

Voluntary Administration

Voluntary Administrations are available to companies which are, or may become, insolvent. They provide a company and its directors – in conjunction with an independent corporate recovery expert – with a flexible tool which can facilitate an orderly reconstruction of a business which may be basically sound, but is currently facing financial difficulty.

RSM Bird Cameron's Turnaround & Insolvency experts advise and administer the affairs of insolvent or near insolvent companies and are qualified to act for you as Voluntary Administrators.

Objectives

The aim of a Voluntary Administration is to enable the business, property and affairs of an insolvent company, or a company which may become insolvent, to be administered in a way that maximises both the chances for the company to continue in existence; and for the return to creditors and shareholders.

Possible outcome

The company's future ultimately rests with its creditors who may resolve that the company:

- execute a Deed of Company Arrangement – whereby the creditors agree to a proposal submitted by the directors to enable returns to creditors to be maximised. Such arrangements are extremely flexible and may entail a moratorium on debt repayments, repayment of debts in full or otherwise from future profit or a sale of under utilised assets;
- be wound up – whereby the company's business property and affairs are liquidated; or
- be returned to the control of its directors if solvent.

Appointment of the Administrator

The Administrator must be a registered liquidator and may be appointed by the directors under the common seal of the company, a secured lender, or the Liquidator if the company is already in liquidation.

The role of the Administrator is to take control and manage the company's affairs, which includes the power to dispose of the business or any assets.

Critical points for directors

Directors have a primary statutory and fiduciary duty to act positively and promptly where a company is, or is likely to become, insolvent.

The appointment of RSM Bird Cameron's Turnaround & Insolvency experts as Voluntary Administrators is a positive step towards resolving financial stress and of minimising director's personal exposure.

Other critical points for directors to note include:

- Voluntary Administration provides a means of avoiding substantial penalties and/or personal liability imposed on directors where debts will be incurred whilst a company is insolvent; or where withholding tax is unable to be remitted within 14 days of receiving a demand to do so.

- The directors must submit a Report as to Affairs within seven days of the appointment.
- During the period of administration, guarantees may not be enforced against directors or their relatives except with leave of the Court.
- The directors' powers are suspended, however they are required to assist the Administrator.

Critical points for unsecured creditors

- Creditors decide the future of the company at the second meeting of creditors.
- Legal proceedings can only continue against the company with the consent of the Administrator or leave of the Court.
- Winding up proceedings against the company may not be commenced.
- Owners and lessors of property may not take possession of their property without the consent of the Administrator or leave of the Court.
- Unless the Administrator notifies the lessors or owners of property of the intention to return their property within seven days of his/her appointment, the Administrator is liable for any rents while that property is used.
- The Administrator is also liable for any debts incurred while he/she is in control of the company.

Critical points for lenders with security over whole, or substantially the whole, of the company's property

- The Administrator must notify secured lenders of the appointment within one business day.
- The lenders then have ten business days to decide whether to enforce securities.
- Lenders can enforce securities upon termination of the administration and/or commencement of the Deed of Arrangement – provided the lender votes against the Deed.

Meetings

The Administrator must hold the first meeting of creditors within eight business days of the appointment commencing.

At this meeting, creditors will be required to vote on the appointment of a committee of creditors.

Creditors may also vote to remove the Administrator from office and appoint someone else to act as Administrator.

A second meeting of creditors at which the company's future will be determined – excepting allowances for Christmas and Easter periods – will be held within 25 business days of the appointment. This meeting can be adjourned for up to 45 business days by creditors or such other period as the court allows.

At the second meeting, creditors will be required to vote on whether to:

- execute a Deed of Company Arrangement;
- wind up the company; or
- end the Administration.

If the creditors resolve to execute a Deed of Company Arrangement, it must be executed within 15 business days of the last creditors' meeting or such other period as the Courts allow.

Failure to do so will automatically result in the company being placed into liquidation.

Multi-disciplined team approach

RSM Bird Cameron's Turnaround & Insolvency team have staff skilled in handling these types of appointments backed by the resources of a full service national accounting practice that includes the following dedicated services lines:

- Assurance & Advisory
- Business Solutions
- Corporate Finance
- Risk Advisory
- Financial Services
- Tax Services

By connecting with our multi-disciplined team approach, you can be assured of us achieving the best outcome.

For more information

RSM Bird Cameron's Turnaround & Insolvency services are available nationally.

Please contact us for detailed information.

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Our one-firm structure enables us to provide strong connections and a focus on client relationships. Clients can readily connect to our national and international expertise and networks, our extensive understanding of Australian business and to our directors and senior advisors. With RSM Bird Cameron you really are... **Connected for Success.**