



18 December 2018

**To the creditor as addressed**

Dear Sir/Madam

**Tropical Metals Pty Ltd  
(In Liquidation) (the Company)  
ACN 061 766 265**

**Initial Information for creditors - Appointment of Liquidators**

On 4 December 2018, Martin Ford and I were appointed Liquidators of the Company by special resolution of the member of the Company passed at a duly convened meeting.

The Company was part owner of the Wolfram Camp Mine, a Tungsten mine approximately 1.5 hours west of Cairns, in North Queensland. Prior to my appointment, the mine operated by the Company was in care and maintenance.

The Company's mining tenements were disclaimed immediately on appointment because among other things, the Company was without funds to continue to fund the financial obligations of care and maintenance. There was also Environmental Protection Orders (EPOs) issued to the Company for financial and technical breaches of the Company's Environmental Authority.

According to the Company's records, you may be a creditor of the Company. We are writing to provide you with information about the liquidation and your rights as a creditor.

**What is a creditor's voluntary liquidation?**

A creditors' voluntary liquidation, or CVL, is a liquidation initiated by the company where the company is unable to pay all of its creditors in full. This means that the company is insolvent.

**What happens to your debt?**

As Liquidators, we are not in a position to discharge debts incurred by the Company prior to our appointment. These debts will rank as unsecured claims against the Company and payment of these amounts is dependent upon the outcome of the liquidation.

You may provide details of your claim against the Company by completing the enclosed Proof of Debt Form 535 and returning it to us via email to [Alison.McLaughlin@pwc.com](mailto:Alison.McLaughlin@pwc.com).

If you have leased property to the Company, have a retention of title claim or hold a Personal Property Security in relation to the Company, please contact our office.

**PricewaterhouseCoopers, ABN 52 780 433 757**  
480 Queen Street, BRISBANE QLD 4000,  
GPO Box 150, BRISBANE QLD 4001  
T: +61 7 3257 5000, F: +61 7 3257 5999, [www.pwc.com.au](http://www.pwc.com.au)



### **Cessation of trading**

We do not accept any liability for payment of goods ordered or services rendered during the period of the liquidation, unless otherwise agreed in writing by us.

If you have any incomplete orders placed by the Company prior to our appointment, they should not be completed unless you receive written confirmation from us.

Any sums becoming due to the Company after our appointment must be paid in full and no "set-offs" will be allowed.

### **Contracts / agreements**

All known contracts are currently being reviewed and we will advise the status of them as soon as practicable.

We expressly advise that we have not adopted any contracts or liabilities of the Company in existence at the date of our appointment unless we notify you to that effect in writing.

In the meantime, payment for use of any goods or services is not an adoption of any contract or liability by the Liquidators.

### **Your rights as a creditor**

Please refer to the enclosed information sheet, "Creditor Rights in Liquidation" prepared by the Australian Restructuring Insolvency & Turnaround Association (**ARITA**).

We wish to draw your attention to the special right to request a meeting in the first 20 business days of a creditors' voluntary liquidation. If we receive a reasonable request for a meeting from at least 5% of known creditors that are not related entities of the Company, we are required to hold a meeting. The details of whether a request is reasonable or not is included in the information sheet enclosed.

### **Prior Involvement and Independence**

We enclose a copy of our Declaration of Independence, Relevant Relationships and Indemnities (**DIRRI**), which provides details of any relevant relationships that we have, and any indemnities or upfront payments that have been provided to us.

We have considered each relationship and it is our opinion that none of the relationships as disclosed in the DIRRI result in any conflict of interest or duty, or affect our independence.

### **Summary of the Company's affairs**

On 13 December 2018 the Company's director provided a completed Report on Company Activities and property (**ROCAP**) and on 18 December 2018 provided a Summary of Affairs (Form 509) regarding the financial status of the Company at the date of our appointment.



A copy of the Form 509 and a list of creditors which notes those creditors that are related entities is enclosed.

### **Progress of liquidation**

Since our appointment, we have commenced an assessment of the Company's financial position to determine the Company's assets and liabilities.

All statutory notifications to the Australian Securities and Investments Commission (**ASIC**) and the Australian Taxation Office (**ATO**) have been attended to and we have made any necessary insurance arrangements.

### **Assets**

We are not aware of any Company owned assets as at the date of appointment, except for the mining tenements. The mining tenements were disclaimed on appointment because among other things, the Company was without funds to continue to fund the financial obligations of care and maintenance at the mine site. There was also Environmental Protection Orders (EPOs) issued to the Company for financial and technical breaches of the Company's Environmental Authority in respect of the mining tenements.

### **Employees**

We are not aware of any employees as at the date of appointment.

### **Investigations**

As Liquidators, we have a duty to undertake investigations in respect of the Company and are able to examine transactions which occurred prior to our appointment to determine if they are voidable. At this stage we are in the process of gathering information to complete these investigations. If any potentially voidable transactions are identified, this may result in additional realisations for the Company.

### **Costs of the liquidation**

We enclose a copy of our Initial Remuneration Notice. This document provides you with information about how we propose to be paid for undertaking the liquidation.

We may write and ask that you approve our remuneration for the work which we do in completing the liquidation. If we do, we will provide you with detailed information so that you can understand what tasks we have undertaken and the costs of those tasks.

### **What happens next?**

We will proceed with the liquidation, including:

- investigating the Company's affairs, and
- reporting to the corporate regulator, ASIC.



If we receive a request for a meeting that complies with the guidelines set out in the Creditor Rights information sheet, we will hold a meeting of creditors.

We will provide you with an update on the progress of our investigations and advise whether a dividend is likely in a further report to creditors. This report will be issued on or before 3 March 2019.

We may then write to you again after that with further information on the progress of the liquidation.

**Where can you get more information?**

ARITA provides information to assist creditors with understanding liquidations and insolvency. This information is available from ARITA's website at [arita.com.au/creditors](http://arita.com.au/creditors).

ASIC also provides information sheets on a range of insolvency topics. A copy of ASIC's "Liquidation: A guide for creditors" information sheet is enclosed. Further information sheets can be accessed on ASIC's website at [asic.gov.au](http://asic.gov.au) (search for "insolvency information sheets").

You may also elect to receive future notices and other documents electronically (by email). Should you wish to do so, please complete the enclosed "Creditors Electronic Communication Method Approval" form and return it to this office.

If you have any queries in relation to the information provided, please contact Alison McLaughlin on 07 3257 6081 or [Alison.McLaughlin@pwc.com](mailto:Alison.McLaughlin@pwc.com).

Yours faithfully

A handwritten signature in black ink, appearing to read "Michael Owen".

**Michael Owen**

Liquidator

Enc



***List of Attachments***

1. Creditors Electronic Communication Method Approval Form
2. A Declaration of Independence, Relevant Relationships and Indemnities (**DIRRI**)
3. Form 509 and list of known creditors
4. Information Sheets
  - (i) ARITA: Creditors Rights in Liquidation
  - (ii) ASIC: Liquidation guide for creditors
5. Proof of Debt ("POD") Form 535
6. Initial Remuneration Notice

**Tropical Metals Pty Ltd (In Liquidation)**  
**ACN 061 766 265 ABN 73 061 766 265 (the Company)**

**Corporations Act 2001 Section 600G**  
**Insolvency Practice Rules (Corporations) – 75-10**

**CREDITOR'S APPROVAL TO THE USE OF EMAIL BY THE EXTERNAL ADMINISTRATOR  
WHEN GIVING OR SENDING CERTAIN NOTICES UNDER SECTION 600G  
OF THE CORPORATIONS ACT 2001**

Should you wish to receive notices and documents relating to the liquidation of Tropical Metals Pty Ltd by email, please complete this form and return it to [liam.barnes@pwc.com](mailto:liam.barnes@pwc.com).

I/We authorise the External Administrators on behalf of the Company and their employees and agents to send and give notices and documents where such notices and documents may be sent by email to me/us using the email address provided below.

<b>Signature:</b>	
<b>Creditor name:</b>	
<b>Creditor address:</b>	
<b>Contact name:</b>	
<b>Position:</b>	
<b>Email Address:</b>	
<b>Contact number:</b>	

Return to: Tropical Metals Pty Ltd (In Liquidation) C/- PricewaterhouseCoopers  
Via Email: [liam.barnes@pwc.com](mailto:liam.barnes@pwc.com)  
Via Post: GPO Box 150, Brisbane QLD 4001

## **Declaration of Independence, Relevant Relationships and Indemnities**

**Wolfram Camp Mining Pty Ltd**

**ACN 108 254 315**

**and**

**Tropical Metals Pty Ltd**

**ACN 061 766 265**

**(both in liquidation)**

**(the Companies)**

Practitioners appointed to an insolvent entity are required to make declarations as to:

- A. their independence generally
- B. relevant relationships, including:
  - i. the circumstances of the appointment
  - ii. any relationships with the Companies and others within the previous 24 months
  - iii. any prior professional services for the Companies within the previous 24 months
  - iv. that there are no other relationships to declare
- C. any indemnities given, or up-front payments made, to the Practitioners.

On 1 August 2018, PPB Advisory merged with PricewaterhouseCoopers (**PwC**). As a result, the majority of PPB Advisory's partners and staff joined PwC.

This declaration is made in respect of us, the partners and staff of PwC, and all members of the PwC global network in Australia.

### **A. Independence**

We, Michael Owen and Martin Ford of PwC, Level 23, 480 Queen Street, Brisbane QLD 4000, have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as joint and several Liquidators of the Companies in accordance with the law and applicable professional standards. The assessment included a review of PPB Advisory matters for the 24 month period prior to accepting the appointment as Liquidators.

This assessment identified no real or potential risks to our independence. We are not aware of any conflicts at the time of our appointment or any reasons that would prevent us from accepting this appointment.

In the event that any conflict arises, we will seek independent legal advice or court directions if appropriate.

In the event that this declaration needs to be updated we will issue a written notice to all known creditors as per the Companies records.

### **B. Declaration of Relationships**

#### **i. Circumstances of appointment**

This appointment was referred to us by Clayton Utz Lawyers, advisor acting for the Companies. Prior to the appointment, Clayton Utz engaged us to specifically advise on the appointment options available to the Companies and contingency planning for same.

Outlined below are dealings with relevant parties over the previous 24 months:

<b>Date</b>	<b>Description</b>
March 2016	Specific limited engagement by Clayton Utz to assist them provide advice to their client by conducting a financial review and provide general information regarding insolvency options available to the Companies.
June 2017	Specific limited engagement by Clayton Utz to assist them provide advice to their client by: <ul style="list-style-type: none"> <li>• engaging with Queensland Government (QG) to understand the options available to the Companies in respect of Environmental Protection Orders and Financial Assurance</li> <li>• providing general information on current insolvency options available to the Companies and its stakeholders and contingency planning.</li> </ul>
7 September 2018	Scott Sharry contacted Michael Owen to discuss the Companies' current position and request he complete independence checks (given the merger with PwC) to confirm there is no reason we should not now take an appointment.
7 September 2018	Telephone conference with director of the Companies, Lewis Black, and Scott Sharry of Clayton Utz Lawyers to discuss the current financial position of the Companies and engagement with QG in expectation of a potential Creditors Voluntary Liquidation (CVL) appointment due to Environmental Protection Orders against the Companies.
8 October 2018	Specific limited engagement by Clayton Utz to review financial position, confirm appropriateness of CVL appointment, engage with QG and contingency planning for an appointment.
7 November 2018	Draft documents required to effect an appointment were emailed to Clayton Utz.
8 October 2018 to 14 November 2018	Telephone and email attendances with Clayton Utz and Company representatives to obtain information and discuss options available to the Companies, resulting in delivery of a final report on 14 November 2018 for the 8 October 2018 engagement, including: <ol style="list-style-type: none"> <li>1. understanding the financial situation of the Companies</li> <li>2. explaining the consequences of insolvency</li> <li>3. clarifying the alternative courses of action available to the insolvent in the case of insolvency</li> <li>4. estimation of timeframe to commence the liquidation process and</li> <li>5. telephone conference with QG to discuss assurances required by Liquidators appointed.</li> </ol>
8 November 2018	Written response received from QG regarding assurances required by Liquidators.
16 November 2018	Clarification on assurances required by Liquidators sought from QG by Clayton Utz.

<b>Date</b>	<b>Description <i>continued...</i></b>
4 December 2018	Extent of assurances from QG required by Liquidators confirmed by Clayton Utz.
4 December 2018	Consent to Act as Liquidators of the Companies provided to Clayton Utz.

In our opinion, these communications do not affect our independence, as the advice was given to Clayton Utz Lawyers to assist them advise their client regarding an appropriate insolvency appointment and not to the director personally. Further, the advice was restricted to the limitations imposed by Principle 2 of the Code of Professional Practice in relation to pre-appointment advice being that any advice or information given by the Practitioner is restricted to:

- the financial situation of the Insolvent;
- the solvency of the Insolvent;
- consequences of insolvency; and
- alternative courses of action available to the Insolvent in the case of insolvency.

Further, the advice provided is unlikely to be subject to review during the liquidations and would not impact on compliance with our statutory and fiduciary duties. It is for these reasons that the advice does not, in our opinion, give rise to a conflict of interest or duty.

We received the following remuneration paid by Clayton Utz in respect of the above mentioned specific engagements:

- \$30,000 (excluding GST) for the March 2016 engagement
- \$50,000 (excluding GST) for the June 2017 engagement
- \$30,000 (excluding GST) for the October 2018 engagement.

We did not provide other information or advice to the Companies, its director or advisor prior to our appointment, beyond that outlined in this Declaration of Independence, Relevant Relationships and Indemnities (**DIRRI**).

## **ii. Relevant relationships (excluding professional services to the insolvent)**

PwC undertakes assignments for a large number of corporate and government entities in Australia and may have acted for some creditors of the Companies. We are not aware of any such relationship that would influence our ability to be able to fully comply with the statutory and fiduciary obligations associated with the liquidations of the Companies in an objective and impartial manner.

The partners and staff of PPB Advisory who joined PwC from 1 August 2018 may have previously acted for some creditors of the Companies. We are not aware of any such relationship that would influence our ability to be able to fully comply with the statutory and fiduciary obligations associated with the liquidations of the Companies in an objective and impartial manner.

We, or a member of our firm, have, or have had within the preceding 24 months, a relationship with:

#### **Clayton Utz Lawyers**

<b>Nature of relationship</b>	<b>Reasons why no conflict of interest or duty</b>
<p>Clayton Utz Lawyers is an advisor to the Companies and referred this matter to us.</p> <p>We have previously had a professional relationship with Clayton Utz Lawyers in respect of other referrals of work and personal and corporate informal and formal appointments.</p>	<p>We believe that this relationship does not result in a conflict of interest or duty because:</p> <ul style="list-style-type: none"> <li>• Referrals from solicitors, business advisors or accountants are commonplace and do not impact on our independence in carrying out our duties as liquidators.</li> </ul>

#### **Deputy Commissioner of Taxation, WorkCover, Department of Environment and Science (DES), Department of Natural Resources, Mines and Energy (DNRME) and/or major banks (unsecured creditors)**

<b>Nature of relationship</b>	<b>Reasons why no conflict of interest or duty</b>
<p>Various Practitioners within PwC are members of panels for appointments as liquidators and bankruptcy trustees.</p> <p>We have undertaken formal assignments of companies where the ATO, WorkCover, DES and DNRME are creditors</p>	<p>We believe that these relationships do not result in a conflict of interest or duty. Our previous relationship with unsecured creditors has not been and is not in relation to the Companies' affairs and/or the Companies' Director or related parties of the Companies.</p>

#### **iii. Prior professional services to the insolvent**

Neither we, nor the firms (i.e. PPB Advisory and PwC), have provided any professional services to the Companies in the previous 24 months. All review engagements were between us and Clayton Utz.

#### **iv. No other relevant relationships to disclose**

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with the Companies, an associate of the Companies, a former insolvency practitioner appointed to the Companies or any person or entity that has security over the whole or substantially the whole of the Companies' property that should be disclosed.

#### **C. Indemnities and up-front payments**

We have been provided with the following indemnities (and/or up-front payments for remuneration) for this administration.

Name of party	Almonty Industries Inc. (Toronto stock exchange listed)
Relationship with the Companies/Director	Creditor/Shareholder
Type of payment	Upfront Payment + indemnity
Amount	\$150,000.00
What the indemnity or upfront payment covers	Liquidators' remuneration, disbursements, claims and liabilities associated with the liquidation of the Companies
Where are the funds held (if received upfront)	Clayton Utz Lawyers' trust account
Any restrictions on the use of the funds	There are no conditions on the conduct or outcome of the liquidations attached to the provision of these funds and indemnity. Further, the funds will not be drawn to meet the Liquidators' remuneration until such time that it is approved by creditors.

This does not include statutory indemnities. We have not received any other indemnities or upfront payments that should be disclosed.

Dated this 10th day of December 2018



**Michael Owen**  
Liquidator



**Martin Ford**  
Liquidator

*Note:*

1. *If circumstances change, or new information is identified, we are required under the Corporations Act 2001 and the Australian Restructuring Insolvency & Turnaround Association (ARITA) Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication as well as table a copy of any replacement declaration at the next meeting of the insolvent's creditors.*
2. *Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.*

# Presentation of summary of affairs of a company

If there is insufficient space in any section of the form, you may attach an annexure and submit as part of this lodgement

**Related forms:**

5604 Information about the company's affairs sent to creditors

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## Company details

Company name

Tropical Metals Pty Ltd

ACN

061 766 265

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## Lodgement details

An image of this form will be available as part of the public register.

Who should ASIC contact if there is a query about this form?

ASIC Registered agent number (if applicable)

206306

Firm/organisation

PwC

Contact name/position description

Liam Barnes

Telephone number (during business hours)

(07) 32576071

Email address (optional)

liam.barnes@pwc.com

Postal address

Level 23, 480 Queen Street

Suburb/City

Brisbane

State/Territory

QLD

Postcode

4000

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## Summary of assets and liabilities

Date to which summary is made up

0  4  1  2  1  8  
[D] [D] [M] [M] [Y] [Y]

**Continued... Summary of assets and liabilities**

	<b>Valuation</b> (for each entry show whether cost or net book amount)	<b>Estimated Realisable Values</b>
	\$	\$
<b>1</b> Assets not specifically subject to security interest		
(a) interest in land	-	-
(b) sundry debtors	-	-
(c) cash on hand	2.00 (Cost)	2.00
(d) cash at bank	19.91 (Cost)	19.91
(e) stock	-	-
(f) work in progress	-	-
(g) plant and machinery	-	-
(h) other assets	-	-
	769,772.95 (NBV)	769,772.95
<b>Sub-total</b>	769,794.86	(To be advised on the value of tenement Bamford Hill EPM14028)
<b>2</b> Assets subject to specific security interests		
Less amounts owing		
<b>Total Assets</b>	(\$ 769,794.86 )	
<b>Total Estimated Realisable Values</b>	(\$ 769,794.86 )	
<b>3</b> Less amounts payable in advance of secured creditor(s) including employee entitlements		
		-
<b>4</b> Less amounts owing and secured by debenture or circulating security interests over assets		
		-
<b>5</b> Less preferential claims ranking behind secured creditors		
<b>6</b> Less balances owing to partly secured creditors		
<b>Total Claims</b>	(\$ )	
<b>Security Held</b>	(\$ )	
<b>7</b> Less creditors (Unsecured) Amount claimed		Parent Company 897,893.02 (Intercompany balance)
<b>8</b> Add contingent assets <b>Estimated to produce</b>		
<b>9</b> Less contingent liabilities <b>Estimated to rank</b>		
<input checked="" type="checkbox"/> Estimated deficiency or		
<input type="checkbox"/> Estimated surplus		\$ -128,098.16
<input type="checkbox"/> Subject to costs of administration or		
<input checked="" type="checkbox"/> Subject to costs of liquidation		
<b>Share capital \$</b>	2.00	
<b>Issued</b>	\$ 2.00	
<b>Paid Up</b>	\$ 2.00	

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## Signature

This form must be signed by a director,  
secretary or liquidator.

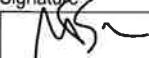
Name of person signing

Lewis Black

Capacity

Director

Signature



Date signed

1	7	/	1	2	/	1	8
[D]	[D]		[M]	[M]		[Y]	[Y]

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## Lodgement

Send completed and signed forms to:  
Australian Securities and Investments Commission,  
PO Box 4000, Gippsland Mail Centre VIC 3841.

### For more information

Web [www.asic.gov.au](http://www.asic.gov.au)

Need help? [www.asic.gov.au/question](http://www.asic.gov.au/question)

Telephone 1300 300 630

# Guide: Presentation of summary of affairs of a company

This guide does not form part of the form. It is included by ASIC to assist you in completing and lodging the Form 509.

**Related forms:**

5604 Information about the company's affairs sent to creditors

<b>Signature</b>	This form must be signed by a director, secretary or liquidator.				
<b>Lodgement period</b>	10 business days after the meeting of the company at which the resolution for winding up was passed.				
<b>Lodgement fee</b>	A lodgement fee applies to this form.  For information on fees refer to <a href="http://www.asic.gov.au/forms">www.asic.gov.au/forms</a> .				
<b>Other forms to be completed</b>	This form should be lodged with Form 5604 Information about the company's affairs sent to creditors - Section 497(1)(b)				
<b>Additional information</b>	The date given as 'date to which summary is made up' must not be earlier than the date of the declaration by a majority of the directors under subsection 494(1) of the <i>Corporations Act 2001</i> .  If this summary of affairs is sent out to creditors in accordance with subparagraph 497(1)(b)(i) of the <i>Corporations Act 2001</i> , it must be made up to the latest practicable date before the notices are sent.				
<b>How to provide additional information</b>	<p><b>Photocopies Form 509 pages</b> If there is insufficient space in any section of the form, you may photocopy the relevant page(s) and submit as part of this lodgement.</p> <p><b>Attachments</b> Attachments must be labelled as shown below.</p> <p><b>Sample</b></p> <table border="1"><tr><td>Liquidator name:</td></tr><tr><td>Attachment name:</td></tr><tr><td>Number of pages:</td></tr><tr><td>Date prepared:</td></tr></table>	Liquidator name:	Attachment name:	Number of pages:	Date prepared:
Liquidator name:					
Attachment name:					
Number of pages:					
Date prepared:					
<b>Privacy</b>	The information provided to ASIC in this form may include personal information. Please refer to our privacy policy ( <a href="http://www.asic.gov.au/privacy">www.asic.gov.au/privacy</a> ) for information about how we handle your personal information, your rights to seek access to and correct personal information, and to complain about breaches of your privacy.				
<b>Lodgement</b>	Send completed and signed forms to: Australian Securities and Investments Commission PO Box 4000, Gippsland Mail Centre VIC 3841.	<b>For more information</b> Web <a href="http://www.asic.gov.au">www.asic.gov.au</a> Need help? <a href="http://www.asic.gov.au/question">www.asic.gov.au/question</a> Telephone 1300 300 630			

**Tropical Metals Pty Ltd (In Liquidation)****Creditors**

Name	Address	Current Balance (\\$)
<b>Related Parties</b>		
Almonty Industries Inc.	c/- Clayton Utz, Level 28 Riparian Plaza, 71 Eagle Street BRISBANE QLD 4000	897,893.02
<b>Total Creditors</b>		<b>897,893.02</b>

# Creditor Rights in Liquidations

As a creditor, you have rights to request meetings and information or take certain actions:



## Right to request a meeting

In liquidations, no meetings of creditors are held automatically. However, creditors with claims of a certain value can request in writing that the liquidator hold a meeting of creditors.

A meeting may be requested in the first 20 business days in a creditors' voluntary liquidation by  $\geq 5\%$  of the value of the debts held by known creditors who are not a related entity of the company.

Otherwise, meetings can be requested at any other time or in a court liquidation by:

- $> 10\%$  but  $< 25\%$  of the known value of creditors on the condition that those creditors provide security for the cost of holding the meeting
- $\geq 25\%$  of the known value of creditors
- creditors by resolution, or
- a Committee of Inspection (this is a smaller group of creditors elected by, and to represent, all the creditors).

If a request complies with these requirements and is 'reasonable', the liquidator must hold a meeting of creditors as soon as reasonably practicable.

## Right to request information

Liquidators will communicate important information with creditors as required in a liquidation. In addition to the initial notice, you should receive, at a minimum, a report within the first three months on the likelihood of a dividend being paid.

Additionally, creditors have the right to request information at any time. A liquidator must provide a creditor with the requested information if their request is 'reasonable', the information is relevant to the liquidation, and the provision of the information would not cause the liquidator to breach their duties.

A liquidator must provide this information to a creditor within 5 business days of receiving the request, unless a longer period is agreed. If, due to the nature of the information requested, the liquidator requires more time to comply with the request, they can extend the period by notifying the creditor in writing.

**Requests must be reasonable.**

**They are not reasonable if:**

Both meetings and information:

- (a) complying with the request would prejudice the interests of one or more creditors or a third party
- (b) there is not sufficient available property to comply with the request
- (c) the request is vexatious

Meeting requests only:

- (d) a meeting of creditors dealing with the same matters has been held, or will be held within 15 business days

Information requests only:

- (e) the information requested would be privileged from production in legal proceedings
- (f) disclosure would found an action for breach of confidence
- (g) the information has already been provided
- (h) the information is required to be provided under law within 20 business days of the request

If a request is not reasonable due to (b), (d), (g) or (h) above, the liquidator must comply with the request if the creditor meets the cost of complying with the request.

Otherwise, a liquidator must inform a creditor if their meeting or information request is not reasonable and the reason why.

## Right to give directions to liquidator

Creditors, by resolution, may give a liquidator directions in relation to a liquidation. A liquidator must have regard to these directions, but is not required to comply with the directions.

If a liquidator chooses not to comply with a direction given by a resolution of the creditors, they must document their reasons.

An individual creditor cannot provide a direction to a liquidator.

## Right to appoint a reviewing liquidator

Creditors, by resolution, may appoint a reviewing liquidator to review a liquidator's remuneration or a cost or expense incurred in a liquidation. The review is limited to:

- remuneration approved within the six months prior to the appointment of the reviewing liquidator, and
- expenses incurred in the 12 months prior to the appointment of the reviewing liquidator.

The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

An individual creditor can appoint a reviewing liquidator with the liquidator's consent, however the cost of this reviewing liquidator must be met personally by the creditor making the appointment.

## Right to replace liquidator

Creditors, by resolution, have the right to remove a liquidator and appoint another registered liquidator.

For this to happen, there are certain requirements that must be complied with:

Meeting request



Information and notice



Resolution at meeting

A meeting must be reasonably requested by the required number of creditors.

Creditors must inform the existing liquidator of the purpose of the request for the meeting.

Creditors must determine who they wish to act as the new liquidator (this person must be a registered liquidator) and obtain:

- Consent to Act, and
- Declaration of Independence, Relevant Relationships and Indemnities (DIRRI).

The existing liquidator will send a notice of the meeting to all creditors with this information.

If creditors pass a resolution to remove a liquidator, that person ceases to be liquidator once creditors pass a resolution to appoint another registered liquidator.

**For more information, go to [www.arita.com.au/creditors](http://www.arita.com.au/creditors)**



## Liquidation: A guide for creditors

If a company is in financial difficulty, its shareholders, creditors or the court can put the company into liquidation.

This information sheet (INFO 45) provides general information for unsecured creditors of companies in liquidation. It covers:

- who creditors are
- the purpose of liquidation
- the liquidator's role
- reporting to creditors
- recoveries from creditors
- creditors' meetings
- voting at creditors' meetings
- proposals to creditors without a meeting
- committee of inspection
- approval of liquidator's fees
- payment of dividends
- other creditor rights
- secured creditor rights
- directors and liquidation
- conclusion of liquidation
- queries and complaints

### Who is a creditor?

You are a creditor of a company if the company owes you money. Usually, a creditor is owed money because they have provided goods or services, or made loans to the company.

A retail customer of a company in liquidation may also be a creditor if they have partly or fully paid for goods and services that they have not received.

An employee owed money for unpaid wages and other entitlements is a creditor.

A person who may be owed money by the company if a certain event occurs (e.g. if they succeed in a legal claim against the company) is also a creditor, and is sometimes referred to as a 'contingent' creditor.

There are generally two categories of creditor – secured and unsecured:

- A secured creditor is someone who holds a security interest, such as a mortgage, in some or all of the company's assets, to secure a debt owed by the company. Lenders usually require a security interest in company assets when they provide a loan. Security interests over personal property other than land are registered on the Personal Property Securities Register (PPSR) if the creditor wants to ensure their security interest is enforceable and accorded priority

in an insolvency. You can search the PPSR to find out if anyone holds a security interest (other than a mortgage over land) in the company's assets.

- An unsecured creditor is a creditor who does not hold a security interest in the company's assets.

Employees are a special class of unsecured creditors. In a liquidation, their outstanding entitlements are paid in priority to the claims of other unsecured creditors. If you are an employee, see [Information Sheet 46 Liquidation: A guide for employees \(INFO 46\)](#).

All references in this information sheet to 'creditors' relate to unsecured creditors unless otherwise stated.

## The purpose of liquidation

The purpose of liquidation of an insolvent company is to have an independent and suitably qualified person (the liquidator) take control of the company so that its affairs can be wound up in an orderly and fair way for the benefit of all creditors.

There are two types of insolvent liquidation:

- creditors' voluntary liquidation
- court liquidation.

The most common type is a creditors' voluntary liquidation, which usually begins in one of two ways:

- creditors vote for liquidation following a voluntary administration or a terminated deed of company arrangement
- an insolvent company's shareholders resolve to liquidate the company and appoint a liquidator.

In a court liquidation, a liquidator is appointed by the court to wind up a company following an application (usually by a creditor). Others, including a director, a shareholder and ASIC, can also make a winding-up application to the court .

After a company goes into liquidation, unsecured creditors cannot commence or continue legal action against the company, unless the court permits.

It is possible for a company in liquidation to also be in receivership: see [Information Sheet 54 Receivership: A guide for creditors \(INFO 54\)](#).

## The liquidator's role

When a company is being liquidated because it is insolvent, the liquidator has a duty to all the company's creditors. The liquidator's role is to:

- collect, protect and realise the company's assets
- investigate and report to creditors about the company's affairs, including any unfair preferences that may be recoverable, any uncommercial transactions that may be set aside, and any possible claims against the company's officers
- inquire into the failure of the company and possible offences by people involved with the company and report to ASIC
- after payment of the costs of the liquidation, and subject to the rights of any secured creditor, distribute the proceeds of realisation – first to priority creditors, including employees, and then to unsecured creditors.

Except for lodging documents and reports required under the *Corporations Act 2001* (Corporations Act), a liquidator is not required to incur an expense in relation to the winding up unless there are enough assets to pay their costs.

If the company is without sufficient assets, one or more creditors may agree to reimburse a liquidator's costs and expenses of undertaking investigations and taking action to recover further assets for the benefit of creditors.

In this case, if additional assets are recovered, the liquidator or particular creditor can apply to the court for the creditor to be compensated for the risk involved in funding the liquidator's recovery action.

If a liquidator suspects that people involved with the company may have committed offences and the liquidator reports this to ASIC, the liquidator may also be able to apply to ASIC for funding to carry out a further investigation into the allegations.

## Reporting to creditors

The liquidator will send the following to creditors:

- initial information about creditors' rights in the liquidation
- a statutory report within three months after their appointment
- such other reports as the liquidator decides or that are reasonably requested by creditors.

### Initial information

Within 10 business days after their appointment as liquidator in a creditors' voluntary liquidation (or 20 business days for a court liquidator), the liquidator must give creditors notice of their appointment and information advising creditors of the following:

- their right to request information, reports and documents
- their right to direct that a meeting of creditors be held
- their right to give directions to the liquidator
- their right to appoint a reviewing liquidator
- their right to remove and replace the liquidator
- in a creditors' voluntary liquidation, a summary of the company's affairs and a listing of the names, addresses and estimated amounts owed to the company's creditors (and identifying if any of the creditors are related entities of the company).

The liquidator must also send with this information an initial remuneration notice if they propose to seek fee approval during the liquidation: see [Information Sheet 85 Approving fees: A guide for creditors \(INFO 85\)](#).

### Statutory report

The liquidator must provide a report to creditors within three months after their appointment containing information about:

- the estimated amount of assets and liabilities of the company
- inquiries undertaken and further inquiries that may need to be undertaken relating to the winding up of the company
- what happened to the business of the company
- the likelihood of creditors receiving a dividend before the affairs of the company are fully wound up
- possible recovery actions.

The report may provide additional information relevant to the liquidation or notify creditors about whether the liquidator proposes to convene a meeting of creditors. The liquidator might also attach details of a proposal to creditors to consider and vote on without the need to hold a meeting. Information about meetings of creditors and voting on proposals without a meeting is included below.

A copy of the report must be lodged with ASIC. A copy of this report may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

### Other reports

There is no statutory requirement for the liquidator to provide further reports to creditors. However, a liquidator will often provide further reports to creditors updating them on the conduct of the liquidation.

Creditors can request that the liquidator provide a report. The liquidator must comply with a reasonable request. See the information at 'Other creditor rights' below.

## Recoveries from creditors

A liquidator has the ability to recover, for the benefit of all creditors, certain payments (known as unfair preferences) made by the company to individual creditors in the six months before the start of the liquidation.

Broadly, a creditor receives an unfair preference if, during the six months prior to liquidation, the company is insolvent, and the creditor suspects the company is insolvent and receives payment of their debt (or part of it) ahead of other creditors. To be an unfair preference, the payment must put the creditor receiving it in a more favourable position than other unsecured creditors.

Not all payments from the company to a creditor in the six months before liquidation are unfair preferences. The Corporations Act provides various defences to an unfair preference claim.

If a liquidator seeks to recover a payment that has been made to you, you may wish to obtain independent legal advice on the merits of the liquidator's claim before repaying any money.

## Creditors' meetings

A liquidator may call a creditors' meeting from time to time to inform creditors of the progress of the liquidation, to find out their wishes on a particular matter or seek approval of the liquidator's fees.

You may also use a creditors' meeting to ask questions about the liquidation and inform the liquidator about your knowledge of the company's affairs.

### Meetings during a court liquidation

In a court liquidation, the liquidator is not required to call a creditors' meeting unless a matter requires creditor approval.

The liquidator can call a creditors' meeting at any time and must also call a meeting if:

- a committee of inspection directs it (where there is a committee of inspection)
- creditors pass a resolution requiring the liquidator call a meeting
- at least 25% in value of creditors direct the liquidator to do so in writing
- less than 25% but more than 10% in value of creditors direct the liquidator to do so in writing and they provide security for the costs of calling and holding the meeting.

The liquidator is not required to comply with a direction to call a meeting given by a committee of inspection or creditors if that direction is not reasonable. There are rules governing when a direction is not reasonable, including if the liquidator, acting in good faith, thinks that:

- complying with the direction would cause substantial prejudice to the interests of creditors or a third party and the prejudice outweighs the benefits of complying with the direction
- there is insufficient available property to comply with the direction.

If the direction is not reasonable, the liquidator must notify the person or body that gave the direction and set out reasons why it is not reasonable. Even if the liquidator decides not to comply with a direction and convene a meeting because it is not reasonable, if the person or body who gave the direction agrees to pay the costs of calling and holding the meeting, and security for those costs is provided if the liquidator requires it, the liquidator must convene the meeting.

**Note:** See the Insolvency Practice Rules (Corporations) 2016 – s75-250.

### Meetings during a creditors' voluntary liquidation

In a creditors' voluntary liquidation, the liquidator is not required to call a creditors' meeting unless a matter requires creditor approval.

The liquidator can call a creditors' meeting at any time and if directed to do so by one of the ways outlined above for court liquidation.

In addition, the liquidator in a creditors' voluntary liquidation must call a meeting if:

- less than 25% but more than 5% in value of creditors direct the liquidator to do so in writing
- none of the creditors who give the direction is a related entity in relation to the company
- the direction is given no more than 20 business days after the resolution for the voluntary winding up of the company is passed.

Creditors might direct a meeting be held to ask questions about the liquidation, inform the liquidator about their knowledge of the company's affairs or to consider replacing the liquidator if they have a concern about the independence of the liquidator appointed by the company's shareholders.

As with a court liquidation, the liquidator is not required to comply with a direction by the committee of inspection or creditors to call a meeting if that direction is not reasonable, but they must notify the person or body that gave the direction and set out reasons why it is not reasonable.

## Minutes of meetings

The chairperson of a creditors' meeting (usually the liquidator or one of their senior staff) must prepare minutes of the meeting and a record of those who were present at the meeting and lodge them with ASIC within one month. A copy of the minutes of meeting may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

## Voting at a creditors' meeting

To vote at a creditors' meeting you must lodge details of your debt or claim with the liquidator. Often, the liquidator will provide you with a form called a 'proof of debt' to be completed and returned before the meeting.

The chairperson of the meeting decides whether or not to accept the debt or claim for voting purposes. The chairperson may decide that a creditor does not have a valid claim. In this case, they may not allow the creditor to vote at all. If the chairperson is in doubt whether to accept the debt or claim, they must mark the vote as objected to and allow the creditor to vote subject to the vote being declared invalid if the objection is sustained. This decision is only for voting purposes. It is not relevant to whether a creditor will receive a dividend.

An appeal against a decision by the chairperson to accept or reject a proof of debt or claim for voting purposes may be made to the court within 10 business days after the decision.

## Voting by proxy

You may appoint an individual as proxy to attend and vote at a meeting on your behalf. Creditors who are companies will have to nominate a person as proxy so that they can participate in the meeting. This is done using a form sent out with the notice of meeting. The completed proxy form must be provided to the liquidator before the meeting.

An electronic form of proxy may be used if the liquidator allows electronic lodgement, provided there is a way to authenticate the appointment of the proxy (e.g. by scanning and emailing a signature or using a digital signature).

You can specify on the proxy form how the proxy is to vote on a particular resolution and the proxy must vote in accordance with that instruction. This is called a 'special proxy'. Alternatively, you can leave it to the proxy to decide how to vote on each of the resolutions put before the meeting. This is called a 'general proxy'.

You can appoint the chairperson to represent you either through a special or general proxy. The liquidator or one of their partners or employees must not use a general proxy to vote in favour of a resolution approving payment of the liquidator's fees.

## Manner of voting

A vote on any resolution put to a creditors' meeting may be taken by creditors stating aloud their agreement or disagreement, or by a more formal voting procedure called a 'poll'.

If voting is by verbally signalling agreement, the resolution is passed if a majority of those present indicate agreement. It is up to the chairperson to decide if this majority has been reached.

After the vote, the chairperson must tell those present whether the resolution has been passed or lost. If the chairperson is unable to determine the outcome of a resolution on verbal agreement, they may decide to conduct a poll.

Alternatively, a poll can be demanded by a person participating and entitled to vote at the meeting. If a poll is demanded, it must be taken immediately.

The chairperson will determine how this poll is taken.

If you intend to demand that a poll be taken, you must do so before, or as soon as, the chairperson has declared the result of a vote taken by voices.

When a poll is conducted, a resolution is passed if both:

- more than half the number of creditors who are voting (in person or by proxy) vote in favour of the resolution
- those creditors who are owed more than half of the total debt owed to creditors at the meeting vote in favour of the resolution.

This is referred to as a 'majority in number and value'. If a majority in both number and value is not reached under a poll (often referred to as a deadlock), the chairperson has a casting vote.

## Chairperson's casting vote

When a poll is taken and there is a deadlock, the chairperson may use their casting vote (except for resolutions to approve their remuneration) either in favour of or against the resolution. Where the resolution relates to their removal as liquidator, the chairperson may only exercise the casting vote in favour of their removal. The chairperson may also decide not to use their casting vote, in which case the deadlocked resolution is not passed.

The chairperson must inform the meeting, and include in the written minutes of meeting that are lodged with ASIC, of the reasons why they exercised their casting vote in a particular way or why they chose not to use their casting vote.

If you are dissatisfied with how the chairperson exercised their casting vote or failed to use their casting vote, you may, in specified circumstances, apply to court for a review of the chairperson's decision. The court may vary or set aside the resolution or order that the resolution is taken to have been passed.

## Votes of related creditors

If directors and shareholders, their spouses and relatives and other entities controlled by them are creditors of the company, they are entitled to attend and vote at creditors' meetings.

If a resolution is passed or defeated based on the votes of these related creditors and you are dissatisfied with the outcome, you may, in specified circumstances, apply to court for the resolution to be set aside and/or for a fresh resolution to be voted on without related creditors being entitled to vote. Certain criteria must be met before the court will make such an order (e.g. the original result of the vote being against the interests of all or a class of creditors).

## Proposals to creditors without a meeting

Instead of convening a creditors' meeting, the liquidator can put proposals to creditors by giving notice in writing.

This notice must be given to each creditor who would be entitled to receive notice of a meeting and:

- include a statement of the reasons for the proposal and the likely impact the proposal will have on creditors
- invite the creditor to either:
  - vote 'yes' or 'no' for the proposal
  - object to the proposal being resolved without a meeting
- specify a reasonable time for creditors' replies to be received by the liquidator.

To vote on the proposal, a creditor must lodge details of their debt or claim with the liquidator and complete the voting documents provided by the liquidator.

Creditors can vote 'yes' or 'no' on the proposal or object to the proposal being resolved without a creditors' meeting. You should return your response to the liquidator within the time specified in the notice, which must be at least 15 business days after the notice is given to creditors.

A resolution is passed if the majority of creditors in number and value who responded to the notice voted 'yes' and if not more than 25% in value of the creditors who responded objected to the proposal being resolved without a creditors' meeting.

The liquidator should provide creditors enough information to allow them to make an informed decision about the proposal. A creditor should contact the liquidator to obtain further information if they think it necessary for them to make a decision.

The liquidator must lodge with ASIC a statement about the outcome of the proposal. A copy of the outcome of the proposal may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

## Committee of inspection

A committee of inspection may be formed to assist and advise the liquidator in both a court liquidation and creditors' voluntary liquidation. The committee of inspection also monitors the conduct of the liquidator, may approve certain steps in the liquidation and may give directions to the liquidator. The liquidator must have regard to, but is not always required to comply with, such directions.

The committee may be formed by resolution passed at any meeting of creditors called for that purpose. Creditors also decide who are to be appointed members of the committee of inspection.

All creditors are entitled to stand for committee membership. Members appointed to the committee of inspection represent the interests of all creditors.

If a creditor is a company, the creditor can nominate, in writing, an individual to represent it on the committee.

A person can be appointed as a member of the committee of inspection:

- by resolution of creditors
- by a creditor, or group of creditors, owed at least 10% of the value of creditors' claims
- by an employee, or group of employees, owed at least 50% in value of outstanding employee entitlements.

A member of the committee of inspection must not directly or indirectly derive any profit or advantage from the external administration of the company.

A committee of inspection has various powers and functions; including to:

- approve the remuneration of the liquidator
- direct the liquidator to convene a meeting of creditors
- request the liquidator to give information, provide a report or produce a document
- obtain specialist advice or assistance (with the prior approval of the liquidator or the court) that the committee considers desirable relating to the conduct of the liquidation.

The liquidator is not required to comply with a direction to convene a meeting or give information if that request is not reasonable. The rules mentioned under the heading 'Meetings during a court liquidation' about when a direction is not reasonable apply to directions given to a liquidator by a committee of inspection.

A committee of inspection can determine its own procedures and exercises its powers through resolutions passed at meetings of the committee. A resolution is passed by a majority in number of its members present at a meeting. The committee of inspection can only act if a majority of its members attend.

Minutes of meetings of the committee of inspection must be prepared and lodged with ASIC within one month. A copy of the minutes of committee of inspection meetings may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

ASIC is entitled to attend a meeting of the committee of inspection.

## Approval of liquidator's fees

A liquidator is entitled to be paid for the work they perform. Generally, their fees will be paid from available assets, before any payments are made to creditors. They may have also arranged for a third party to pay any shortfall in their fees if there aren't any assets.

The fees cannot be paid until the amount has been approved by creditors, a committee of inspection or the court. Alternatively, the liquidator may put a proposal to creditors to approve their fees without holding a meeting.

**Note:** If fees are not approved by the relevant decision-making body, and the liquidation commenced on or after 1 September 2017, the liquidator is entitled to be paid reasonable fees up to a maximum of \$5,000 excluding GST (indexed annually from 1 July 2017).

If you are asked to approve fees, either at a general meeting of creditors or at a meeting of a committee of inspection or by a proposal put to creditors without a meeting, the liquidator must give you, at the same time as the notice of the meeting or with the proposal, a report that contains sufficient information for you to assess whether the fees claimed are reasonable. This report should be in simple language and set out:

- a summary description of the major tasks performed or likely to be performed
- the costs of completing those tasks and how those costs were calculated
- the periods when funds will be drawn to pay the fees
- the estimated total amount, or range of amounts, of total fees
- an explanation of the likely impact the fees will have on any dividends to creditors
- such other information that will assist in assessing the reasonableness of the fees claimed.

If you are in any doubt about how the fees were calculated, ask for more information.

If you do not think the fees are reasonable, you should raise your concerns with the liquidator.

Generally, if fees are approved and you wish to challenge the decision, you may apply to court and ask the court to review the fees. You may wish to seek your own legal advice if you are considering applying for a court review of fees.

Apart from fees, the liquidator is entitled to reimbursement for out-of-pocket expenses that have arisen in carrying out their administration. This reimbursement may require creditor, committee of inspection or court approval.

For further information, see [Information Sheet 85 Approving fees: A guide for creditors \(INFO 8\)](#).

## Payment of dividends

If there are funds left over after payment of the costs of the liquidation and payments to other priority creditors, including employees, the liquidator will pay these to unsecured creditors as a dividend. Generally, the order in which funds are distributed is:

- costs and expenses of the liquidation, including liquidators' fees
- outstanding employee wages and superannuation
- outstanding employee leave of absence (including annual leave and long service leave)
- employee retrenchment pay
- unsecured creditors.

Each category is paid in full before the next category is paid. If there are insufficient funds to pay a category in full, the available funds are paid on a pro rata basis (and the next category or categories will be paid nothing).

## Proving your debt

Before any dividend is paid to you for your debt or claim, you will need to give the liquidator sufficient information to prove your debt.

The liquidator will notify you if there are likely to be funds available for distribution and must call for formal proof of debt forms to be lodged. At least 14 days notice of the deadline for lodging the proof must be given.

This notice must be given to each person claiming to be a creditor whose debt or claim has not already been admitted by the liquidator. It must also be published on ASIC's [Published notices](#) website. A copy of the formal proof of debt form will be sent to you with the notice.

You should attach copies of any relevant invoices or other supporting documents to the proof of debt form, as your debt or claim may be rejected if there is insufficient evidence to support it.

If a creditor is a company, the proof of debt form must be signed by a person authorised by the company to do so.

The completed proof of debt form must be delivered or posted to the liquidator. When submitting your claim, ask the liquidator to acknowledge receipt of your claim and advise if any further information is needed.

The liquidator must notify you within seven days if they reject your claim. If you are dissatisfied with the decision, your first step should be to promptly contact the liquidator to see if you can resolve the matter.

If you can't resolve the matter with the liquidator, you may wish to seek your own legal advice, as you have a limited time to appeal to the court. The liquidator will notify you of this time in the notice of rejection. It must be at least 14 days after you receive the notice. The court has the power to extend the time to appeal. If you don't appeal within this time, the liquidator's decision on your claim is final.

If you have a query regarding the calculation of your claim, or the timing of the payment, discuss this with the liquidator.

## Other creditor rights

As well as the various rights involving meetings and participation in dividends discussed above, the other rights of creditors include the right to:

- request the liquidator give information, provide a report or produce a document
- inspect certain books of the liquidator
- inform the liquidator about your knowledge of matters relevant to the affairs of the company in liquidation
- appoint a reviewing liquidator
- remove and replace the liquidator by resolution passed at a meeting of creditors
- complain to ASIC or the court about the liquidator's conduct in connection with their duties.

## Request for information

Creditors can, by resolution passed at a meeting of creditors or individually, request the liquidator to give information, provide a report or produce a document.

The liquidator must comply with this request unless:

- the information, report or document is not relevant to the liquidation
- the liquidator would breach their duties if they complied with the request
- it is not reasonable to comply with the request.

There are rules governing when a direction is not reasonable, including if the liquidator, acting in good faith, thinks that:

- complying with the request would substantially prejudice the interests of one or more creditors or a third party and that the prejudice outweighs the benefits of complying with the request
- the information would be privileged from production in legal proceedings
- there is not sufficient available property to comply with the request
- the law requires the information to be provided by the liquidator within 20 business days of the request being made.

If the direction is not reasonable, the liquidator must notify the requesting party and set out reasons why the request is not reasonable.

If the requesting party agrees to pay the costs of providing the information and security for those costs is provided if the liquidator requires it, the liquidator must comply with the request.

## Liquidator's books

Liquidators must keep sufficient books to give a complete and correct record of their administration of the company's affairs. These include minutes of meetings and details of all the receipts and payments for the liquidation.

These books must be available at the liquidator's office for inspection by creditors and shareholders.

Copies of minutes of meetings and detailed lists of receipts and payments, as well as a number of other documents, must also be lodged with ASIC. Copies of these documents may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

## Informing the liquidator

The liquidator must report to ASIC if they suspect that anyone connected to the company may have committed an offence. If you have any information that might assist in preparing such a report, you should let the liquidator know.

These reports are not available for inspection. ASIC reviews these reports and decides whether to take further action, such as banning a person from acting as a company director for a period of time or charging the person with a criminal offence. ASIC considers a range of factors when deciding what action, if any, to take. For further information, see [Information Sheet 151 ASIC's approach to enforcement \(INFO 151\)](#).

## Appoint a reviewing liquidator

Creditors can resolve to appoint a reviewing liquidator to carry out a review into fees and/or costs incurred by the liquidator. In addition, one or more creditors with the agreement of the liquidator may appoint a reviewing liquidator.

This review is limited to:

- remuneration approved within the six months before the reviewing liquidator is appointed
- costs or expenses incurred during the 12-month period before the reviewing liquidator is appointed (unless the liquidator agrees to a longer period).

The reviewing liquidator must be a registered liquidator. A creditor who wishes to appoint a reviewing liquidator must approach a registered liquidator to get a written consent from that person that they would be prepared to act as reviewing liquidator. The person must also make a written declaration about any relationships they or their firm may have that might affect their independence to act as reviewing liquidator.

The liquidator, and their staff, must cooperate with the reviewing liquidator.

If creditors pass a resolution to appoint a reviewing liquidator, the reviewing liquidator's costs form part of the expenses of the liquidation of the company. If one or more creditors appoint the reviewing liquidator with the consent of the liquidator without passing a resolution, the reviewing liquidator's costs are borne by the creditor(s) appointing the reviewing liquidator.

## Remove and replace the liquidator

Creditors may remove and replace the liquidator at any time by resolution of creditors passed at a creditors' meeting for which at least five business days notice is given.

A creditor who wishes to appoint a replacement liquidator must request that the current liquidator convene a meeting. The liquidator is not required to comply if the request is not reasonable (there are rules about when a request to convene a meeting is reasonable – see the information under the heading 'Meetings during a court liquidation' above). The liquidator must comply with the request if the creditor agrees to pay the cost of calling the meeting, and security for those costs is provided if the liquidator requires it.

The notice of meeting must include details of the proposed resolution and attach a consent to act and declaration of relevant relationships of the proposed replacement liquidator.

Accordingly, a creditor who wishes to remove the current liquidator and appoint a replacement liquidator must approach a registered liquidator to get a written consent from that person that they would be prepared to act as liquidator of the company. The person must also make a written declaration about any relationships they or their firm may have that might affect their independence to act as liquidator.

If the resolution to remove the current liquidator is passed at the meeting, the removal takes effect from when a resolution to appoint the replacement liquidator is passed.

## Applications to the court

The court has the power to make such orders as it thinks fit in relation to an external administration. Creditors and other persons with a financial interest in the external administration can apply to the court for these orders which include:

- an order determining any question arising in the external administration
- an order that a person cease to be appointed as the liquidator and that another registered liquidator be appointed
- orders in relation to remuneration.

Making an application to the court can be costly. You should attempt to resolve any problems with the liquidator and only go to court if this fails.

Liquidators, ASIC and other people can also make applications to the court. For example, a liquidator might apply to have questions decided about powers exercised in a liquidation.

## Secured creditors' rights

If a company fails to meet its obligations under a security interest (e.g. a charge or a mortgage), a secured creditor can appoint an independent and suitably qualified person (a receiver) to take control of and realise some or all of the secured assets (collateral), in order to repay the secured creditor's debt. This right continues after the company goes into liquidation. For more on receivership, see [INFO 54](#).

Another option available to a secured creditor is to ask the liquidator to deal with the collateral for them and account to them for the proceeds and costs of collecting and selling those assets.

A secured creditor is entitled to vote at creditors' meetings for the amount the company owes them that exceeds the amount they are likely to receive from realisation of the collateral. The secured creditor can participate in any dividend to unsecured creditors on a similar basis.

## Directors and liquidation

Directors cannot use their powers after a liquidator has been appointed. They have an obligation to assist the liquidator by:

- advising the liquidator of the location of company property and delivering any such property in their possession to the liquidator
- providing the company's books and records to the liquidator
- advising the liquidator of the whereabouts of other company records
- providing a written report about the company's business, property and financial circumstances within 10 business days of the appointment of the liquidator by the court or within five business days of the appointment of a liquidator in a creditors' voluntary liquidation
- meeting with, or reporting to, the liquidator to help them with their inquiries, as reasonably required
- if required by the liquidator, attending a creditors' meeting to provide information about the company and its business, property, affairs and financial circumstances.

A liquidator has the power to apply to the court to conduct a public examination, under oath, of a director (or other person with information about the company).

Compensation proceedings for amounts lost by creditors as a result of the company trading while insolvent can be initiated against a director personally by ASIC, a liquidator or, in certain circumstances, a creditor.

## Conclusion of liquidation

A liquidation effectively comes to an end when the liquidator has realised and distributed all the company's available property and made their report to ASIC.

The liquidator must lodge a final account of their receipts and payments, called an 'end of administration return' and lodge it with ASIC.

**Note:** For a creditors' voluntary liquidation ending before 1 July 2018, the liquidator must also convene a final meeting of the members and creditors of the company and lodge a return for the final meeting with ASIC.

Alternatively, in a court liquidation, after the liquidator decides that the company's affairs are fully wound up, they may:

- seek an order for release from the court
- seek an order for release and that ASIC deregister the company
- if the liquidation is finalised before 1 July 2018 and there are insufficient assets to obtain a court order for the company's deregistration, request that ASIC deregister the company.

ASIC will deregister the company three months after the end of administration return is lodged (or return for the final meeting of members and creditors in a creditors' voluntary winding up if the administration ends before 1 July 2018).

## Queries and complaints

You should first raise any queries or complaints with the liquidator. If this fails to resolve your concerns, including any concerns about the liquidator's conduct, you can lodge a report of misconduct with ASIC – see [How to complain](#).

Lodging your report of misconduct online ensures the quickest response from ASIC to your concerns.

ASIC usually does not become involved in matters of commercial judgement by a liquidator.

Reports of misconduct against companies and their officers can also be made to ASIC.

If you are unable to report misconduct to ASIC online, you can contact us on 1300 300 630.

## Where can I get more information?

For an explanation of terms used in this information sheet, see [Information Sheet 41 Insolvency: A glossary of terms \(INFO 41\)](#). For more on external administration, see the related information sheets listed in [Information Sheet 39 Insolvency information for directors, employees, creditors and shareholders \(INFO 39\)](#).

Further information is available from the [Australian Restructuring Insolvency & Turnaround Association \(ARITA\) website](#). The ARITA website also contains the [ARITA Code of Professional Practice for Insolvency Practitioners](#).

## Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.

This is **Information Sheet 45 (INFO 45)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Last updated: 01/09/2017 07:47

**FORM 535**  
*Corporations Act 2001*

**FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)**  
**TROPICAL METALS PTY LTD (IN LIQUIDATION) ACN 061 766 265**

To the Liquidators of Tropical Metals Pty Ltd (In Liquidation) (**the Company**)

- This is to state that the Company was on 4 December 2018, and still is, justly and truly indebted

to ..... (creditor)  
(name of creditor)

of .....  
(address of creditor)

for \$.....

Particulars of the debt are:

Date (date when the debt arose)	Consideration (state how debt arose and attach supporting documentation)	Amount (\$)	Remarks (include details of voucher substantiating payment)

- To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following  
(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).

Date	Drawer	Acceptor	Amount (\$c)	Due Date

\*3A. I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

\*3B. I am the creditor's agent authorised in writing to make this statement in writing. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

\* Items 3A & 3B - delete both if the creditor is a natural person and this proof is made by the creditor personally. In other cases, if, for example, you are the director of a corporate creditor or the solicitor or accountant of the creditor, you sign this form as the creditor's authorised agent (delete item 3A). If you are an authorised employee of the creditor (credit manager etc), delete item 3B.

**I have attached the following documents (tick as many as appropriate):**

- |   |   |   |   |
|---|---|---|---|
| <input type="checkbox"/> Invoices                   | <input type="checkbox"/> Judgement from Court | <input type="checkbox"/> Letters of demand  | <input type="checkbox"/> Orders from Company    |
| <input type="checkbox"/> Monthly statements         | <input type="checkbox"/> Statutory demand     | <input type="checkbox"/> Credit application | <input type="checkbox"/> Guarantee from Company |
| <input type="checkbox"/> Creditors authority letter | <input type="checkbox"/> Other documents      |   |   |

Complete all sections

Dated ...../...../..... Name ..... Signatory.....

Phone ..... Email address.....

## **Initial Remuneration Notice**

**Tropical Metals Pty Ltd  
(In Liquidation) (the Company)  
ACN 061 766 265**

The purpose of the Initial Remuneration Notice is to provide you with information about how we propose our remuneration for undertaking the liquidation will be set.

### **A Remuneration Method**

There are four basic methods that can be used to calculate the remuneration charged by an insolvency practitioner. They are:

#### **1. Time based / hourly rates**

This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work, multiplied by the number of hours spent by each person on each of the tasks performed.

#### **2. Fixed Fee**

The total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration. Sometimes a practitioner will finalise an administration for a fixed fee.

#### **3. Percentage**

The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.

#### **4. Contingency**

The practitioner's fee is structured to be contingent on a particular outcome being achieved.

### **B Method chosen**

Given the nature of this administration we propose that our remuneration as Liquidators be calculated on Hourly Rates. This is because:

- it ensures that creditors are only charged for work that is performed
- as Liquidators, we are required to perform a number of tasks which do not necessarily relate to the realisation of assets, for example responding to creditor enquiries, reporting to ASIC and conducting investigations
- generally, it is difficult to estimate with accuracy the total amount of fees necessary to complete all tasks required in the administration and
- our firm has a time recording system that can produce a detailed analysis of time spent on each type of task by each individual staff member utilised in the administration

### **C Explanation of Hourly Rates**

The rates for our remuneration calculation are set out in the following table together with a general guide showing the qualifications and experience of staff engaged in the administration and the role they take in the administration. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage. Time is charged in 6 minute increments. The hourly rates set out in the below schedule are exclusive of GST and do not include disbursements.

Remuneration is approved by a resolution of the creditors, a creditors' committee or a court.

**PwC hourly rates as at 1 October 2018 and guide to level of insolvency classification \***

<b>Title</b>	<b>Description</b>	<b>Hourly rate (ex GST) \$</b>
Partner/ Appointee	A registered liquidator or bankruptcy trustee who is a leading practitioner with extensive experience in all forms of insolvency administrations. A senior member of management with ultimate responsibility for the conduct of the administration.	720.00
Managing Director/ Appointee	Generally, a registered liquidator or bankruptcy trustee with extensive experience in all forms of insolvency administrations. A senior member of management and, where a co-appointee, has responsibility for the conduct of the administration.	690.00
Director	Highly experienced in insolvency matters at a senior level, including managing complex administrations and supervising teams. Capable of deputising for the Appointees where required, and may be qualified to accept appointments in his/her own right. Alternatively, may have specialist business or industry skills, and management experience at a senior level, or a combination of skills.	625.00
Senior Manager	Experienced in insolvency matters with strong technical knowledge and commercial skills. Capable of supervising teams, having primary responsibility for small to medium matters, or complex aspects of larger matters. Answerable to the Appointees and/or senior team members. Alternatively, may have specialist business or industry skills, and management experience at a senior level, or a combination of skills.	560.00
Manager	Experienced in insolvency matters with well-developed technical and commercial skills. Capable of supervising smaller teams, and can take day-to-day responsibility for smaller to medium matters, or aspects of more complex matters. Alternatively, may have management, business, or industry skills, or a combination of skills. Generally reports to senior team members, or directly to the Appointees on smaller matters.	510.00
Senior Consultant	Generally a qualified accountant with postgraduate qualifications in insolvency subjects. Assists with planning and control of various aspects of the administration. Has day-to-day responsibility for overseeing fieldwork and can supervise staff. Has experience in larger and more complex administrations.	425.00
Consultant	Generally a qualified accountant. Assists with planning and control of various aspects of the administration, but is primarily responsible for completing fieldwork under the supervision of more senior staff.	350.00
Specialist	Has specialist skills and experience in bookkeeping and other administrative tasks connected to statutory and other reporting obligations of the administration.	180.00
Administration support	Has appropriate skills to provide administrative support to the team including high-speed and accurate document preparation and data entry, records control and management, and general data analytics.	180.00

\* The above rates are reviewed from time to time. The description of each grade is a general guide only. From time to time there may be persons employed who, because of their skills and experience, are employed in positions where they may not necessarily meet all of the above qualifications.

Future remuneration is approved subject to a maximum or cap. Sometimes the actual cost of the administration will exceed the maximum which has been approved, in which case, we may seek another resolution for additional remuneration. We will not pay any amount exceeding the maximum without this approval.

Where funds are available, we will usually pay approved remuneration at intervals not less than one month. Where funds are not available, remuneration will not be paid.

#### **D Estimate of Remuneration**

We estimate that the administration will cost approximately \$30,000 to \$50,000 (exclusive of GST) to complete.

We received an upfront payment held in trust and indemnity should insufficient assets be available to meet costs of the administration. This has been disclosed in our Declaration of Independence, Relevant Relationships and Indemnities.

Approved remuneration may exceed the amount of this indemnity and can be paid from the assets of the Liquidation after approval by creditors or the Court.

#### **E Disbursements**

Disbursements are divided into three types:

- **Externally provided professional services** – these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- **Externally provided non-professional costs** – these are recovered at cost. Examples of externally provided professional service disbursements are travel, accommodation, search fees, lodgement fees, storage, outsourced printing and photocopying services.
- **Internal disbursements** such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

We are not required to seek creditor approval for disbursements paid to third parties but must account to creditors. We must be satisfied that these disbursements are appropriate, justified and reasonable.

We are required to obtain creditor approval for the payment of internal disbursements where there is a profit or advantage prior to these disbursements being paid from the administration. Creditors will be asked to approve our internal disbursements prior to these disbursements being paid from the administration.

Details of the basis of recovering disbursements in this administration are provided below. Full details of any actual costs incurred will be provided with future reporting.

#### **Basis of disbursement claim**

<b>Disbursements</b>	<b>Rate (Excl GST)</b>
Externally provided professional services	At cost
Externally provided non-professional services	At cost
Staff vehicle use	65 cents per kilometre for first 150km of return trip and 40 cents per kilometre thereafter

Dated this 18th day of December 2018



**Michael Owen and Martin Ford**  
Liquidators