



**Broker Services Australia Pty Ltd
(In Liquidation)
ACN 074 976 364**

Report to Creditors

4 December 2023

Level 38 Tower Three, 300
Barangaroo Avenue, SYDNEY
NSW 2000
PO Box H67
AUSTRALIA SQUARE NSW 1215

P. +61 2 9335 7000
F. +61 2 9335 7001
W. kpmg.com.au

Contents

Section	Page
1 Executive summary	2
2 Introduction	3
3 Update on the liquidation	4
4 Creditor claims	5
5 Liquidator's remuneration	6
6 Summary of receipts and payments	7
7 Return to creditors	7
8 Meeting of creditors	8
9 Conclusion	9
10 Enclosures	9
Annexures	10
A – Notice of meeting of creditors	11
B – Notice of intention to declare a final dividend	13
C – Remuneration approval request	14
1 Summary	14
2 Declaration	14
3 Remuneration sought	15
4 Disbursements sought	15
5 Previous remuneration approvals	15
6 Likely impact on dividends	16
7 Report on progress of the liquidation	16
8 Summary of receipts and payments	16
9 Questions	17

1 Executive summary

BBY Limited (BBYL) was formerly the largest independent stockbroker in Australia and New Zealand before its collapse in May 2015, when 10 group companies were placed into external administration.

Broker Services Australia Pty Ltd (BSA) was the employment company within the BBY business which dealt with most employee and contractors but held minimal assets.

Purpose of this report

The purpose of this report is to:

- Update BSA creditors on the outcome of the BSA liquidation and likely final returns.
- Provide creditors with a Liquidators' Remuneration Report and seek approval of fees.

A meeting of creditors has been scheduled for 10.30am AEST on 20 December 2023. See further at Section 8.

Returns to creditors

Funds are available in the liquidation to pay a dividend in respect of certain priority creditor claims, including to:

- The Department of Employment and Workplace Relations, in respect of advances made under the Fair Entitlements Guarantee (FEG) for payment of outstanding employment entitlements to former employees.
- Former employees in respect of certain priority claims against BSA that were not settled from FEG advances.

No funds are available for distribution to other secured or unsecured creditors.

Refer to Section 7 of this report for further details.

Next steps

Prior to declaring a distribution, participating priority creditors need to lodge a proof of debt with the Liquidator. Claims will either be accepted or rejected, and creditors will be notified of the outcome.

Enclosed with this report is:

- A **Notice of a meeting of creditors**, to be held at 10.30am AEST on 20 December 2023 (see Annexure A). You may also attend the meeting via MS Teams. Please contact us to obtain access.
- A **Form 535 Formal Proof of Debt or Claim** (to be completed and returned)
- A **Notice of intention to declare a dividend** in respect of priority creditor claims, also requesting submission of a proof of debt (see Annexure B)
- A **Form 532 Appointment of Proxy** (to be completed and returned)

To participate in the meeting please complete and return the Proof of Debt and Proxy forms by 4pm on 19 December 2023 to this office by email or post:

Email: rporwal1@kpmg.com.au

Post: KPMG, Attention R Porwal, PO Box H67, AUSTRALIA SQUARE NSW 1215

2 Introduction

Stephen Vaughan and Ian Hall of KPMG were appointed as Voluntary Administrators of the following 10 companies within the BBY corporate group on 17 May 2015.

BBY external administration appointments				
BBY Company	Administration	Liquidation	DOCA	Administration Ended
BBY Holdings Pty Ltd (BBYH)	17-May-15	22-Jun-15		
BBY Limited (BBYL)	17-May-15	22-Jun-15		
BBY Advisory Services Pty Ltd (BAS)	17-May-15	22-Jun-15		
Broker Services Australia Pty Ltd (BSA)	17-May-15	22-Jun-15		
BBY Nominees Pty Ltd (BBYN)	17-May-15	08-Oct-15		
BBY Protection Nominees Pty Ltd (deregistered)	17-May-15			15-Oct-15
Options Research Pty Ltd (deregistered)	17-May-15			15-Oct-15
Tilbia Nominees Pty Ltd (deregistered)	17-May-15			15-Oct-15
SmarTrader Limited (deregistered)	17-May-15		22-Jun-15	1-Jun-18
BBY Hometrader Pty Ltd (deregistered)	17-May-15		22-Jun-15	1-Jun-18

Receivers and Managers from PPB were appointed on 18 May 2015 over BSA and 3 other BBY companies, BBYH, BBYL and BAS, on behalf of St George Bank, a secured creditor. They subsequently retired from BSA on 20 May 2015.

BSA was the employment company within the BBY business which dealt with most employees and contractors.

Five of the above companies have since been deregistered. Ian Hall retired as a joint Liquidator on 31 December 2021. The liquidations of the five remaining BBY companies, including BSA, are expected to be concluded in 2024.

Our previous reports to BSA creditors included:

- Our Section 439A Report during the Voluntary Administration dated 12 June 2015 (a combined group report)
- Report dated 9 September 2016 (combined group report)
- Report dated 21 September 2017 (combined group report)
- Report dated 21 September 2018 (combined group report)

At a meeting of BSA creditors on 22 June 2015 a committee of inspection was formed. Committee meetings were held on:

- 29 July 2015
- 8 September 2015
- 22 December 2015 (a quorum was not present for this meeting and it did not proceed)
- 23 February 2017

A report on the liquidation of BBY Limited, dated 31 March 2022, along with other reports and further details of the BBY external administrations can be found on the creditor information website at www.kpmg.com/au/bby. That report includes a wider overview of the group liquidations, major milestones, the reasons for the failure of the BBY group and results of recovery actions.

3 Update on the liquidation

Fair Entitlements Guarantee claim processing

The Fair Entitlements Guarantee is a scheme of last resort assisting employees who have lost their job because their employer entered liquidation. During 2015 the Department of Employment and Workplace Relations advanced \$1.746 million to the Liquidators which was distributed to former BSA employees in respect of priority employee entitlements. FEG also processed further payments directly to employees.

Asset recoveries

We identified that BSA was creditor of another company in the group, BBY Hometrader Pty Ltd, for \$175,409. BBYH entered a Deed of Company Arrangement with its creditors in July 2015. Under the terms of the Deed, BSA received a dividend of \$82,060 (representing 47% of its claim).

We also recovered amounts from cash at bank, insurance and GST refunds, as well as FEG costs reimbursements, as set out in the account of receipts and payments, totalling approximately \$85,000.

Recovery actions

A liquidator has various statutory rights to seek to set aside or void, for the benefit of creditors, certain types of transactions including unfair preferences, uncommercial and unfair loans, unreasonable director related transactions and other transactions for the purpose of interfering with the rights of creditors.

The time period involved can be from within 6 months up to 4 years and in some cases beyond this, from when the company was placed into administration or liquidation. With some exceptions these recovery rights only arise if the company was insolvent at the relevant time and there are some limited available statutory defences.

Unfair preference payments

During our investigations, we reviewed payments made by BSA to creditors during the period prior to being placed into external administration. We identified payments that we concluded constituted unfair preferences in favour of the Australian Taxation Office, in the amount of \$777,077, and Revenue NSW, for \$110,813. We commenced legal proceedings in respect of these claims. Both parties disputed our conclusions and defended the proceedings. We ultimately settled with both parties, recovering a total of \$420,000, representing 47% of our claims.

Insolvent trading claim

There are also some statutory provisions that apply to company directors that give rise to civil and criminal offences for breaches of the Act and a basis for claims against them. There are circumstances where directors can be held personally liable for losses incurred as a consequence of continuing to trade and incur debt at a time when a company was or was likely to become insolvent. There are, again, some limited available statutory defences.

A resolution was passed at the meeting of the BSA Committee of Inspection on 23 February 2017 approving the entry of the Liquidators and the Company into a litigation funding agreement with IMF Bentham Limited (now called Omni Bridgeway Limited) to support various recovery actions. Other group companies that were party to the agreement included BBY Limited and BBY Holdings Pty Ltd.

With the benefit of funding from litigation funder, the Liquidators completed further investigations and public examinations and pursued a claim against the directors seek damages for allowing the companies to trade whilst insolvent.

A formal mediation of the insolvent trading claim was held in April 2017. An in-principle agreement was reached with the Directors and the insurer agreeing to settle all claims subject to several conditions. However, the agreement was not finalised due to certain conditions not being met.

The Liquidators subsequently negotiated over an extended period with the Directors, their insurer and St George Bank. In September 2018 the Liquidators settled their claim against the insurer. The Directors were not parties to the settlement. The settlement terms and amount are confidential.

On 23 September 2019 Justice Rees of the Supreme Court subsequently approved an apportionment of the settlement proceeds and associated costs between the 3 BBY companies, ordering that the Liquidators are justified in allocating the net proceeds and associated non funded costs between the companies in the following manner: BBY Limited 89%, BSA 10% and BBY Holdings Pty Ltd 1%, [2019] NSWSC 1272.

BSA's share of net recoveries after litigation funding costs and legal fees was \$250,348 and its share of unfunded costs was \$61,690.

For further information, refer to our report to creditors of BBY Limited, dated 31 March 2022, on our website.

4 Creditor claims

A Report as to Affairs prepared by Glenn Rosewall dated 5 June 2015 estimated the realisable value of assets at \$316,796 and disclosed creditor claims totalling \$18.6 million.

Broker Services Australia Pty Ltd (in Liquidation)		
Report as to Affairs G Rosewall 5 June 2015		
Creditor	Claim	Amount \$'000
St George Bank	Overdraft (secured)	2,500
Employees	Salary	5,853
	Commission	471
	Annual Leave	1,143
	Long Service Leave	453
	Superannuation	737
	Accounts payable	124
Independent Advisors		2,353
Brokers		697
Australian Taxation Office	Withholding Tax	3,274
	GST	0
NSW Revenue	Payroll tax	632
Trade Creditors		425
Accrued Expenses		24
Total		18,686

The Report provided did not reconcile. It indicated total unsecured creditor claims were \$8.9 million. The table presents components of the Report with a recalculated total. Previous investigations into the wider group, as part of investigations into management of client monies, indicated that, in many aspects, the BBY group did not maintain adequate financial and client records.

Creditors of BSA include St George Bank, as a secured creditor, employees in relation to priority entitlements, FEG, with a subrogated claim in respect of amounts paid to employees, and ordinary unsecured creditors, including independent contractors.

Funds are available in the liquidation to pay a dividend in respect of certain priority creditor claims, including to FEG and former employees in respect of certain priority claims against BSA that were not settled from FEG advances. No funds are available for distribution to other secured or unsecured creditors.

St George Bank held security of various BBY companies including BSA and suffered a shortfall after realising its security security of over \$8 million.

According to BSA records, ordinary unsecured creditor claims apparently included amounts owed to BBY Limited and BBY Holdings Pty Ltd totalling over \$21 million.

BSA also utilised independent contractors to perform functions within the business. They were not treated as employees and were not entitled to make priority claims in the liquidation.

The Fair Entitlements Guarantee met priority employee claims received in respect of 103 former BSA employees. We processed 12 distributions on behalf of FEG to 87 former employees totalling \$1.746 million. From July 2016 the FEG payment process changed and claims approved by FEG were paid directly to employees. As at the date of this report, FEG had advanced a total of \$1.87 million to meet employee entitlements. Advance made under FEG are summarised below.

Broker Services Australia Pty Ltd (in liquidation)	
Fair Entitlements Guarantee advances	\$
Wages	162,237
Commission	-
Annual leave	540,863
Long service leave	166,720
Pay in lieu of notice	415,462
Redundancy	584,823
Superannuation	-
Total	1,870,106

Once entitlements are paid under FEG, the Commonwealth stands in the shoes of the employee as a subrogated creditor.

FEG also received \$2.9m in claims from 33 former employees relating to unpaid commission in the months leading to the business ceasing to trade, particularly for April and May 2015. FEG did not accept the majority of these claims on various grounds including, for example, that these did not match company payroll records of amounts due or that evidence could not be provided that commissions were part of their remuneration.

Some claims submitted to FEG in respect of wages, commission, annual leave and redundancy were in excess of statutory caps on entitlements under the FEG scheme and were not met.

Former employees are entitled to prove as a priority creditor to the extent a priority entitlement was not met in full by FEG.

5 Liquidator's remuneration

Set out below is a summary of actual and estimated future remuneration costs, including the period of the Voluntary Administration, from 17 May to 22 June 2015, and Liquidation to 30 November 2023.

Broker Services Australia Pty Ltd Remuneration summary		
	Approved	Amount \$
Voluntary Administration	22/06/2015	133,838
	22/06/2015	82,691
Liquidation	22/06/2015	100,000
Approved to date		316,529
FEG funded costs	Not required	26,490
Actual pending approval (insolvent trading costs per Fed Court)		61,690
Estimated future fees (incl adjudication and priority dividend)		27,490
Total excluding GST		432,199

We seek creditor approval in respect of:

- BSA's share of the unfunded costs of the insolvent trading claim discussed in Section 3 of this report at page 5, totalling \$61,690.
- Estimated costs to complete the liquidation, including this report, calling the meeting of creditors, adjudicating priority claims, paying a final dividend in respect of priority entitlements, and finalising the liquidation, totalling \$27,490.

Further details are set out in the Remuneration Report at Appendix C.

6 Summary of receipts and payments

Set out below is a summary of receipts and payments in the liquidation.

Broker Services Australia Pty Ltd	
Receipts & Payments at 30 November 2023	
\$	Amount
Receipts	
Fair Entitlements Guarantee advances	1,746,014
Preference recoveries	420,000
Insolvent trading recovery - BSA share net of costs	250,348
BBY Hometrader DOCA dividend	82,060
GST refunds	44,167
FEG processing fee remittance	26,490
Opening cash balance	10,317
Interest	4,281
Insurance refund	608
Total receipts	2,584,285
Payments	
Distributions to employees, incl PAYG WH tax	1,746,014
Voluntary Administrators remuneration	216,529
Liquidator remuneration	100,000
Legal fees	94,883
FEG processing fees - Liquidator	26,490
Insurance	3,405
GST paid	46,936
Other	1,737
Bank charges	942
Total payments	2,236,937
Cash at Bank	347,348

Funds on hand total \$347,348 as at 30 November 2023.

7 Return to creditors

There will be surplus funds available in the liquidation to pay a dividend in respect of priority creditor claims, including to:

- The Department of Employment and Workplace Relations, Fair Entitlements Guarantee scheme in respect of a subrogated claim against BSA for entitlements paid by FEG to former employees.
- Former employees in respect of claims against BSA that were not met by FEG.

Our estimate of available funds is set out below.

Broker Services Australia Pty Ltd Estimated Outcome \$'000	
Cash at Bank on 30 November 2023	347
Estimated expenses	
Liquidator's actual remuneration (insolvent trading costs)	62
Liquidator's future remuneration	27
Contingency provision	5
Total	94
Estimated funds available	253

No funds are available for other creditors.

The amount of a dividend will depend on the level of participating claims. However, the available funds will probably only be sufficient to meet a portion of claims in respect of wages, superannuation and possibly leave of absence.

This report includes a notice of intention to declare the priority dividend on 25 January 2024 (Annexure B).

Creditors who have not lodged a Formal Proof of Debt with the Liquidator are requested to prove their claims and complete the attached Form 535 Formal Proof of Debt. Please include substantiating details and documents to support your claim.

You are required formally to prove your debt or claim on or before 5 January 2024 or you will be excluded from participation in a dividend.

The Liquidator is required to adjudicate your claim and either admit or reject your proof of debt. We may contact you during that process and we will advise you of the outcome.

8 Meeting of creditors

A meeting of creditors of the Company will be held at **10.30am on 20 December 2023** at the offices of KPMG, 300 Barangaroo Avenue, Sydney. Attached is a Notice of Meeting of Creditors (Annexure A).

We will be able to discuss this report and the status of the liquidation. Creditors will also be requested to approve outstanding remuneration of the Liquidator as detailed in the attached Remuneration Approval Request (Annexure C).

Conference facilities

You may also attend the meeting via MS Teams. To obtain access please contact Rajat Porwal at least one business day prior to the meeting by email at rporwal1@kpmg.com.au or by phone at +61 (02) 9335 8630.

Proofs of Debt and Proxies

A person is not entitled to vote at the meeting unless they provide particulars of their debt or claim to the Liquidator before the meeting. Creditors wishing to vote at the meeting must provide a Proof of Debt and, if not attending in person or are a company, must complete a Proxy form. These forms are attached:

- Form 535 – Proof of Debt
- Form 532 – Appointment of Proxy

9 Conclusion

We expect that the liquidation will be concluded in mid-2024. Remaining steps in the liquidation include:

- The final meeting of creditors
- Adjudication of priority employee claims
- Declaration and payment of a final dividend in respect of priority claims
- Final statutory lodgements with the ATO and ASIC.

Should you have any questions, please contact Rajat Porwal of this office on +61 (02) 9335 8630.



Stephen Vaughan
Liquidator

10 Enclosures – POD and Proxy forms

- Form 535 Formal Proof of Debt or Claim Form
- Form 532 - Appointment of Proxy

Please complete and return these forms by 19 December 2023 to participate in the meeting on 20 December 2023.

Proofs of Debt need to be submitted by no later than 5 January 2024 in order to participate in the final priority dividend.

Annexures

A – Notice of meeting of creditors

Notice of meeting of creditors

Insolvency Practice Rules (Corporations) 2016, Section 75-15

Broker Services Australia Pty Ltd (In Liquidation) (the Company) ACN 074 976 364

NOTICE IS GIVEN that a meeting of the creditors of the Company will be held at the offices of KPMG, Level 26 Tower Three, 300 Barangaroo Avenue, SYDNEY NSW 2000 at **10.30am on 20 December 2023**.

Agenda

1. To hear an account of the Liquidators' dealings in the liquidation to date.
2. To consider and if thought appropriate approve the following resolutions.
 - a. *"That the remuneration of the Liquidator, as set out in the Remuneration Approval Request dated 4 December 2023, is approved for payment in the sum of \$61,689.60, plus GST, and that the Liquidator can draw the remuneration immediately or as required."*
 - b. *"That the future remuneration of the Liquidator, as set out in the Remuneration Approval Request dated 4 December 2023, for the period from 4 December 2023 is approved at a sum equal to the cost of time spent by the Liquidator and his partners and staff, calculated at the rates set out in the report to creditors and Remuneration Approval Request of 4 December 2023, up to a capped amount of \$27,490, plus GST, and that the Liquidator can draw the remuneration as required."*
3. Any other business.

Creditors wishing to vote at the meeting of creditors, who will not be attending in person or are a company must complete and return a Proxy Form by no later than 4pm on 19 December 2023, by email to rporwal1@kpmg.com.au, or by post to PO Box H67, AUSTRALIA SQUARE NSW 1215. A Proxy Form is enclosed.

For creditors who are unable to attend the meeting in person, a MS Teams conference call facility will be available. If you wish to vote or participate, you must attend in person or by proxy. Creditors are not entitled to vote at the meeting unless they lodge particulars of the debt or claim before the meeting. Please contact KPMG by email at rporwal1@kpmg.com.au at least one business day prior to the meeting to advise that you will be using the conference facilities and to be provided with the conference call code.

Dated this 4th day of December 2023



Stephen Vaughan
Liquidator

Note: In accordance with IPR Section 75-15(1)(c) please see effect of IPR Section 75-85 Entitlement to vote at meetings of creditors on the following page.

Effect of IPR Section 75-85 – Entitlement to vote at meetings of creditors

1. A person other than a creditor (or the creditor's proxy or attorney) is not entitled to vote at a meeting of creditors.
2. Subject to subsections (3), (4) and (5), each creditor is entitled to vote and has one vote.
3. A person is not entitled to vote as a creditor at a meeting of creditors unless:
 - (a) his or her debt or claim has been admitted wholly or in part by the external administrator; or
 - (b) he or she has lodged, with the person presiding at the meeting, or with the person named in the notice convening the meeting as the person who may receive particulars of the debt or claim:
 - (i) those particulars; or
 - (ii) if required—a formal proof of the debt or claim.
4. A creditor must not vote in respect of:
 - (a) an unliquidated debt; or
 - (b) a contingent debt; or
 - (c) an unliquidated or a contingent claim; or
 - (d) a debt the value of which is not established;unless a just estimate of its value has been made.
5. A creditor must not vote in respect of a debt or a claim on or secured by a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor unless he or she is willing to do the following:
 - (a) treat the liability to him or her on the instrument or security of a person covered by subsection (6) as a security in his or her hands;
 - (b) estimate its value;
 - (c) for the purposes of voting (but not for the purposes of dividend), to deduct it from his or her debt or claim.
6. A person is covered by this subsection if:
 - (a) the person's liability is a debt or a claim on, or secured by, a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor; and
 - (b) the person is either liable to the company directly, or may be liable to the company on the default of another person with respect to the liability; and
 - (c) the person is not an insolvent under administration or a person against whom a winding up order is in force.

B – Notice of intention to declare a final dividend

Form 548

Notice to Creditor or Person Claiming to be a Creditor of Intention to Declare a Final Dividend

*Corporations Regulations 2001
Subregulation 5.6.65(1)*

Broker Services Australia Pty Ltd (In Liquidation) (the Company) ACN 074 976 364

A first and final dividend is to be declared on **25 January 2024** for the Company.

You are required formally to prove your debt or claim on or before **5 January 2024**. If you do not, I will exclude your claim from participation, and I will proceed to make a final dividend without having regard to it.

A formal proof of debt form is enclosed for your convenience.

Dated this 4th day of December 2023



Stephen Vaughan
Liquidator

Broker Services Australia Pty Ltd (In Liquidation)
c/- KPMG
Tel: +61 2 9335 8630
Email: rporwal1@kpmg.com.au

C – Remuneration approval request

Schedule 2 to the Corporations Act 2001, Section 70-50
Insolvency Practice Rules (Corporations) 2016, Section 70-45

Broker Services Australia Pty Ltd (In Liquidation) (the Company) **ACN 074 976 364**

1 Summary

I am asking creditors to approve remuneration of \$89,179.60 plus GST.

Set out below is a summary of remuneration approved to date and the amount requested for approval.

Broker Services Australia Pty Ltd (in Liquidation) Remuneration summary				
	Approved	Drawn	Approval request	Total \$
Voluntary Administration	22/06/2015	133,838.00		133,838.00
	22/06/2015	82,691.00		82,691.00
Liquidation	22/06/2015	100,000.00		100,000.00
Approved to date		316,529.00		316,529.00
FEG funded costs	Not required	26,490.00		26,490.00
Actual pending approval (insolvent trading costs per Fed Court orders)			61,689.60	61,689.60
Estimated future fees (incl adjudication and priority dividend)			27,490.00	27,490.00
Total excluding GST		343,019.00	89,179.60	432,198.60

Further details of remuneration and disbursements can be found in Sections 3 and 4 of this remuneration approval request.

I estimate that the total cost of this liquidation will be \$189,179.60 plus GST.

The additional fee approval of \$89,179.60.60 being sought in the liquidation relates to additional costs associated with:

- BSA’s court approved share of the unfunded recovery costs of the insolvent trading recovery action. As noted in Section 3, BSA’s share of net recoveries after litigation funding costs and legal fees was \$250,348 and its share of unfunded costs was \$61,689.60.
- Preparing this report to creditors, convening the meeting scheduled for 20 December 2023.
- Calling for and adjudicating on formal proofs of debt from priority creditors.
- Preparing and paying a dividend to priority creditors.
- Completing the liquidation including all statutory obligations.

This is my final remuneration approval request.

2 Declaration

I, Stephen Vaughan of KPMG, have undertaken an assessment of this remuneration and disbursements claim for my appointment as Liquidator of the Company in accordance with the law and applicable professional standards. I am satisfied that the remuneration and disbursements claimed is necessary and proper.

I have reviewed the work in progress report for the administration to ensure that remuneration is only being claimed for necessary and proper work performed and no adjustment was necessary because work that was not considered billable had already been allocated to a non-chargeable phase in KPMG’s time cost system.

3 Remuneration sought

The remuneration I am asking creditors to approve is as follows:

For	Period	Amount (ex GST) \$	Rates to apply	When it will be drawn
Work already completed for insolvent trading claim	23 February 2017 to 23 September 2019	61,689.60	As set out in schedule A	Immediately
Work to be completed in the future	23 September 2019 to finalisation	27,490.00		As incurred
Total remuneration to be approved		\$89,179.60		

On 23 September 2019 Justice Rees of the Supreme Court approved an apportionment of the settlement proceeds and associated costs between the 3 BBY companies, ordering that the Liquidators are justified in allocating the net proceeds and associated non funded costs between the companies in the following manner: BBY Limited 89%, BSA 10% and BBY Holdings Pty Ltd 1%, [2019] NSWSC 1272. Details of the BSA share of the insolvent trading claim costs are set out below. These are calculated as 10% of overall costs between BBYL, BBYH and BSA.

Broker Services Australia Pty Ltd - Share of recovery costs			
Grade	Hours	Rate	Cost \$
Appointee	8.5	650	5,496.35
Director	0.0	600	-
Associate Director	30.6	550	16,810.47
Manager	44.7	500	22,374.04
Executive	16.4	350	5,731.34
Analyst	30.3	200	6,069.97
Administration & Other	37.2	140	5,207.43
Total excluding GST	167.7		61,689.60

Details of the work to be completed in the future are included at **Schedule A**.

Actual resolutions to be considered at the meeting of creditors on 20 December 2023 are set out at **Schedule B** for your information.

4 Disbursements sought

I am not required to seek creditor approval for costs paid to third parties or where I am recovering a cost incurred on behalf of the administration, but I must provide details to creditors. Details of these amounts are included in the summary of receipts and payments attached at **Schedule D**.

I am required to obtain creditors' consent for the payment of disbursements where I, or a related entity of myself, may directly or indirectly obtain a profit (for example, internal printing costs). I do not seek approval of any disbursements.

5 Previous remuneration approvals

The following remuneration approvals have previously been provided by creditors:

Broker Services Australia Pty Ltd (in Liquidation) Remuneration approved to date		
	Approved	Total \$
Voluntary Administration	22/06/2015	133,838.00
	22/06/2015	82,691.00
Liquidation	22/06/2015	100,000.00
Total excluding GST		316,529.00

I am now seeking approval of a further \$89,179.60 in remuneration which will bring total remuneration claimed in this liquidation to \$189,179.60 plus GST.

A full explanation is at **Schedule C**.

6 Likely impact on dividends

The Corporations Act sets the order for payment of claims against the Company and it provides for remuneration of the Liquidator to be paid in priority to other claims. This ensures that when there are sufficient funds, the Liquidator receives payment for the work done to recover assets, investigate the Company's affairs, report to creditors and ASIC and distribute any available funds.

BSA had limited assets. We called for proofs of debt during the voluntary administration period in early 2015 however we did not call for formal proofs for the purposes of adjudication because at that time it did not appear there was likely to be any funds available for distribution.

During the liquidation we recovered approximately \$670,000 in proceeds from the insolvent trading claim and recovery of preferential payments, and another \$141,000 from other realisations.

I estimate there will be approximately \$253,000 in funds available in the liquidation to pay a dividend in respect of certain priority creditor claims, including to:

- The Department of Employment and Workplace Relations, in respect of advances made under the Fair Entitlements Guarantee (FEG) for payment of outstanding employment entitlements to former employees.
- Former employees in respect of certain priority claims against BSA that were not settled from FEG advances.

No funds are available for distribution to other secured or unsecured creditors.

The dividend rate depends on the level of priority employee claims admitted for the purpose of a dividend and can not be estimated until formal proofs of debt are received.

7 Funds received for remuneration

As noted in Section 3 of this report, during 2015 the Department of Employment and Workplace Relations advanced \$1.746 million to the Liquidators which was distributed to former BSA employees in respect of priority employee entitlements. The Department normally pays Liquidators directly for this work, in this case being \$26,490 plus GST. This did not require creditor approval.

8 Report on progress of the liquidation

This Remuneration Approval Request must be read in conjunction with the report to creditors dated 4 December 2023 which outlines the progress of the liquidation.

9 Summary of receipts and payments

A summary of receipts and payments for the period 22 June 2015 to 30 November 2023 is set out at **Schedule D** to this Remuneration Approval Request.

An annual administration return was lodged with ASIC on 30 August 2023 which also provides information on the conduct of the administration.

10 Questions

If you require further information in relation to the information in this report, please contact Rajat Porwal of this office on (02) 9335 8630 or rporwal1@kpmg.com.au.

You can also access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors
- ASIC at www.asic.gov.au (search for INFO 85, Approving fees: A Guide for creditors)

Dated this 4th day of December 2023



Stephen Vaughan

Liquidator

Attachments:

Schedule A – Details of work

Schedule B – Resolutions

Schedule C – Explanation where future remuneration previously approved

Schedule D – Summary of receipts and payments

Schedule A – Details of work

I am asking creditors to approve remuneration of \$89,179.60 plus GST.

This includes \$61,689.60 actual remuneration and \$27,490 of estimated future remuneration.

Broker Services Australia Pty Ltd - Share of recovery costs			
Grade	Hours	Rate	Cost \$
Appointee	8.5	650	5,496.35
Director	0.0	600	-
Associate Director	30.6	550	16,810.47
Manager	44.7	500	22,374.04
Executive	16.4	350	5,731.34
Analyst	30.3	200	6,069.97
Administration & Other	37.2	140	5,207.43
Total excluding GST	167.7		61,689.60

Broker Services Australia Pty Ltd - Estimated Future Remuneration									
Grade	Rate	Total		Creditors		Dividend		Administration	
	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$
Appointee	650	8	5,200	4	2,600	2	1,300	2	1,300
Manager	500	17	8,500	10	5,000	4	2,000	3	1,500
Executive	350	37	12,950	20	7,000	10	3,500	7	2,450
Analyst	200	-	-	-	-	-	-	-	-
Administration & Other	140	6	840	1	140	4	560	1	140
Total excluding GST		68	27,490	35	14,740	20	7,360	13	5,390
GST			2,749		1,474		736		539
Total including GST			30,239		16,214		8,096		5,929
Average hourly rate (excl GST)			404		421		368		415

The below table contains more detailed descriptions of the tasks to be performed within each task area by the Liquidator and their staff, which is referred to in Part 3 and supports Resolution 2 set out in **Schedule B**.

		Tasks
		Future work
Period		23 September 2019 to finalisation
Amount (ex GST)		\$27,490.00
Task Area	General Description	
Creditors		35 hours \$14,740
	Creditor enquiries, requests and directions	<ul style="list-style-type: none"> – Receive and respond to creditor enquiries – Documenting creditor enquiries and requests
	Report to creditors	<ul style="list-style-type: none"> – General report to creditors
	Dealing with proofs of debt (POD)	<ul style="list-style-type: none"> – Receipting and filing POD when not related to a dividend – Corresponding with ATO regarding POD when not related to a dividend
	Creditors meeting	<ul style="list-style-type: none"> – Preparation for creditors meeting – Holding creditors meeting – Lodgement of minutes of creditors meeting
Dividend		20 hours \$7,360
	Processing proofs of debt (POD)	<ul style="list-style-type: none"> – Preparation of correspondence to potential creditors inviting lodgement of POD – Receipt of POD – Maintain POD register – Adjudicating POD – Request further information from claimants regarding POD

		Tasks
		Future work
		– Preparation of correspondence to claimant advising outcome of adjudication
	Dividend procedures	<ul style="list-style-type: none"> – Preparation of correspondence to creditors advising of intention to declare dividend – Advertisement of intention to declare dividend – Obtain clearance from ATO to allow distribution of Company's assets – Preparation of dividend calculations – Preparation of correspondence to creditors announcing declaration of dividend – Advertise announcement of dividend – Preparation of distribution – Preparation of dividend file – Preparation of payment vouchers to pay dividend – Preparation of correspondence to creditors enclosing payment of dividend
Administration		13 hours \$5,390
	Correspondence	– General correspondence
	Document maintenance, file review, checklist	<ul style="list-style-type: none"> – Filing of documents – File reviews – Updating checklists
	Bank account administration	<ul style="list-style-type: none"> – Preparing correspondence closing accounts – Requesting bank statements – Bank account reconciliations
	ASIC forms and lodgements	<ul style="list-style-type: none"> – Preparing and lodging ASIC forms – Correspondence with ASIC regarding statutory forms

		Tasks
		Future work
	ATO and other statutory reporting	– Preparing BASs
	Finalisation	– Notifying ATO of finalisation – Cancelling ABN / GST registration – Completing checklists – Finalising WIP
	Planning / Review	– Discussions regarding status / strategy of administration
	Books and records / storage	– Dealing with records in storage – Sending job files to storage

Schedule B – Resolutions

Remuneration

Resolution 1 – for work already completed:

"That the remuneration of the Liquidator, as set out in the Remuneration Approval Request dated 4 December 2023, is approved for payment in the sum of \$61,689.60, plus GST, and that the Liquidator can draw the remuneration immediately or as required."

Resolution 2 – for work to be completed in the future:

"That the future remuneration of the Liquidator, as set out in the Remuneration Approval Request dated 4 December 2023, for the period from 4 December 2023 is approved at a sum equal to the cost of time spent by the Liquidator and his partners and staff, calculated at the rates set out in the report to creditors and Remuneration Approval Request of 4 December 2023, up to a capped amount of \$27,490, plus GST, and that the Liquidator can draw the remuneration as required."

Schedule C – Explanation where remuneration previously approved

At the second meeting of creditors on 22 June 2015, creditors approved my prospective remuneration of \$100,000.00 excl GST. To date, I have drawn \$100,000.00 and applied it in payment of my remuneration. My remuneration has exceeded this cap and in this report I am now seeking approval of a further capped amount of \$89,179.60 plus GST to enable me to complete the liquidation.

To assist creditors with understanding how total remuneration has and/or will be incurred, this table shows remuneration to date, including the current claims, divided by task categories.

Task	Fees already approved at 22 June 2015	Approval sought for work already done	Approval sought for future work	Total per task
	\$	\$	\$	\$
Assets	3,250.00	-	-	3,250.00
Creditors	24,925.00	-	14,740	39,665.00
Employees	25,650.00	-	-	25,650.00
Investigation	11,175.00	61,689.60	-	72,864.60
Dividend	11,175.00	-	7,360	18,535.00
Administration	23,825.00	-	5,390	29,215.00
TOTAL	100,000.00	61,689.60	27,490.00	189,179.60
Total remuneration previously approved				100,000.00
Difference (see table below for further explanation)				89,179.60
Payment reconciliation				
TOTAL (incl. amount now claimed)				189,179.60
Amount paid to date				100,000.00
Amount outstanding (incl amount claimed now)				89,179.60

I make the following general comments regarding the progress of the liquidation that has affected my previous remuneration estimate:

- Significant work was undertaken in pursuing an insolvent trading claim against the Directors of the BBY Group. This work had not formed part of the previous fee approval by creditors
- Due to the poor state of the books and records, additional work was undertaken in calculating employee entitlements and liaising with the Department of Employment and Workplace Relations as part of employees applying to the Fair Entitlement Guarantee Scheme; and
- Due to the length of the liquidation, we have had to conduct additional creditors meetings, reports to creditors and attend to statutory obligations.

I have provided an explanation of tasks remaining to be completed, including my estimated costs to complete those tasks, to support my current remuneration approval request, at Part 3 of the report and in **Schedule A**.

Schedule D – summary of receipts and payments

Broker Services Australia Pty Ltd	
Receipts & Payments at 30 November 2023	
\$	Amount
Receipts	
Fair Entitlements Guarantee advances	1,746,014
Preference recoveries	420,000
Insolvent trading recovery - BSA share net of costs	250,348
BBY Hometrader DOCA dividend	82,060
GST refunds	44,167
FEG processing fee remittance	26,490
Opening cash balance	10,317
Interest	4,281
Insurance refund	608
Total receipts	2,584,285
Payments	
Distributions to employees, incl PAYG WH tax	1,746,014
Voluntary Administrators remuneration	216,529
Liquidator remuneration	100,000
Legal fees	94,883
FEG processing fees - Liquidator	26,490
Insurance	3,405
GST paid	46,936
Other	1,737
Bank charges	942
Total payments	2,236,937
Cash at Bank	347,348

Insolvency information for directors, employees, creditors and shareholders

This is **Information Sheet 39 (INFO 39)**. It lists ASIC's information sheets for directors, employees, creditors and shareholders affected by a company's insolvency.

We have produced these with endorsement from the Australian Restructuring Insolvency & Turnaround Association (ARITA).

The information sheets give a basic understanding of the three most common company insolvency procedures – liquidation, voluntary administration and receivership – as well as the independence requirements for external administrators and approving external administrator remuneration. There is also a glossary of commonly used insolvency terms.

List of information sheets

- [INFO 41](#) *Insolvency: A glossary of terms*
- [INFO 42](#) *Insolvency: A guide for directors*
- [INFO 43](#) *Insolvency: A guide for shareholders*
- [INFO 45](#) *Liquidation: A guide for creditors*
- [INFO 46](#) *Liquidation: A guide for employees*
- [INFO 54](#) *Receivership: A guide for creditors*
- [INFO 55](#) *Receivership: A guide for employees*
- [INFO 74](#) *Voluntary administration: A guide for creditors*
- [INFO 75](#) *Voluntary administration: A guide for employees*
- [INFO 84](#) *Independence of external administrators: A guide for creditors*
- [INFO 85](#) *Approving fees: A guide for creditors*

Where can I get more information?

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

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

This information sheet was updated on 1 September 2017.

Liquidation: A guide for creditors

This is **Information Sheet 45 (INFO 45)**. It provides information for unsecured creditors of companies in liquidation.

It covers:

- [who is a creditor?](#)
- [the purpose of liquidation](#)
- [the liquidator's role](#)
- [reporting to creditors](#)
- [recoveries from creditors - 'unfair preferences'](#)
- [creditors' meetings](#)
- [voting at a creditors' meeting](#)
- [proposals to creditors without a meeting](#)
- [committee of inspection](#)
- [approval of liquidator's fees](#)
- [distribution of money](#)
- [other creditor rights](#)
- [secured creditors' rights](#)
- [directors and liquidation](#)
- [ceasing simplified liquidation process](#)
- [conclusion of liquidation](#)
- [questions and complaints](#)

Who is a creditor?

You are a creditor if the company owes you money. You may be owed money because you:

- supplied goods or services to the company
- made loans to the company
- paid for goods or services that you have not received
- are an employee owed money for unpaid wages and other entitlements.

A 'contingent creditor' is owed money by the company if a certain event occurs (e.g. if they succeed in a legal claim against the company).

Creditors might be secured or unsecured:

- A **secured creditor** holds a **security interest**, such as a mortgage, in some or all the company's assets, to secure a debt owed by the company. Lenders might require a security interest in company assets when they provide a loan. If the creditor wants to ensure their security interest over personal property other than land is enforceable and given priority in an insolvency, they should register the security on the Personal Property Securities Register (PPSR). 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** does not hold a security interest in the company's assets.

Employees are a special category or class of unsecured creditor. In a liquidation, outstanding employee entitlements are paid before the claims of other unsecured creditors. For more information, see [Information Sheet 46 Liquidation: A guide for employees](#) (INFO 46).

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

The purpose of liquidation

The liquidation of an insolvent company allows an independent registered liquidator (the liquidator) to take control of the company so its affairs can be wound up in an orderly and fair way to benefit creditors.

There are two types of insolvent liquidation:

- creditors' voluntary liquidation
- court liquidation.

The most common type is a creditors' voluntary liquidation, which begins when:

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

In a court liquidation, a liquidator is appointed by the court to wind up a company following an application (usually by a creditor). Directors, shareholders 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. For more information, see [Information Sheet 54 Receivership: A guide for creditors](#) (INFO 54).

Simplified liquidation process

A simplified liquidation process is a streamlined creditors' voluntary winding up for companies that meet the [relevant criteria](#), including having liabilities less than \$1 million.

It applies only to a creditors' voluntary winding up of a company where the event that triggers the start of the winding up occurs on or after 1 January 2021.

For additional information about the simplified liquidation process, refer to the [simplified liquidation FAQs](#).

The liquidator's role

Liquidators have a duty to all company creditors.

Role in a creditors' voluntary liquidation and a court liquidation

The role of a liquidator in a creditors' voluntary liquidation (that has not adopted the simplified liquidation process) and a court liquidation is to:

- protect, collect and sell the company's assets
- investigate and report to creditors about the company's affairs, including:
 - unfair preferences (payments made to certain creditors over others) that may be recoverable
 - uncommercial transactions that may be set aside
 - possible claims against the company's officers (including insolvent trading)
 - creditor-defeating dispositions that may be recovered, including in relation to illegal phoenix activity
- inquire into the failure of the company – and possible offences by people involved with the company – and report to ASIC
- distribute money from the collection and sale of assets after payment of the costs of the liquidation, including the liquidator's fees (subject to the rights of any secured creditor) – first to priority creditors, including employees, and then to unsecured creditors.

If a liquidator suspects that people involved with the company may have committed offences, and the liquidation has no or insufficient assets for the liquidator to be paid for their work to further investigate, the liquidator can apply to ASIC for funding to carry out a further investigation into the allegations and report to ASIC.

Role in a simplified liquidation process

The role of a liquidator who has adopted the simplified liquidation process is to:

- protect, collect and sell the company's assets
- provide an initial report to creditors
- investigate the company's affairs, including whether there are:
 - unfair preferences (payments made to certain creditors over others) that may be recoverable
 - uncommercial transactions that may be set aside
 - possible claims against the company's officers (including insolvent trading)
 - creditor-defeating dispositions that may be recovered, including in relation to illegal phoenix activity
- inquire into the failure of the company and, where there are reasonable grounds to believe a person connected to the company may have engaged in conduct that would constitute an offence that has had, or is likely to have, a material adverse effect on the interests of creditors, report the matter to ASIC
- distribute money from the collection and sale of assets after payment of the costs of the liquidation, including the liquidator's fees (subject to the rights of any secured creditor) – first to priority creditors, including employees, and then to unsecured creditors (noting there can only be one dividend paid to unsecured creditors).

Role in all liquidations

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

If the company does not have enough assets, one or more creditors may agree to reimburse a liquidator's costs and expenses to undertake investigations and act to recover further assets. If the liquidator recovers additional assets, the liquidator or a creditor can apply to the court to compensate the creditor from funds recovered for funding the liquidator's recovery action. Compensation is usually paid before other creditors are paid.

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 (the content of this report differs depending on whether the simplified liquidation process is adopted)
- other reports as the liquidator decides or that creditors reasonably request.

Initial information

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

- request information, reports and documents
- direct that a meeting of creditors be held
- give directions to the liquidator
- appoint a reviewing liquidator
- remove and replace the liquidator.

In a creditors' voluntary liquidation, the liquidator also gives a summary of the company's affairs and a list of the names, addresses and estimated amounts owed to the company's creditors (identifying any creditors of the company).

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

- the company's estimated assets and liabilities
- inquiries undertaken and further inquiries that the liquidator may need to undertake
- what happened to the company's business
- the likelihood of creditors receiving a dividend (part repayment of their debt)
- possible recovery actions as outlined above.

The report may give additional information relevant to the liquidation or notify creditors about whether the liquidator will convene a meeting of creditors. The liquidator might also attach details of a proposal for creditors to consider and vote on without the need to hold a meeting.

When a liquidator adopts the simplified liquidation process, the liquidator's report is different to the report described above. When a liquidator adopts the simplified liquidation process, the liquidator's report need only contain information about:

- anything relating to the winding up that the liquidator has done to date
- the date that the winding up is likely to end
- the likelihood of creditors receiving a dividend.

The liquidator must lodge a copy of the report with ASIC. You can obtain a copy by searching [ASIC Connect](#) for a fee.

Other reports

While there is no legal requirement to provide further reports to creditors, liquidators may provide further reports to update creditors about the liquidation.

Creditors can ask the liquidator to provide a further report. If the request is reasonable, the liquidator must comply with the request. See [other creditor rights](#) below.

Recoveries from creditors – ‘unfair preferences’

A liquidator can recover, for the benefit of all creditors, certain payments the company made to individual creditors before the start of the liquidation (known as ‘[unfair preferences](#)’).

In general terms, a payment to a creditor may be an unfair preference payment if, during the six months before the liquidation is taken to have begun until the date the liquidator was appointed:

- the company was insolvent at the time it made the payment to the creditor (or became insolvent because of making the payment), and
- the creditor received more in respect of the unsecured debt owed to them than they would have received by way of dividend from the liquidation if the payment was set aside and the creditor had to prove their debt in the liquidation.

Note: Depending on the circumstances surrounding the appointment of the liquidator, the date the liquidation is taken to have begun may be a date before the date on which the liquidator is appointed.

There is no limit on the value of unfair preference payments that a liquidator can recover.

Limitations where simplified liquidation process adopted

When a liquidator adopts the simplified liquidation process, a liquidator’s ability to recover payments from unrelated creditors that receive payments from the company is different. In a simplified liquidation, a payment or series of payments made to an unrelated creditor are not recoverable as an unfair preference unless:

- the payment(s) is/are made at any time from three months before the liquidation is taken to have begun until the date the liquidator is appointed, and
- the total of the payment(s) received from the company during this period is more than \$30,000.

Note: Depending on the circumstances surrounding the appointment of the liquidator, the date the liquidation is taken to have begun may be a date before the date on which the liquidator is appointed.

Defences available to creditors

Not all payments made within the relevant three- or six-month period before the liquidator is appointed are unfair preference payments.

There are various ‘defences’ provided in the Corporations Act. In particular, a creditor has a defence to a claim they have received an unfair preference if they can prove that, at the time the payment was made:

- they became a party to the transaction in good faith
- they had no reasonable grounds for suspecting the company was insolvent (or became insolvent because of the payment)
- a reasonable person in their circumstances would have had no reasonable grounds for suspecting the company was insolvent (or became insolvent because of the payment), and
- they gave valuable consideration for the payment.

If a liquidator seeks to recover a payment that has been made to you, you should ask the liquidator to provide you with:

- details of the payments they claim result in the creditor receiving an unfair preference
- reasons why they think the payment is an unfair preference payment (including the basis on which the liquidator claims the creditor cannot establish a defence), and
- supporting evidence to support their claim.

If the matter remains unresolved, you should seek independent legal advice on the merits of the registered liquidator’s claim before repaying the money.

Creditors’ meetings

Other than where the simplified liquidation process is adopted, a liquidator may call a creditors’ meeting from time to time to inform creditors about the liquidator’s progress, to find out creditors’ wishes on a matter or to approve the liquidator’s fees.

You can use a creditors’ meeting to ask questions about the liquidation and tell the liquidator what you know about the company.

ASIC is also entitled to attend and participate in a meeting of creditors should there be a reason to do so.

A liquidator cannot call a meeting of creditors when the liquidator has adopted the simplified liquidation process.

Meetings during a court liquidation

In a court liquidation, the liquidator does not have to call a creditors’ meeting unless creditors need to approve a matter.

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 ask the liquidator in writing to call a meeting
- less than 25% but more than 10% in value of creditors ask the liquidator in writing to call a meeting and they pay the costs of calling and holding the meeting.

If a direction to call a meeting by creditors or the committee of inspection is not reasonable, the liquidator does not have to comply. A direction is not reasonable if the liquidator, acting in good faith, thinks that:

- holding the meeting 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 money available to hold the meeting.

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.

If the liquidator decides not to convene a meeting because it is not reasonable, but 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 that, the liquidator must convene the meeting: see section 75-250 of the [Insolvency Practice Rules \(Corporations\) 2016](#).

Meetings during a creditors' voluntary liquidation

In a creditors' voluntary liquidation, the liquidator does not have to call a creditors' meeting unless creditors need to approve a matter.

The liquidator can call a creditors' meeting at any time and if directed to do so.

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

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

Creditors might request a meeting be held to:

- ask questions about the liquidation
- tell the liquidator what they know about the company
- consider replacing the liquidator if they have concerns about the liquidator's independence or conduct.

If a request to call a meeting by creditors or the committee of inspection is not reasonable, the liquidator does not have to comply. However, they must notify the person or body that made the request and set out reasons why it is not reasonable.

If the liquidator decides not to convene a meeting because it is not reasonable, but 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 that, the liquidator must convene the meeting: see section 75-250 of the [Insolvency Practice Rules \(Corporations\) 2016](#).

Meetings when the simplified liquidation process adopted

A liquidator who has adopted the simplified liquidation process is not required or permitted to hold a creditors' meeting. Matters that need to be determined by creditors are decided without a meeting via the 'proposal without a meeting process'.

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 present at the meeting. The minutes must be lodged with ASIC within one month. You can search ASIC Connect and obtain a copy of the minutes of the meeting for a fee.

Voting at a creditors' meeting

To vote at a creditors' meeting you must lodge details of your debt or claim with the liquidator. The liquidator will provide you with a 'proof of debt' form to complete and return before the meeting.

The chairperson of the meeting decides whether to accept the debt or claim for voting purposes. The chairperson may decide a creditor does not have a valid claim and not allow the creditor to vote.

If the chairperson is not sure 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 payment of their claim.

You can appeal to the court within 10 business days after the chairperson decides to accept or reject a proof of debt or claim for voting purposes.

Voting by proxy

You can 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. You do this by completing a proxy form that is sent out with the notice of meeting. You must provide the completed proxy form to the liquidator before the meeting. An electronic proxy form may be used if the liquidator allows electronic lodgement.

A 'special proxy' is used when you specify on the proxy form how the proxy holder is to vote on specified resolutions (the actual resolution wording is on the form). The proxy holder must vote in accordance with that instruction and cannot change the voting at the meeting. Further, the resolution specified in the form is the one you are voting on.

If a resolution that is specified in the special proxy is modified, then your special proxy should not be counted because you have not indicated how you will vote on that modified resolution. Subject to directions given in the special proxy, the proxy has the same right to speak and vote on other matters that may arise at the meeting as the creditor who appointed them. A 'general proxy' is used when you leave it to the proxy holder to decide how to vote on each resolution.

You can appoint the chairperson to represent you through either a special or general proxy. If the liquidator, their partner or their employee is appointed as a general proxy, the proxy holder cannot vote in favour of a resolution approving payment of liquidator's fees.

Manner of voting

To vote on any resolution put to a creditors' meeting, creditors state aloud their agreement or disagreement, or a 'poll' is taken.

If voting is on the voices, the resolution is passed if a majority of those present indicate agreement. It is up to the chairperson to decide if a majority is reached.

After the vote, the chairperson must tell those present whether the resolution passed or failed. If the chairperson cannot determine the outcome of a resolution on the voices, they may conduct a poll.

A person participating and entitled to vote can also demand a poll. If a poll is demanded, it must be taken immediately, and the chairperson determines how to take this poll. If the meeting is held using virtual meeting technology, each vote must be taken on a poll.

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

When a poll is taken, 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 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 (deadlock), the chairperson has a casting vote.

Chairperson's casting vote

When 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. If the resolution relates to the liquidator's removal, the chairperson may only exercise the casting vote in favour of their removal. The chairperson may also decide not to use their casting vote, and then 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) the reasons why they did or did not 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 the court for a review of the chairperson's decision. The court may vary or set aside the resolution or order the resolution is taken to have been passed.

Votes of related creditors

If directors and shareholders, their spouses, 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 related creditor votes and you are dissatisfied with the outcome, you may, in specified circumstances, apply to the court for the resolution to be set aside and/or for a fresh resolution to be voted on without related creditor votes. Certain criteria must be met before the court will make such an order (e.g. the original result of the vote is 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. A liquidator who has adopted the simplified liquidation process will use this process to seek resolutions from creditors, including for approval of remuneration.

This notice must be given to each creditor 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 without a meeting
- specify a reasonable time for the liquidator to receive creditor replies.

To vote on the proposal, you must lodge details of your debt or claim with the liquidator and complete the provided voting documents.

You can vote 'yes' or 'no' on the proposal and/or object to the proposal 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 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 25% or less in value of the creditors who responded objected to the proposal being resolved without a creditors' meeting.

The liquidator should provide enough information to allow creditors to make an informed decision about the proposal. Contact the liquidator if you need further information to help you decide.

The liquidator must lodge with ASIC a statement about the outcome of the proposal. You can search [ASIC Connect](#) and obtain a copy of the outcome of the proposal for a 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. No committee of inspection can be formed where the liquidator has adopted the simplified liquidation process.

The committee of inspection also:

- monitors the conduct of the liquidator
- may approve certain steps in the liquidation
- 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. 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
- a creditor, or group of creditors, owed at least 10% of the value of creditors' claims
- 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 liquidation of the company unless creditors resolve to allow it, or a court grants leave to derive the profit or advantage. Deriving a profit or advantage can arise during ongoing trading with the company after the liquidator is appointed.

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

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

If the request to convene a meeting or provide information is not reasonable, the liquidator does not have to comply with the request. The same rules about when a request 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 exercise its powers through resolutions passed at meetings of the committee. A resolution is passed by a majority in number of 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. You can search [ASIC Connect](#) and obtain a copy of the minutes of committee of inspection meetings for a fee.

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

Approval of liquidator's fees

A liquidator is entitled to be paid for the necessary work they properly perform. Their fees will usually be paid from available assets before any payments are made to creditors. If there are no – or only limited assets – the liquidator is sometimes not paid (or only partially paid) for the work they do. The liquidator may arrange for a third party to contribute to their fees.

A liquidator is also entitled to ask for approval to pay their estimated future fees (for work yet to be done). Usually this is requested to allow the liquidator to continue doing work up to a certain point in time (e.g. to achieve a particular outcome) or to the completion of the liquidation.

The fees cannot be paid until the amount has been approved by creditors, a committee of inspection or the court. The liquidator can also put a proposal to creditors to approve their fees without holding a meeting (required where the liquidator has adopted the simplified liquidation process).

If fees are not approved by the relevant decision-making body, the liquidator is entitled to receive reasonable fees up to a specified maximum (indexed annually).

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

- a summary 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 fees, or range of fees
- an explanation of the likely impact the fees will have on any payments to creditors
- other information that will assist you to determine whether the fees claimed are reasonable.

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

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

If fees are approved and you wish to challenge the decision, you can apply to the court for a review of the fees. You may wish to seek your own legal advice about this.

Apart from fees, the liquidator is entitled to reimbursement for out-of-pocket expenses. This reimbursement may require creditor, committee of inspection or court approval. For more information, see [INFO 85](#).

Distribution of money

If there are funds left over after paying the liquidators' costs and priority creditors, including employees, the liquidator will pay unsecured creditors a dividend. Where the liquidator has adopted the simplified liquidation process, there can only be one dividend paid to unsecured creditors. Generally, funds are distributed in the following order:

- 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 must be 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 information to prove your debt.

The liquidator will notify you if funds might be available for payment and will call for formal proof of debt forms to be lodged. The liquidator must give you at least 14 days' notice of the deadline for lodging the proof of debt.

This notice must be given to each person claiming to be a creditor whose debt or claim has not already been accepted 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 all relevant invoices or other supporting documents to the proof of debt form, because 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.

The completed proof of debt form must be delivered or posted to the liquidator. When you submit your claim, ask the liquidator to acknowledge receipt of your claim and if they require any further information.

If the liquidator decides to reject your claim, they must notify you within seven days after making that decision and provide reasons for doing so. If you are dissatisfied with the decision, follow the steps outlined in the notice of rejection and/or seek competent legal advice on your options to appeal the decision to reject your claim. You will have a limited time after you receive the notice, to appeal the liquidator's decision. If you do not appeal within this time, the liquidator's decision on your claim is final.

Contact the liquidator if you have questions about the calculation of your claim, or the timing of the payment.

Other creditor rights

As well as the various rights involving meetings and participation in dividends, creditors also have a right to:

- inform the liquidator about what they know that is relevant to the company's liquidation
- request the liquidator give information, provide a report or produce a document
- inspect certain books of the liquidator
- appoint a reviewing liquidator (not available when the liquidator adopts the simplified liquidation process)
- remove and replace the liquidator by resolution passed at a creditors' meeting (not available when the liquidator adopts the simplified liquidation process)
- complain to ASIC or the court about the liquidator's conduct in connection with their duties.

Request for information

Creditors can, by resolution 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 enough money to cover the costs incurred to comply with the request.

The law requires the liquidator to provide the information 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 that), 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 several other documents, must also be lodged with ASIC. You can search [ASIC Connect](#) and obtain copies of these documents for a fee.

Informing the liquidator

If the liquidator suspects anyone connected to the company may have committed an offence, the liquidator must report this to ASIC. Let the liquidator know if you have any information that might help the liquidator to prepare such a report.

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 or charging the person with a criminal offence. ASIC considers a range of factors when deciding what action, if any, to take. For more information, see [Information Sheet 151 ASIC's approach to enforcement](#) (INFO 151).

Appoint a reviewing liquidator

Other than where a liquidator has adopted the simplified liquidation process, creditors can resolve to appoint a reviewing liquidator to carry out a review into fees and/or costs incurred by the liquidator. With the liquidator's agreement, one or more creditors may also appoint a reviewing liquidator.

A creditor can also apply for ASIC to appoint a reviewing liquidator: see [Form 5605 Application for ASIC to appoint a reviewing liquidator](#).

Where creditors resolve to appoint a reviewing liquidator, the 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 get written consent from the registered liquidator confirming they would be prepared to act as reviewing liquidator. The person must also make a written [declaration about any relationships](#) they or their firm 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. 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) who appoint the reviewing liquidator.

Remove and replace the liquidator

Other than where a liquidator has adopted the simplified liquidation process, 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 the current liquidator to [convene a meeting](#). The liquidator is not required to comply if the request is not reasonable. 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 at the liquidator's request.

A creditor who wishes to remove the current liquidator and appoint a replacement liquidator must approach a registered liquidator to get a written consent confirming 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.

The notice of meeting must include details of the proposed resolution and attach:

- consent to act
- [declaration of relevant relationships](#) of the proposed replacement 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 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, including:

- 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 court can be costly. You can consider going to court if you cannot resolve any problems with the liquidator directly.

Liquidators, ASIC and other people can also make applications to the court. For example, a liquidator might apply to have questions decided about how to exercise certain powers 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 the secured assets in order to repay the secured creditor's debt. This right continues after the company goes into liquidation (see [INFO 54](#))
- ask the liquidator to deal with the secured assets 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 less the amount they are likely to receive from realisation of the secured assets (i.e. their shortfall). The secured creditor can participate in any dividend to unsecured creditors for their shortfall.

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 the property in their possession to the liquidator
- providing the company's books and records
- advising the liquidator of the location of other company records
- providing a written report about the company's business, property, affairs and financial circumstances within:
 - 10 business days of the appointment of the liquidator by the court, or
 - 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).

If the company has traded while insolvent, ASIC, a liquidator or, in certain circumstances, a creditor can commence proceedings against directors personally for amounts lost by creditors.

Specific requirements under the simplified liquidation process

Where the directors believe that the company is eligible for the simplified liquidation process, the directors must, within five business days after liquidation commences, give to the liquidator:

- a report on the company's business affairs
- a declaration that they believe, on reasonable grounds, the company meets the eligibility criteria for the simplified liquidation process.

Ceasing simplified liquidation process

The liquidator must cease to follow the simplified liquidation process if:

- the eligibility criteria for the simplified liquidation process are no longer met
- the liquidator believes on reasonable grounds that the company, or a director of the company, has engaged in conduct involving fraud or dishonesty that has had, or is likely to have, a material adverse effect on the interests of the creditors or a class of creditors as a whole.

Conclusion of liquidation

A liquidation comes to an end when the liquidator has realised and distributed all the company's available property and reported 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. You can search [ASIC Connect](#) and obtain a copy of the return for a fee.

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

- seek an order for release from the court
- seek an order for release and deregistration of the company by ASIC.

ASIC will deregister the company three months after the end of administration return is lodged.

Questions and complaints

Contact the liquidator to raise any questions or complaints. If this fails to resolve your concerns, including any concerns about the liquidator's conduct, you can [lodge a report of misconduct with ASIC](#). Reports of misconduct against companies and their officers can also be made to ASIC. ASIC does not usually become involved in matters of commercial judgement by a liquidator.

More information

› [Information Sheet 39](#) *Insolvency information for directors, employees, creditors and shareholders* (INFO 39)

› [Australian Restructuring Insolvency & Turnaround Association \(ARITA\) website](#)

› [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.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

This information sheet was reissued in June 2023.

Liquidation: A guide for employees

This is **Information Sheet 46 (INFO 46)**. It provides information for employees of companies in liquidation.

It covers:

- [who is an employee?](#)
- [the purpose of liquidation](#)
- [the liquidator's role](#)
- [employee entitlements](#)
- [proving your claim](#)
- [payment summaries and separation certificates](#)
- [committee of inspection](#)
- [right to request information](#)
- [questions and complaints](#)

If you are an employee of a company in liquidation, you should also read [Information Sheet 45 Liquidation: A guide for creditors](#) (INFO 45).

Who is an employee?

You are an employee if you are:

- engaged by a company under an award, enterprise agreement, agreement-based transitional instrument (i.e. agreements that were in force before the commencement of the *Fair Work Act 2009*) or a contract of employment
- paid a salary, wages or commission.

If you are a **contractor**, you may be classified as an unsecured creditor, not an employee. You should seek your own legal advice or contact the [Australian Taxation Office \(ATO\)](#), the [Fair Work Ombudsman](#) or your union representative to determine if you are a contractor or an employee.

If you are an employee owed money for unpaid wages, superannuation, annual leave, sick leave (in limited circumstances), long service leave, retrenchment pay or other benefits, you are a creditor of the company. You may be entitled to some or all of what you are owed before other creditors (this is known as 'priority').

The purpose of liquidation

The liquidation of an insolvent company allows an independent registered liquidator (the liquidator) to take control of the company so its affairs can be wound up in an orderly and fair way to benefit creditors.

There are two types of insolvent liquidation:

- creditors' voluntary liquidation
- court liquidation.

The most common type is a creditors' voluntary liquidation, which begins when:

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

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

It is possible for a company in liquidation to also be in receivership. For more information, see [Information Sheet 55 Receivership: A guide for employees](#) (INFO 55).

The liquidator's role

Liquidators have a duty to all company creditors. Their role is to:

- protect, collect, and sell the company's assets
- investigate and report to creditors about the company's affairs, including any:
 - [unfair preferences](#) (payments made to certain creditors and not others) that may be recoverable
 - [uncommercial transactions](#) that may be set aside
 - possible claims against the company's officers (including insolvent trading)
 - [creditor-defeating dispositions](#), including [illegal phoenix activity](#)
- inquire into the failure of the company – and possible offences by people involved with the company – and report to ASIC
- distribute money from the collection and sale of assets after payment of the costs of the liquidation, including the liquidator's fees (subject to the rights of any secured creditor) – 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 any expense for the winding up unless there are enough assets to pay their costs.

Employee entitlements

In most cases, the liquidation of a company terminates the employment of employees.

If there are funds left over after paying the liquidator's fees and expenses, employees have the right to be paid their outstanding entitlements before other unsecured creditors are paid (priority claims). Employee entitlements are grouped into categories (or classes) and paid in the following order:

- outstanding wages and superannuation
- outstanding leave of absence (e.g. annual leave and long service leave)
- retrenchment pay.

Each class must be paid in full before the next class is paid. If there isn't enough money to pay a class in full, the available funds are paid on a pro-rata basis (and the next class or classes will be paid nothing).

If directors and their spouses or relatives are employees, their priority claims for the period they are a director, spouse or relative of a director are limited to a maximum of:

- \$2,000 for outstanding wages and superannuation
- \$1,500 for outstanding leave entitlements.

Directors and their spouses or relatives are **excluded employees** and are not entitled to any priority retrenchment pay for the period they are a director, spouse or relative of a director. Any amounts left owing after these priority amounts are treated as an ordinary unsecured claim along with other unsecured creditors (e.g. trade creditors).

Employees may also be entitled to make a claim against the [Fair Entitlements Guarantee \(FEG\)](#).

Sometimes, the liquidator may continue to trade the business for a short period to help in the winding up. If this happens, employee entitlements accruing during this period (on terms agreed with the liquidator) are paid out of available assets as a cost of the winding up and before other outstanding employee entitlements are paid.

Attempts to avoid employee entitlements

It is an offence for anyone to enter into an agreement or transaction with the intention of avoiding employee entitlements of a company.

If the company is in liquidation and the employees suffer damage or loss as a result of a person entering into such an agreement or transaction, that person is liable to pay compensation for the loss suffered. Employees have priority to any compensation recovered by a liquidator.

If you believe such an offence has been committed, tell the liquidator. You can also [lodge a report of misconduct with ASIC](#).

Proving your claim

Before any amount is paid to you for your outstanding entitlements, you will need to give the liquidator information to prove your debt. You can obtain the relevant form, called a '[proof of debt](#)' from the liquidator.

The liquidator will notify you if funds might be available for payment and will call for proofs of debt to be lodged.

The liquidator may be able to tell you what you are owed based on the company's records. However, company records may not be well maintained, and it is important you keep your pay and other records about the terms of your employment. You may also need these records to complete your income tax return and establish your entitlement to the FEG.

The liquidator may reject your claim if company records are inadequate and you have insufficient information to justify your claim.

When you submit your claim, ask the liquidator to confirm receipt of your claim and if they require any further information.

Contact the liquidator if you have questions about the calculation of your claim, or the timing of the payment.

If the liquidator rejects your claim and you are dissatisfied with the decision, follow the steps outlined in the notice of rejection. You will have a limited time after you receive the notice to appeal the liquidator's decision. If you do not appeal within this time, the liquidator's decision on your claim is final.

A liquidator may also ask you to submit a proof of debt to vote at a creditors' meeting. This is **not** the same as a proof of debt for dividend purposes.

The Fair Entitlements Guarantee (FEG)

Employees owed certain entitlements after losing their job because their employer went into liquidation may be able to get financial help from the Australian Government.

This help is available through the FEG.

The FEG is a scheme of last resort assisting employees who have lost their job because their employer entered liquidation. For more information, see the [FEG website](#).

The FEG does not cover unpaid superannuation contributions. For information about outstanding superannuation entitlements, contact the [Australian Taxation Office \(ATO\)](#).

Payment summaries and separation certificates

Most employees require a PAYG payment summary (group certificate) to complete and lodge their income tax return. A separation certificate may also be required before an employee who loses their job can apply for social security.

If a liquidator pays you any employee entitlements, they must provide you with a PAYG payment summary recording the entitlements paid and any income tax deducted. Contact the liquidator to find out if they are going to prepare your PAYG payment summary for entitlements paid by the company before their appointment and, if so, what period it will cover. The liquidator is not obliged to prepare this.

If you cannot obtain a PAYG payment summary for any period, [contact the ATO](#) to find out how to meet your obligations.

Contact the liquidator to find out if they are going to prepare your separation certificate. Also, contact [Centrelink](#) to find out what you should do if you cannot obtain a separation certificate.

Committee of inspection

A [committee of inspection](#) may be formed to assist and advise the liquidator. The committee of inspection also:

- monitors the conduct of the liquidator
- may approve certain steps in the liquidation
- may give directions to the liquidator.

The liquidator must consider but is not always required to follow the directions. For more information, see [INFO 45](#).

All creditors, including a representative of the company's employees, are entitled to stand for committee membership to represent the interests of all creditors. Employees and large creditors can appoint their own member.

Right to request information

As a creditor, you can ask the liquidator to give you information, provide a report or produce a document relevant to the liquidation.

If the request is reasonable, the liquidator must provide this information, report or document. Complying with the request will not cause the liquidator to breach their duties.

Questions and complaints

Contact the liquidator to raise any questions or complaints. If the liquidator fails to resolve your concerns, including any concerns about the liquidator's conduct, you can [lodge a report of misconduct with ASIC](#). ASIC does not usually become involved in matters of commercial judgement by a liquidator.

More information

- › [Information Sheet 39 *Insolvency information for directors, employees, creditors and shareholders* \(INFO 39\)](#)
- › [Australian Restructuring Insolvency & Turnaround Association \(ARITA\) website](#)
- › [ARITA Code of Professional Practice for Insolvency Practitioners](#)

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Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

This information sheet was reissued in June 2023.

Last updated: 30/06/2023 06:02

Approving fees: A guide for creditors

This is **Information Sheet 85 (INFO 85)**. It provides creditors with information about the external administrator's fees in a liquidation of a company, voluntary administration or deed of company arrangement. This information sheet outlines the rights that creditors have in approving the external administrator's fees.

The fees of a receiver are fixed by the secured creditor that appoints the receiver and is not discussed in this information sheet.

It covers:

- entitlement to fees and costs
- who may approve fees
- calculation of fees
- initial remuneration notice
- report on proposed fees
- deciding if fees are reasonable
- reimbursement of out-of-pocket costs
- questions and complaints

Entitlement to fees and costs

An external administrator is entitled to receive:

- reasonable fees, or remuneration, for the necessary work they properly perform, after these fees have been approved by creditors, a committee of inspection or a court
- reimbursement for out-of-pocket costs incurred in performing their role.

External administrators are only entitled to fees that are reasonable for the necessary work that they and their staff properly perform in the external administration. What is reasonable will depend on the type of external administration and the issues that need to be resolved. Some are straightforward, while others are more complex.

External administrators must undertake some tasks that may not directly benefit creditors. These include 'statutory' tasks such as reporting to ASIC about potential breaches of the law and lodging forms and notices with ASIC. The external administrator is entitled to be paid for undertaking statutory tasks.

Out-of-pocket costs that are commonly reimbursed include:

- legal fees
- valuers', real estate agents' and auctioneers' fees
- stationery, photocopying, telephone and postage costs
- retrieval costs for recovering company computer records
- storage costs for company books and records.

Creditors have a direct interest in the level of fees and costs because the external administrator will generally be paid from the company's available assets before any payments are made to creditors. If there are not enough assets, the external administrator may have arranged for a third party to pay any shortfall. As a creditor, you should receive details of such an arrangement. If there are not enough assets to pay the fees and costs, and there is no third-party payment arrangement, an external administrator is sometimes not paid (or only partially paid) for the work they do.

Who may approve fees

An external administrator's fees must be approved by:

- resolution of creditors
- a committee of inspection (if there is a committee of inspection and if no resolution has been passed by creditors), or
- the court if neither the creditors or a committee of inspection have passed a resolution.

An external administrator in a member's voluntary winding up must have fees approved by a resolution of the company, or the court.

The external administrator must provide enough information to allow creditors to help you assess whether the fees are reasonable.

If fees are not approved by creditors in one of the above ways, the liquidator is entitled to receive reasonable fees up to a maximum default amount (indexed annually).

Creditors' approval of fees at a creditors' meeting

Creditors can approve fees by passing a resolution at a creditors' meeting. To vote on any resolution at a creditors' meeting, creditors state aloud their agreement or disagreement (called a 'vote on the voices') or a 'poll' is taken.

Unless creditors call for a poll, the resolution passes if a simple majority of creditors present and voting, in person or by proxy, indicates they agree to the resolution.

If a poll is taken, a majority in number and value of creditors present and voting must agree. A poll requires the votes of each creditor to be counted and recorded.

A separate creditors' resolution is required for approving fees for an administrator in a voluntary administration and an administrator of a deed of company arrangement, even if the administrator is the same person in both administrations.

A proxy is where a creditor appoints someone else to represent them at a creditors' meeting and vote on their behalf. A proxy can be a general or special proxy. A general proxy allows the person holding the proxy to vote as they wish on a resolution, while a special proxy directs the proxy holder to vote in a certain way.

A creditor will sometimes appoint the external administrator as a proxy to vote on the creditor's behalf. An external administrator, their partners or staff must not use a general proxy to vote on approving their fees – they must hold a special proxy to do this. All special proxies must vote as directed, even those against approval of fees.

Creditors' approval without a creditors' meeting

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

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

- include a statement of 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 without a meeting
- specify a reasonable time for the external administrator to receive creditors' replies.

To vote on the proposal, you must lodge details of your debt or claim with the external administrator and complete the provided voting documents.

Creditors can vote 'yes' or 'no' on the proposal and/or object to the proposal without a creditors' meeting. You should return your response to the external administrator 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 25% or less in value of the creditors who responded objected to the proposal without a creditors' meeting.

The external administrator should provide you with enough information to make an informed decision. Contact the external administrator if you require further information to help you decide.

The external administrator must lodge with ASIC the outcome of the proposal. You can get a copy of the outcome of the proposal by searching [ASIC Connect](#) for a fee.

Committee of inspection approval

Where creditors have not passed a resolution approving fees, a [committee of inspection](#) can approve an external administrator's fees. In doing so, the members of the committee represent the interests of all creditors or employees, not just their own individual interests.

A committee of inspection makes its decision by a majority in number of its members present at a meeting, but it can only act if a majority of its members attend.

To find out more about committees of inspection and how they are formed, see [Information Sheet 45 Liquidation: A guide for creditors](#) (INFO 45) and [Information Sheet 74 Voluntary administration: A guide for creditors](#) (INFO 74).

Calculation of fees

Fees may be calculated on a:

- time basis, based on time spent by the external administrator and their staff
- quoted fixed fee, based on an upfront estimate
- percentage of asset realisations.

Charging on a time basis is the most common method. If an external administrator seeks approval for charging wholly or partly on a time basis, and the work is yet to be carried out, the approval sought must include a maximum limit ('cap') on the amount of remuneration the external administrator is entitled to receive. For example, future fees calculated according to time spent may be approved based on the expected number of hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X.

If the work involved exceeds this figure, the external administrator will have to ask creditors/committee to approve further fees, after accounting for the fees already incurred.

An external administrator is also entitled to ask for approval to pay their estimated future fees (for work yet to be done). Usually this is requested to allow the external administrator to continue doing work up to a certain point in time (e.g. to achieve a particular outcome) or to the completion of the external administration.

The external administrator and their staff will record the time taken for the various tasks involved, and a record will be kept of the nature of the work performed.

It is up to the external administrator to justify why the method chosen for calculating fees is appropriate. As a creditor or committee member you have a right to question the external administrator about the calculation method used and how the calculation was made. You can also ask whether the hourly rates are negotiable.

Hourly rates

External administrators have a scale of hourly rates, with different rates for each category of staff working on the external administration, including the external administrator.

If the external administrator intends to charge on a time basis, you should receive a copy of these hourly rates soon after their appointment and before you are asked to approve fees. It is important to note the hourly rates do not represent an hourly wage for the external administrator and their staff.

The external administrator is running a business – an insolvency practice – and the hourly rates will be based on the cost of running the business, including overheads such as rent for business premises, utilities, wages and superannuation for staff who are not charged out at an hourly rate (such as personal assistants), information technology support, office equipment and supplies, insurances, taxes, and a profit.

External administrators are professionals required to have qualifications and experience, be independent and maintain up-to-date skills. Many of the costs of running an insolvency practice are fixed costs that must be paid, even if there are insufficient assets available to pay the external administrator for their services. External administrators compete for work and their rates should reflect this.

Initial remuneration notice

If the [external administrator](#) proposes to seek fee approval, the external administrator must send creditors a notice setting out the following information:

- the method by which they seek to be paid (e.g. time basis, quoted fixed price)
- the rate of fees
- an estimate of the expected total fees
- how out-of-pocket costs will be calculated
- a brief explanation of the different methods to calculate fees
- an explanation why they chose a particular fee method
- if a time-cost basis was chosen, the hourly rates of the external administrator and other staff who will work on the external administration.

This initial remuneration notice must be sent to creditors:

- in a voluntary administration, at the same time as the notice of the first meeting of creditors is sent
- in a court liquidation, within 20 business days after the liquidator's appointment
- in a creditors' voluntary liquidation, within 10 business days after the day of the meeting at which the resolution to wind up the company is passed.

Report on proposed fees

When seeking approval of fees, the external administrator must send creditors/committee members a report setting out:

- a summary description of the major tasks performed, or likely to be performed
- the costs associated with each of these tasks and how the costs were calculated
- when the funds will be drawn to pay the fees
- an estimated total amount, or a range of total fees
- an explanation of the likely impact the fees will have on any payment to creditors
- other information that will assist creditors to assess the reasonableness of the fees claimed.

Creditors/committee members may be asked to approve fees for work already performed or an estimate of work yet to be carried out. For more information about the tasks involved, see [INFO 45](#) and [INFO 74](#).

Deciding if fees are reasonable

If you are asked to approve an amount of fees, you must decide if the amount is reasonable given the work carried out in the external administration and the results of that work.

The external administrator must provide you with certain information to help you decide if you should approve their fees. To decide if the fees claimed are reasonable and for necessary work properly performed, you might find the following additional information the external administrator provides useful:

- an explanation of why the work performed was necessary
- the size and complexity (or otherwise) of the external administration
- the value and nature of the assets or property dealt with
- the level of risk or responsibility involved with the external administration
- whether there are any extraordinary issues that the external administrator had to deal with
- the amount of fees (if any) that have previously been approved
- if the fees are calculated, in whole or in part, on a time basis:
 - the period over which the work was or is likely to be performed
 - the time spent by each level of staff on each of the major tasks performed or likely to be performed
 - if the fees are for work that is yet to be carried out, whether the fees are capped.

If you need more information about fees than is provided in the external administrator's report, let the external administrator know before the meeting at which fees will be voted on.

What can you do if you think the fees are not reasonable?

If you think the fees claimed are not reasonable, you should raise your concerns with the external administrator. You decide whether to vote in favour of, or against, a resolution to approve fees.

Generally, if creditors or a [committee of inspection](#) approve fees and you wish to challenge this decision, you may apply to the court for review of the fees. You may wish to seek your own legal advice if you are considering applying for a court review of the fees.

As well as a court review of the external administrator's fees, creditors (by resolution of creditors) or one or more creditors (with the external administrator's consent) can appoint a [registered liquidator](#) to carry out a review of fees and/or costs incurred by the external administrator of the company.

A creditor can also apply for ASIC to appoint a reviewing liquidator: see [Form 5605 Application for ASIC to appoint a reviewing liquidator](#).

Where creditors resolve to appoint a reviewing liquidator, the review is limited to:

- remuneration approved within the six months before the reviewing liquidator is appointed
- costs or expenses incurred during the 12 months before the reviewing liquidator is appointed (unless the external administrator 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 written consent 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 external administrator and their staff must cooperate with the reviewing liquidator.

If creditors pass a resolution to appoint the reviewing liquidator, the reviewing liquidator's costs form part of the expenses of the external administration of the company. If one or more of the creditors appoint the reviewing liquidator with the consent of the external administrator, the reviewing liquidator's costs are borne by the creditor(s) appointing the reviewing liquidator.

Reimbursement of out-of-pocket costs

An [external administrator](#) should be very careful incurring costs that must be paid from the external administration – as careful as if they were dealing with their own money. Their report on fees must also include information on the out-of-pocket costs of the external administration.

Out of pocket expenses (or disbursements) can be categorised into:

- external services or costs such as legal fees, valuation fees, travel, accommodation and search fees
- internal services or costs such as photocopying, printing and postage.

External costs are usually charged at cost and do not require prior approval of creditors.

Internal costs may be charged at a rate higher than actual cost in order to recover overheads and similar costs. In instances where costs are charged at a rate higher than cost, the external administrator will need to obtain creditor approval before being reimbursed.

When seeking approval of out-of-pocket expenses, the external administrator must send creditors/committee members a report setting out:

- a summary of the out-of-pocket expenses
- how they were calculated
- the total amount the external administrator is seeking reimbursement for
- why the expenses were necessary.

You may be asked to approve reimbursement of out-of-pocket expenses for expenses already incurred or an estimate of expenses to be incurred.

If the expenses are yet to be incurred, a maximum limit (cap) should be placed on the amount the external administrator may incur and get reimbursed for.

Questions and complaints

Contact the external administrator to raise questions or complaints. If this fails to resolve your concerns, including any concerns about their conduct, you can [lodge a report of misconduct with ASIC](#). ASIC does not usually become involved in matters of an external administrator's commercial judgement.

More information

- › [Information Sheet 39](#) *Insolvency information for directors, employees, creditors and shareholders* (INFO 39)
- › [Australian Restructuring Insolvency & Turnaround Association \(ARITA\) website](#)
- › [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 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.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

This information sheet was reissued in June 2023.

Last updated: 16/06/2023 12:00