



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 46

Liquidation: a guide for employees

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

This information sheet provides general information for employees of companies in liquidation. Employees should also read ASIC information sheet INFO 45 *Liquidation: a guide for creditors*.

Who is an employee?

You are likely to be classified as an employee if you are:

- engaged by a company under an award, Certified Agreement, Australian Workplace Agreement, or a contract of employment, and
- paid a salary, wages or commission.

Contractors are not employees. They are ordinary unsecured creditors of the company.

If you are an employee who is owed money for unpaid wages, superannuation, annual leave, sick leave, 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 in priority to the company's other creditors.

The purpose of liquidation

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

There are two types of insolvent liquidation:

- creditors' voluntary liquidation, and
- court liquidation.

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

- creditors vote for liquidation following a voluntary administration or a terminated deed of company arrangement, or
- an insolvent company's shareholders resolve to liquidate the company and appoint a liquidator. Within 11 days of being appointed by shareholders, the liquidator must call a meeting of creditors who may confirm the liquidator's appointment or appoint another liquidator of the creditors' choice.

Important note: This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

Liquidation Guide 2015

David Kirk



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