



# SMITH HANCOCK

## FACT SHEET: Voluntary Administration

### Object of a Voluntary Administration

The *Corporations Act, 2001* ("the Act") provides that the object of administration is to provide for the business, property and affairs of an insolvent company to be administered in such a way that:

- (a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or
- (b) if it is not possible for the company or its business to continue in existence results in a better return for the company's creditors and members than would result from an immediate winding up of the company.

### Who can be the Voluntary Administrator?

The administrator must be a person registered with the Australian Securities & Investments Commission ("ASIC") as a liquidator. The Act provides for a number of disqualifications including where the person is a creditor or officer of the company.

### How is the Administrator appointed?

Most commonly, a company may by writing appoint an administrator if the Board has resolved that in the opinion of the directors the company is insolvent or likely to become insolvent and an administrator should be appointed.

This process is quick, easy and relatively cheap to undertake. There is no need to involve the Courts.

Alternatively, a liquidator or secured creditor may appoint an administrator. However, these types of appointments infrequently occur.

### What happens after the appointment has occurred?

Generally the administration will last for up to 26 business days during which time:

- two creditor meetings are held - the first meeting within 8 business days after the date of appointment and the second within 5 business days before or after the end of the "convening period";
- the "convening period" is generally 20 business days commencing from the day after the administration begins. The convening period is extended to 25 business days for administrations commencing in December or less than 25

business days before Good Friday;

- the administrator assumes control of the company's affairs;
- the administrator is personally liable for goods and services rendered to the corporation, but has a right of indemnity from the assets of the company;
- the powers of an officer of the company are suspended but they are required to assist the administrator;
- only the administrator can deal with company property;
- the administrator will investigate the company's affairs;
- the administrator must report to ASIC if it appears that an offence has been committed;
- a "freeze" is placed on all creditor claims creditors are unable to take possession of property or otherwise recover it, a proceeding in a court cannot be begun or proceeded with and personal guarantees provided by a director cannot be enforced (note there are some exceptions to this moratorium, eg secured creditors);
- by no later than, generally, the 20th business day the administrator is to provide a report to creditors about the company's business, property and affairs and financial circumstances and a statement setting out the administrator's opinion and reasons for that opinion about each of the following:
  - (i) whether it would be in the creditors' interests for the company to execute a deed of company arrangement ("DCA")
  - (ii) whether it would be in the creditors' interests for the administration to end
  - (iii) whether it would be in the creditors' interests for the company to be wound up (placed in liquidation).

### When does the Administration end?

Generally the creditors determine the future of the company at the second creditors' meeting by voting in favour of one of the options outlined above. The administration will end when:

- the company and the administrator execute the DCA (usually within 15 business days after the end of the second meeting of creditors)
- creditors resolve either for the administration to end or for the company to be wound up.

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