



DEM ASIA GROUP

## **INITIAL INFORMATION SHEET FOR CREDITORS**

Insolvency Practice Rules (Corporations) 70-30

**SETTLERS COMPANY PTY LIMITED ACN 606 610 904  
ATF SETTLERS PROPERTY TRUST ABN 78 694 717 061  
AND  
SETTLERS OPERATIONS PTY LIMITED ACN 609 526 605  
(ADMINISTRATOR APPOINTED) (RECEIVERS & MANAGERS APPOINTED)  
("THE COMPANIES")**

The purpose of this document is to provide you with information about the voluntary administration of the Companies, including the first meeting of creditors, the effect of the appointment of an Administrator, and your rights as a creditor.

### **NOTIFICATION OF APPOINTMENT**

I was appointed Administrator to each of the Companies on 26 August 2019 pursuant to Section 436A of the Corporations Act 2001 (the Act).

I note that on 28 August 2019, Mr Joseph Ronald Hansell, John Richard Park and Ian Charles Francis were appointed Receivers and Managers to each of the Companies.

A copy of my Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) is attached. The DIRRI assists you to understand any relevant relationships that I have, and any indemnities or upfront payments that have been provided to me. None of the relationships disclosed in this document affect my independence.

### **WHAT IS A VOLUNTARY ADMINISTRATION?**

A voluntary administration or VA is a process initiated by the directors of a company when they believe that the company is, or is likely to become, insolvent. This means that the company is unable to pay its debts or is likely to become unable to pay its debts as they fall due.

A voluntary administration gives a company an opportunity to consider its financial position and its future. Creditors will be given an opportunity to vote on the future of each company.

According to the company's records, you may be a creditor of one of the Companies.

### **What happens to your debt?**

All creditors of the Companies are now creditors in the voluntary administration. As a creditor, you have certain rights, although your debt will be dealt with in the voluntary administration.

It is important to note that a voluntary administration creates restrictions on creditors being able to enforce their rights. You generally cannot enforce your claim, recover your property, enforce your security, commence an action to place the company into liquidation or act on a personal guarantee.

If you have leased the companies' property, have a retention of title claim or hold a Personal Property Security in relation to the companies, please contact my staff as soon as possible.

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## Your rights as a creditor

Information regarding your rights as a creditor is provided in the information sheet enclosed. This includes your right to:

- Make reasonable requests for information
- Give directions to me
- Appoint a reviewing liquidator
- Replace me as Administrator

## MEETINGS OF CREDITORS

As voluntary administrator, I am required to hold two meetings of creditors.

### First meetings of creditors

In accordance with Section 436E of the Act, I am required to hold the first meeting of creditors within 8 business days following my appointment.

The first meeting of creditors will be held for the Companies as follows:

**Date:** Wednesday, 4 September 2019  
**Time:** 2.30 PM  
**Address:** The Grace Hotel, Level 2 Kirralaa Room, 77 York Street, Sydney NSW

Further information in relation to this meeting is contained in the attached Notice of Meeting of Creditors. To participate in this meeting, you may need to:

- Submit an **informal proof of debt** and information to substantiate your claim.
- Appoint a person – a “**proxy**” or person authorised under a power of attorney – to vote on your behalf at the meeting. This may be necessary if you are unable to attend the meeting, or if the creditor is a company.

You can appoint the chairperson of the meeting as your proxy and direct the chairperson how you wish your vote to be cast. If you choose to do this, the chairperson must cast your vote as directed.

Proof of debt and proxy forms are included with the notice of meeting. To facilitate the conduct of the meeting, completed proof of debt and, if applicable, proxy forms must be returned to my office by post, or email **by 12.00 PM on Tuesday, 3 September 2019**.

### Committee of Inspection

At this meeting, creditors will consider whether a Committee of Inspection (COI) should be appointed.

It is my opinion that a COI is not required for this voluntary administration due to the limited number of creditors of the Companies, however, creditors may vote as they wish, at the Meeting of Creditors.

### Second meeting of creditors

I will also in due course call a second meeting of creditors. Before that meeting you will be sent the notice of meeting and a detailed report. At that second meeting, you will decide about the future of each of the Companies.



You are encouraged to attend these meetings and participate in the voluntary administration process.

## CREDITORS ELECTRONIC COMMUNICATION METHOD APPROVAL FORM

I have enclosed a Creditors' Electronic Communications Method Approval Form by which creditors may elect to choose to receive future notices and documents by email. I recommend that where possible creditors elect to receive future notices electronically, as this will facilitate the communication process and reduce the costs of the administration that may otherwise be incurred.

During the course of this administration, I may forward to creditors notices for the purposes of section 600(G) of the Act, informing creditors that I have made notices and/or documents publicly available by electronic means, by posting those notices and/or documents on the Internet. Any future notices sent to you for the purposes of section 600G will be sent to you either by email (where you have approved email communications by returning the enclosed Creditors' Electronic Communications Method Approval Form) or by post. I am able to comply with my obligations under the Act to serve copies of these notices and/or documents on you by notifying you that the notices and/or documents are available electronically and the way in which they can be accessed by you.

## WHAT HAPPENS NEXT?

I will proceed with the voluntary administration, including:

- Preparing for and holding the meeting of creditors;
- Undertaking investigations into the company's affairs;
- Conducting discussions with the party who has registered on the PPSR;
- Respond to creditor enquiries generally;
- Analysing any offer for a deed of company arrangement that is received;
- Preparing my report to creditors; and
- Preparing for and holding the second meeting of creditors.

As discussed above, you will receive further correspondence from me before the second meeting of creditors.

## COSTS OF THE VOLUNTARY ADMINISTRATION

I have enclosed my Initial Remuneration Notice for your reference. This document provides you with information about how I proposed to be paid for undertaking the voluntary administration.

I will seek your approval of my remuneration at the second meeting of creditors. I will provide you with a Remuneration Approval Report detailing my remuneration prior to the second meeting of creditors, so that you can understand what tasks I have undertaken or will be required to undertake, and the costs of those tasks. If there is a COI appointed, the COI may approve my remuneration.

## WHERE CAN YOU GET MORE INFORMATION?

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides information to assist creditors with understanding voluntary administrations and insolvency.

This information is available from ARITA's website at [www.arita.com.au](http://www.arita.com.au) (search for "insolvency fact sheets").



Should you have any queries regarding the above, please do not hesitate to contact Lucy Vecchio of this office on 0414 679 181 or via email on [lucy.vecchio@demasiagroup.com](mailto:lucy.vecchio@demasiagroup.com).

Dated this 28 day of August 2019.

**DAMIEN M HODGKINSON**  
**ADMINISTRATOR**



DEM ASIA GROUP

**NOTICE OF FIRST MEETING OF  
CREDITORS OF COMPANIES UNDER ADMINISTRATION**

CORPORATIONS ACT 2001  
*Section 436E*  
Insolvency Practice Rules (Corporations)  
75-10, 75-15, 75-20, 75-35

**SETTLERS COMPANY PTY LIMITED ACN 606 610 904  
ATF SETTLERS PROPERTY TRUST ABN 78 694 717 061  
AND  
SETTLERS OPERATIONS PTY LIMITED ACN 609 526 605  
(ADMINISTRATOR APPOINTED) (RECEIVERS & MANAGERS APPOINTED)  
("THE COMPANIES")**

1. On 26 August 2019, the Companies under section 436A appointed Damien Hodgkinson of DEM Australasia Pty Limited T/a DEM Asia Group, Suite 4.02, Level 4, 249 Pitt Street, Sydney NSW 2000 as the Administrator of the Companies.
2. Notice is now given that a meeting of the creditors of the Companies will be held at The Grace Hotel, Level 2 Kirralaa Room, 77 York Street, Sydney NSW on **Wednesday, 4 September 2019 at 2.30 PM.**
3. The purpose of the meeting is to determine:
  - a. whether to appoint a committee of inspection; and
  - b. if so, who are to be the committee's members.
4. At the meeting, creditors may also, by resolution:
  - a. remove the Administrator from office; and
  - b. appoint someone else as administrator of the Companies.
5. Attendance at this meeting is not compulsory. Creditors may attend and vote in person, by proxy or by attorney\*. The appointment of a proxy must be in the approved form.

A special proxy can be lodged showing approval or rejection of each resolution. Proxy forms must be given to me as Administrator or the person named as convening the meeting. An attorney of the creditor must show the instrument by which he or she is appointed to the Chairperson of the meeting, prior to the commencement of the meeting.

**Video conference facilities will be available.**

- Please note under Insolvency Practice Rules (Corporations) (IPR) Section 75-35 if you wish to participate in the meeting using such facilities, you must give to the convener:
  - (a) A written statement setting out:
    - (i) the name of the person and of the proxy or attorney (if any);
    - (ii) an address to which notices to the person, proxy or attorney may be sent; and



(iii) a method by which the person, proxy or attorney may be contacted for the purposes of the meeting.

- **Any creditor wishing to participate in the meeting by video conference must advise Jenny Kim of my office on [jenny.kim@demasiagroup.com](mailto:jenny.kim@demasiagroup.com) to obtain the video conference details above by no later than 12.00pm on Tuesday, 3 September 2019.**

DATED this 27 August 2019.

**DAMIEN M HODGKINSON**  
**ADMINISTRATOR**

**Notes:**

**\*Voting at a Meeting the effect of Insolvency Practice Rules (Corporations) 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 Companies directly, or may be liable to the Companies 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.



DEM ASIA GROUP

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

CORPORATIONS ACT 2001

Section 436DA

**SETTLERS COMPANY PTY LIMITED ACN 606 610 904  
ATF SETTLERS PROPERTY TRUST ABN 78 694 717 061  
(ADMINISTRATOR APPOINTED) (RECEIVERS & MANAGERS APPOINTED)  
("THE COMPANY")**

Section 436DA of the Corporation Act requires the Practitioner/s appointed to an insolvent entity to make declarations as to:

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

This declaration is made in respect of myself, my partners and my firm, DEM Australasia Pty Limited

**A. Independence**

I, Damien Hodgkinson, of DEM Australasia Pty Limited have undertaken a proper assessment of the risks to my independence prior to accepting the appointment as Administrator of the Company in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to my independence. I am not aware of any reasons that would prevent me from accepting this appointment.

**B. Declaration of Relationships**

**i Circumstances of appointment**

This appointment was referred to me by Mr Brett Lennane of Newpoint Advisory. I was first contacted on 26 August by Mr Lennane and was subsequently asked to provide my consent to act. After assessing the risks to my independence, I provided my consent. I believe that this referral does not result in a conflict of interest or duty because:

- No advice was provided in relation to any of the director's personal affairs
- No prior engagement with the Company nor had I met the Director prior to the appointment.



My colleague Lucy Vecchio, and I had one (1) meeting with the Company director on 27 August 2019 for the purposes of:

- Obtaining information about the Company, including its assets and liabilities;
- Provide information to the Company and its representatives in relation to the nature and consequences of an insolvency appointment; and
- After assessing the risks to my independence, provided my consent to act.

No remuneration was received for the information provided.

In my opinion, this meeting does not affect my independence for the following reasons:

- The Courts and ARITA's Code of Professional Practice specifically recognise the need for practitioners to provide information on the insolvency process and the options available and do not consider that providing such information results in a conflict or an impediment to accepting the appointment;
- The nature of the information provided to the Company is such that it would not be subject to review and challenge during the course of the Voluntary Administration; and
- The pre-appointment information provided will not influence my ability to be able to fully comply with the statutory and fiduciary obligations associated with the Voluntary Administration in an objective and impartial manner.

I have provided no other information or advice to the Company, its director or its representatives or its advisors prior to my appointment beyond that outlined in this Declaration.

**ii Relevant Relationships (excluding Professional Services to the Insolvent)**

Neither I, nor my firm, have, or have had within the preceding 24 months, any relationships with Company, an associate of the Company, a former insolvency practitioner appointed to Company or any person or entity that has security over on the whole or substantially whole of the Company' property (including any PPSA retention of title property).

**iii Prior Professional Services to the Insolvent**

Neither I, nor my firm, have provided any professional services to Company in the previous 24 months, other than those outlined herein.

**iv No other relevant relationships to disclose**

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

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

I have been provided with the following upfront payments for remuneration for the conduct of this administration:





Name	Relationship with Company	Nature of indemnity or payment
Settlers Company Pty Limited ATF Settlers Property Trust	Director	<p>The Director has provided an upfront payment of \$25,000 excluding GST to cover my initial remuneration and expenses associated with the administration.</p> <p>At the date of this declaration, the amount of \$25,000 excluding GST has been provided.</p> <p>The money will not be drawn to meet my remuneration or internal disbursements until such time that it is approved either by creditors, any Committee of Inspection, or the Court.</p> <p>There are no conditions on the conduct or outcome of the administration attached to the provisions of these funds.</p>

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

Dated: 28 August 2019

**DAMIEN M HODGKINSON**  
**ADMINISTRATOR**

**NOTE:**

1. *If circumstances change, or new information is identified, I am/we are required under the Corporations Act 2001 and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with my next communication as well as table a copy of any replacement declaration at the next meeting of the insolvent's creditors.*
2. *Pursuant to Section 506A(5) of the Corporations Act 2001 I am required to make a replacement declaration of relevant relationships if:-*
  - i. *The declaration becomes out-of-date; or*
  - ii. *The Liquidator becomes aware of an error in the declaration.*

*I am also required to table a copy of any replacement declaration at the next meeting of the Company' creditors.*
3. *Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent*



DEM ASIA GROUP

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

CORPORATIONS ACT 2001

Section 436DA

**SETTLERS OPERATIONS PTY LIMITED ACN 609 526 605  
(ADMINISTRATOR APPOINTED) (RECEIVERS & MANAGERS APPOINTED)  
("THE COMPANY")**

Section 436DA of the Corporation Act requires the Practitioner/s appointed to an insolvent entity to make declarations as to:

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- B. relationships, including
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- Obtaining information about the Company, including its assets and liabilities;
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- The nature of the information provided to the Company is such that it would not be subject to review and challenge during the course of the Voluntary Administration; and
- The pre-appointment information provided will not influence my ability to be able to fully comply with the statutory and fiduciary obligations associated with the Voluntary Administration in an objective and impartial manner.

I have provided no other information or advice to the Company, its director or its representatives or its advisors prior to my appointment beyond that outlined in this Declaration.

**ii Relevant Relationships (excluding Professional Services to the Insolvent)**

Neither I, nor my firm, have, or have had within the preceding 24 months, any relationships with Company, an associate of the Company, a former insolvency practitioner appointed to Company or any person or entity that has security over on the whole or substantially whole of the Company' property (including any PPSA retention of title property).

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Neither I, nor my firm, have provided any professional services to Company in the previous 24 months, other than those outlined herein.

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

I have been provided with the following upfront payments for remuneration for the conduct of this administration:



Name	Relationship with Company	Nature of indemnity or payment
Settlers Company Pty Limited ATF Settlers Property Trust	Director	<p>The Director has provided an upfront payment of \$25,000 excluding GST to cover my initial remuneration and expenses associated with the administration.</p> <p>At the date of this declaration, the amount of \$25,000 excluding GST has been provided.</p> <p>The money will not be drawn to meet my remuneration or internal disbursements until such time that it is approved either by creditors, any Committee of Inspection, or the Court.</p> <p>There are no conditions on the conduct or outcome of the administration attached to the provisions of these funds.</p>

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

Dated: 28 August 2019

**DAMIEN M HODGKINSON**  
**ADMINISTRATOR**

**NOTE:**

1. *If circumstances change, or new information is identified, I am/we are required under the Corporations Act 2001 and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with my next communication as well as table a copy of any replacement declaration at the next meeting of the insolvent's creditors.*
2. *Pursuant to Section 506A(5) of the Corporations Act 2001 I am required to make a replacement declaration of relevant relationships if:-*
  - i. *The declaration becomes out-of-date; or*
  - ii. *The Liquidator becomes aware of an error in the declaration.**I am also required to table a copy of any replacement declaration at the next meeting of the Company' creditors.*
3. *Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent*



DEM ASIA GROUP

## **INITIAL REMUNERATION NOTICE**

Insolvency Practice Schedule (Corporations) 70-50  
Insolvency Practice Rules (Corporations) 70-35

**SETTLERS COMPANY PTY LIMITED ACN 606 610 904**  
**ATF SETTLERS PROPERTY TRUST ABN 78 694 717 061**  
**(ADMINISTRATOR APPOINTED) (RECEIVERS & MANAGERS APPOINTED)**  
**("THE COMPANY")**

The purpose of the Initial Remuneration Notice is to provide you with information about how my remuneration for undertaking the Administration will be set.

### **A. Remuneration Methods**

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

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

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

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

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

#### **3. Percentage**

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

#### **4. Contingency**

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

### **B. Method chosen**

Given the nature of this administration we propose that our remuneration be calculated as a fixed fee of \$25,000 plus GST, exclusive of disbursements and legal costs. This is because:

- *Limited number of creditors; and*
- *Uncertainty of outcome*

### **Explanation of Hourly Rates**

The rates for my remuneration calculation are set out in the following table together with a general guide showing the qualifications and experience of staff that will be engaged in the administration and the role they take in the administration. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.

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<b>Title</b>	<b>Description</b>	<b>Hourly Rate (excl. GST)</b>
Appointee / Director	Official or Registered Liquidator or Managing Director of DEM Australasia Pty Limited.	\$630
Associate / Director	More than 10 years experience. Qualified and capable of controlling all aspects of an appointment. May be appropriate to take appointments in their own right.	\$570
Manager 1	Typically, CA or CPA qualified. 7 + years insolvency experience, likely more than 3 years as manager, tertiary qualified. Answerable to the appointee but otherwise responsible for all aspects of administration. Capable of controlling all aspects of an insolvency appointment.	\$495
Manager 2	Typically, CA or CPA qualified. 6 - 7 years + insolvency experience. Controls all allocated insolvency tasks. Well-developed technical and commercial skills.	\$425
Supervisor	Typically, CA or CPA qualified. 4 to 6 years' experience. Will have had conduct or minor administrations and experience in control of staff. Assists planning and controls medium to larger appointments. Reports to manager.	\$380
Senior 1	Typically, 2 to 4 years' experience. CA or CPA program commenced or completed. Required to control and or assist on the fieldwork on insolvency appointments. Reports to supervisor / manager.	\$325
Senior 2	Typically, 1 to 2 years' experience. Likely tertiary course underway or near complete. Required to control and or assist on the fieldwork on insolvency appointments. Reports to supervisor / manager.	\$295
Intermediate 1	Typically, up to 2 years' experience. Required to assist on fieldwork for insolvency appointments. Reports to more senior staff.	\$250
Intermediate 2	Typically, less 1 year insolvency experience. Trainee likely undertaking a degree with an accountancy major. Required to assist on fieldwork for insolvency appointments. Reports to more senior staff.	\$200
IT Administrator	Appropriate skills.	\$220
Secretary / WPO	Appropriate skills including machine usage.	\$180
Clerk	Non-qualified but passed HSC. Classification would depend on experience, salary and complexity of work to be conducted.	\$140
Junior	HSC. Plans to undertake at least part-time degree/diploma. Required to assist in administration and day-today fieldwork under supervision of more senior staff.	\$140

### **C. Estimated remuneration**

The cost of the Voluntary Administration will be \$25,000.00 (excl GST), subject to the following variables which may have a significant effect on this estimate provided and that I am unable to determine until I have commenced the administration:

- The second lender will appoint a receiver to manage and sell the subject properties. In the event that our assistance is required in selling the properties, we will negotiate out additional costs directly with the receiver and/or Secured Creditor as appropriate.
- Legal fees

#### D. Disbursements

Disbursements are divided into three types:

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

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

I am required to obtain creditor's consent for the payment of internal disbursements. Creditors will be asked to approve my internal disbursements prior to these disbursements being paid from the administration.

Details of the basis of recovering disbursements in this administration are provided below.

#### Basis of disbursement claim

Disbursement	Rate
Externally provided professional services	At Cost
Externally provided non-professional services	At Cost
Internal disbursements:	
Postage	At cost
Photocopying	At cost
Printing and stationery	At cost
Books and Records Storage	At cost
Books and Records Transport	At cost
Staff Vehicle Use	ATO Standard Rate per Km

Dated this 28 August 2019.



**DAMIEN M HODGKINSON**  
**ADMINISTRATOR**



DEM ASIA GROUP

## **INITIAL REMUNERATION NOTICE**

Insolvency Practice Schedule (Corporations) 70-50  
Insolvency Practice Rules (Corporations) 70-35

### **SETTLERS OPERATIONS PTY LIMITED ACN 609 526 605 (ADMINISTRATOR APPOINTED) (RECEIVERS & MANAGERS APPOINTED) ("THE COMPANY")**

The purpose of the Initial Remuneration Notice is to provide you with information about how my remuneration for undertaking the Administration will be set.

#### **A. Remuneration Methods**

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

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

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

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

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

##### **3. Percentage**

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

##### **4. Contingency**

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

#### **B. Method chosen**

Given the nature of this administration we propose that our remuneration be calculated as a fixed fee of \$25,000 plus GST, exclusive of disbursements and legal costs. This is because:

- *Limited number of creditors; and*
- *Uncertainty of outcome*

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

The rates for my remuneration calculation are set out in the following table together with a general guide showing the qualifications and experience of staff that will be engaged in the administration and the role they take in the administration. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.



<b>Title</b>	<b>Description</b>	<b>Hourly Rate (excl. GST)</b>
Appointee / Director	Official or Registered Liquidator or Managing Director of DEM Australasia Pty Limited.	\$630
Associate / Director	More than 10 years experience. Qualified and capable of controlling all aspects of an appointment. May be appropriate to take appointments in their own right.	\$570
Manager 1	Typically, CA or CPA qualified. 7 + years insolvency experience, likely more than 3 years as manager, tertiary qualified. Answerable to the appointee but otherwise responsible for all aspects of administration. Capable of controlling all aspects of an insolvency appointment.	\$495
Manager 2	Typically, CA or CPA qualified. 6 - 7 years + insolvency experience. Controls all allocated insolvency tasks. Well-developed technical and commercial skills.	\$425
Supervisor	Typically, CA or CPA qualified. 4 to 6 years' experience. Will have had conduct or minor administrations and experience in control of staff. Assists planning and controls medium to larger appointments. Reports to manager.	\$380
Senior 1	Typically, 2 to 4 years' experience. CA or CPA program commenced or completed. Required to control and or assist on the fieldwork on insolvency appointments. Reports to supervisor / manager.	\$325
Senior 2	Typically, 1 to 2 years' experience. Likely tertiary course underway or near complete. Required to control and or assist on the fieldwork on insolvency appointments. Reports to supervisor / manager.	\$295
Intermediate 1	Typically, up to 2 years' experience. Required to assist on fieldwork for insolvency appointments. Reports to more senior staff.	\$250
Intermediate 2	Typically, less 1 year insolvency experience. Trainee likely undertaking a degree with an accountancy major. Required to assist on fieldwork for insolvency appointments. Reports to more senior staff.	\$200
IT Administrator	Appropriate skills.	\$220
Secretary / WPO	Appropriate skills including machine usage.	\$180
Clerk	Non-qualified but passed HSC. Classification would depend on experience, salary and complexity of work to be conducted.	\$140
Junior	HSC. Plans to undertake at least part-time degree/diploma. Required to assist in administration and day-today fieldwork under supervision of more senior staff.	\$140

### **C. Estimated remuneration**

The cost of the Voluntary Administration will be \$25,000.00 (excl GST), subject to the following variables which may have a significant effect on this estimate provided and that I am unable to determine until I have commenced the administration:

# Creditor Rights in Voluntary Administrations

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



## Right to request information

Information is communicated to creditors in a voluntary administration through reports and meetings.

In a voluntary administration, two meetings of creditors are automatically held. You should expect to receive reports and notice of these meetings:

- The first meeting is held within 8 business days of the voluntary administrator's appointment. A notice of meeting and other information for this meeting will be issued to all known creditors.
- The second, or decision, meeting is usually held within 6 weeks of the appointment, unless an extension is granted. At this meeting, creditors will get to make a decision about the company's future. Prior to this meeting the voluntary administrator will provide creditors with a notice of the meeting and a detailed report to assist in making your decision.

Important information will be communicated to creditors prior to and during these meetings. Creditors are unable to request additional meetings in a voluntary administration.

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

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

### Requests must be reasonable.

#### They are not reasonable if:

- (a) complying with the request would prejudice the interests of one or more creditors or a third party
- (b) the information requested would be privileged from production in legal proceedings
- (c) disclosure would found an action for breach of confidence
- (d) there is not sufficient available property to comply with the request
- (e) the information has already been provided
- (f) the information is required to be provided under law within 20 business days of the request
- (g) the request is vexatious

If a request is not reasonable due to (d), (e) or (f) above, the voluntary administrator must comply if the creditor meets the cost of complying with the request.

Otherwise, a voluntary administrator must inform a creditor if their information request is not reasonable and the reason why.

## Right to give directions to voluntary administrator

Creditors, by resolution, may give a voluntary administrator directions in relation to a voluntary administration. A voluntary administrator must have regard to these directions, but they are not required to comply with the directions.

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

An individual creditor cannot provide a direction to a voluntary administrator.

## Right to appoint a reviewing liquidator

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

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

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

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

## Right to replace voluntary administrator

At the first meeting, creditors have the right to remove a voluntary administrator and appoint another registered liquidator to act as voluntary administrator.

A creditor must ensure that they have a consent from another registered liquidator prior to the first meeting if they wish to seek the removal and replacement of a voluntary administrator.

Creditors also have the opportunity to replace a voluntary administrator at the second meeting of creditors:

- If creditors vote to accept a proposed deed of company arrangement, they can appoint a different registered liquidator as the deed administrator.
- If creditors vote to place the company into liquidation, they can appoint a different registered liquidator as the liquidator.

It is however usual for the voluntary administrator to act as deed administrator or liquidator. It would be expected that additional costs would be incurred by an alternate deed administrator or liquidator to gain the level of knowledge of the voluntary administrator.

Like with the first meeting, a creditor must ensure that they have a consent from another registered liquidator prior to the second meeting if they wish to seek to appoint an alternative registered liquidator as deed administrator or liquidator.

**For more information, go to [www.arita.com.au/creditors](http://www.arita.com.au/creditors) or go to ASIC's web site to view their insolvency resources <http://asic.gov.au/regulatory-resources/insolvency/>**

**or**

# Creditor Information Sheet

## Offences, Recoverable Transactions and Insolvent Trading



### Offences

A summary of offences under the Corporations Act that may be identified by the administrator:

180	Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.
181	Failure to act in good faith.
182	Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of the officer's position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.
206A	Contravening a court order against taking part in the management of a corporation.
206A, B	Taking part in the management of corporation while being an insolvent, for example, while bankrupt.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of an auditor.
314-7	Failure to comply with requirements for the preparation of financial statements.
437C	Performing or exercising a function or power as an officer while a company is under administration.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to the administrator.
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.

### Recoverable Transactions

#### Preferences

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under the Corporations Act.

#### Uncommercial Transaction

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to:

- the benefit or detriment to the company;
- the respective benefits to other parties; and,
- any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years.

The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

### **Unfair Loan**

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only must be entered into before the winding up began.

### **Arrangements to avoid employee entitlements**

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person. It will only be necessary to satisfy the court that there was a breach on the balance of probabilities. There is no time limit on when the transaction occurred.

### **Unreasonable payments to directors**

Liquidators have the power to reclaim '*unreasonable payments*' made to directors by companies prior to liquidation. The provision relates to payments made to or on behalf of a director or close associate of a director. The transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

### **Voidable charges**

Certain charges over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six months of its creation.

## **Insolvent trading**

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they did so expect;
- they did not take part in management for illness or some other good reason; or
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

**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.



ASIC

Australian Securities & Investments Commission

## Voluntary administration: A guide for creditors

If a company is in financial difficulty, it can be put into voluntary administration.

This information sheet (INFO 74) provides general information for unsecured creditors of companies in voluntary administration. It covers:

- [who is a creditor](#)
- [the purpose of voluntary administration](#)
- [the voluntary administrator's role](#)
- [effect of appointment](#)
- [voluntary administrator's liability](#)
- [creditors' meetings](#)
- [voting at a creditors' meeting](#)
- [company returned to directors](#)
- [liquidation](#)
- [deed of company arrangement](#)
- [approval of administrator's fees](#)
- [proposals to creditors without a meeting](#)
- [committee of inspection](#)
- [directors and voluntary administration](#)
- [other creditor rights](#)
- [queries and complaints](#)

### Who is a creditor?

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

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

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

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

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

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

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

Employees are a special class of unsecured creditors. Their outstanding entitlements are usually paid in priority to the claims of other unsecured creditors. If you are an employee, see [Information Sheet 75 Voluntary administration: A guide for employees](#) (INFO 75).

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

## The purpose of voluntary administration

Voluntary administration is designed to resolve a company's future direction quickly (the below table summarises the process). An independent and suitably qualified person (the voluntary administrator) takes full control of the company to try to work out a way to save either the company or its business.

If it isn't possible to save the company or its business, the aim is to administer the affairs of the company in a way that results in a better return to creditors than they would have received if the company had instead been placed straight into liquidation. A mechanism for achieving these aims is a deed of company arrangement.

A voluntary administrator is usually appointed by a company's directors, after they decide that the company is insolvent or likely to become insolvent. Less commonly, a voluntary administrator may be appointed by a liquidator, provisional liquidator, or a secured creditor.

### The voluntary administration process

Step	What happens
Appointment of voluntary administrator	<p>A decision to appoint a voluntary administrator for a company can be made by:</p> <ul style="list-style-type: none"> <li>• the directors (by resolution of the board and in writing)</li> <li>• a secured creditor (with a security interest in all or substantially all of the company's property), or</li> <li>• a liquidator (or provisional liquidator).</li> </ul> <p>Voluntary administration begins on the appointment of the voluntary administrator.</p>
First meeting of creditors	<p>The voluntary administrator must hold the first meeting of creditors within eight business days of being appointed, unless the court allows an extension of time.</p> <p>At least five business days notice of the meeting must be given to creditors.</p> <p>Creditors can vote at this meeting to:</p> <ul style="list-style-type: none"> <li>• replace the administrator, and/or</li> <li>• create a committee of inspection.</li> </ul>
Voluntary administrator's investigation and report	<p>The voluntary administrator must investigate the company's affairs and report to creditors on alternatives.</p>

Step	What happens
Second meeting of creditors – meeting to decide company's future	<p>The voluntary administrator must hold the meeting to decide the company's future within 25 business days of being appointed (or 30 business days if the appointment is around Christmas or Easter), unless the court allows an extension of time.</p> <p>At least five business days notice of the meeting must be given to creditors.</p> <p>Creditors can decide at this meeting to:</p> <ul style="list-style-type: none"> <li>• return the company to the control of the directors</li> <li>• accept a deed of company arrangement (the deed must be signed by the company within 15 business days following the meeting, unless the court allows an extension of time), or</li> <li>• put the company into liquidation (this happens immediately, and the administrator becomes the liquidator).</li> </ul>

A company in voluntary administration may also be in receivership: see [Information Sheet 54 Receivership: A guide for creditors](#) (INFO 54).

## The voluntary administrator's role

After taking control of the company, the voluntary administrator investigates and reports to creditors on the company's business, property, affairs and financial circumstances, and on the three options available to creditors. These are:

- end the voluntary administration and return the company to the directors' control
- approve a deed of company arrangement through which the company will pay all or part of its debts and then be free of those debts
- wind up the company and appoint a liquidator.

The voluntary administrator must give an opinion on each option and recommend which option is in the best interests of creditors.

In doing so, the voluntary administrator tries to work out the best solution to the company's problems, assesses any proposals put forward by others for the company's future, and compares the possible outcomes of the proposals with the likely outcome in a liquidation.

A creditors' meeting is usually held about five weeks after the company goes into voluntary administration to decide on the best option for the company's future. In complex administrations, this meeting may be held later if the court consents.

The voluntary administrator has all the powers of the company and its directors. This includes the power to sell or close down the company's business or sell individual assets in the lead up to the creditors' decision on the company's future.

Another responsibility of the voluntary administrator is to report to ASIC on possible offences by people involved with the company.

At the end of their administration, the voluntary administrator must lodge a detailed account of receipts and payments (known as the 'end of administration return'). A copy of this account of receipts and payments may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

Although the voluntary administrator may be appointed by the directors, they must act fairly and impartially.

## Effect of appointment

The effect of the appointment of a voluntary administrator is to provide the company with breathing space while the company's future is resolved. While the company is in voluntary administration:



- unsecured creditors can't begin, continue or enforce their claims against the company without the administrator's consent or the court's permission
- owners of property (other than perishable property) used or occupied by the company, or people who lease such property to the company, can't recover their property
- except in limited circumstances, secured creditors can't enforce their security interest in the company's assets
- a court application to put the company in liquidation can't be commenced
- a creditor holding a personal guarantee from the company's director or other person can't act under the personal guarantee without the court's consent.

## Voluntary administrator's liability

Any debts that arise from the voluntary administrator purchasing goods or services, or hiring, leasing, using or occupying property, are paid from the available assets of the company as costs of the voluntary administration. If there are insufficient funds available from asset sales to pay these costs, the voluntary administrator is personally liable for the shortfall. To have the benefit of this debt protection as a provider of goods or services to a company in voluntary administration, you should ensure you receive a purchase order authorised in the manner advised by the voluntary administrator.

The voluntary administrator must also decide whether to continue to use or occupy property owned by another party that is held or occupied by the company at the time of their appointment.

Within five business days after their appointment, the voluntary administrator must notify the owner of property whether they intend to continue to occupy or use the property and, if they do not intend to continue to occupy or use the property, the location of that property (if known). If the voluntary administrator decides to continue to occupy or use the property, they will be personally liable for any rent or amounts payable arising after the end of the five business days.

## Creditors' meetings

Two meetings of creditors must be held during the voluntary administration.

### First creditors' meeting

The voluntary administrator must hold the first creditors' meeting within eight business days after the voluntary administration begins.

At least five business days before the meeting, the voluntary administrator must notify as many creditors as practical in writing and advertise the meeting. The advertisement must appear on [ASIC's published notices website](#).

The voluntary administrator must send to creditors, with the notice of meeting, declarations about any relationships they may have, or indemnities they have been given, to allow creditors to consider the voluntary administrator's independence and make an informed decision about whether to replace them with another voluntary administrator of the creditors' choice.

The purpose of the first meeting is for creditors to decide two questions:

- whether they want to form a committee of inspection, and, if so, who will be on the committee
- whether they want the existing voluntary administrator to be removed and replaced by a voluntary administrator of their choice.

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

A creditor who wishes to nominate an alternative voluntary administrator at the first meeting must approach a registered liquidator before the meeting and get a written consent from that person that they would be prepared to act as voluntary administrator. The proposed alternative administrator should give to the meeting declarations about any relationships

they may have or indemnities they have been given. The voluntary administrator will only be replaced if the resolution to replace them is passed by the creditors at the meeting.

To be eligible to vote at this meeting, you must lodge details of your debt or claim with the voluntary administrator (discussed further below).

This meeting can be chaired by either the voluntary administrator or one of their senior staff.

## **Second creditors' meeting (to decide the company's future)**

After investigating the affairs of the company and forming an opinion on each of the three options available to creditors (outlined above), including an opinion as to which option is in the best interests of creditors, the administrator must call a second creditors' meeting. At this meeting, creditors are given the opportunity to decide the company's future.

This meeting is usually held about five weeks after the company goes into voluntary administration (six weeks if the appointment is around Christmas or Easter).

However, in complex voluntary administrations, often more time is needed for the voluntary administrator to be in a position to report to creditors. In these circumstances, the court can approve an extension of time to hold the meeting.

The voluntary administrator must chair this meeting.

In preparation for the second meeting, the voluntary administrator must send creditors the following documents at least five business days before the meeting:

- a notice of meeting
- the voluntary administrator's report
- the voluntary administrator's statement.

These will be accompanied by:

- a claim form (usually a 'proof of debt' form)
- a proxy voting form.

The meeting must also be advertised on [ASIC's published notices website](#).

Either or both the first and second creditors' meeting may be held using telephone or videoconferencing facilities.

## **Voluntary administrator's report**

You should read the voluntary administrator's report before you attend the second meeting or decide whether you want to appoint someone else to vote on your behalf at that meeting. This report must give sufficient information to explain the company's business, property, affairs and financial circumstances, to enable you to make an informed decision about the company's future.

The report should also provide an analysis of any proposals for the future of the company, including the possible outcomes, as well as a comparable estimate of what would be available for creditors in a liquidation.

## **Voluntary administrator's statement**

The voluntary administrator's statement must include the voluntary administrator's opinion, with reasons, on each of the options available to creditors, as well as an opinion on which option the voluntary administrator believes is in the best interests of creditors. As noted above, the options are:

- end the voluntary administration and return the company to the directors' control
- approve a deed of company arrangement (if one is proposed)
- wind up the company and appoint a liquidator.

The voluntary administrator's statement must also include such other information known to the voluntary administrator that will allow you to make an informed decision about each of the options above.

The statement must also advise whether there are any voidable transactions (such as unfair preferences, unfair loans, insolvent trading, etc.) where money or property may be recoverable by a liquidator, if one were appointed.

If there are proposals for a deed of company arrangement, the voluntary administrator must provide creditors with a statement giving enough details of each proposal to enable creditors to make an informed decision. The types of proposals allowed in a deed of company arrangement are very flexible.

Typically, a proposal will provide for the company to pay all or part of its debts, possibly over time, and then be free of those debts. It will often provide for the company to continue trading. How these things will happen varies from case to case, as the terms allowed in a deed of company arrangement are also very flexible. The contents of a deed of company arrangement are discussed below.

You should insist on being provided with as much information about the terms of the proposed deed as possible before the creditors' meeting. The minimum contents of a deed of company arrangement, discussed below, provide a guide on the information you might request if it hasn't already been provided.

You should also contact the voluntary administrator before the meeting if you believe the voluntary administrator's report or statement do not contain sufficient information to enable you to make a decision about the company's future.

## Voting at a creditors' meeting

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

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

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

A secured creditor is entitled to vote for the full amount of their debt without having to deduct the value of their security interest.

## Voting by proxy

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

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

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

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

## Manner of voting

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

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

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

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

The chairperson will determine how this poll is taken.

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

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

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

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

### Chairperson's casting vote

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

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

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

### Votes of related creditors

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

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

### Deciding how to vote at the second meeting

How you vote at the meeting on the three possible options, including any competing proposals for a deed of company arrangement, is a commercial decision based on your assessment of the company and its future prospects, and your personal circumstances. The information provided by the voluntary administrator, including opinions expressed, will assist you. However, you are not obliged to accept the administrator's recommendation.

If you do not consider that you have been given enough information to decide how to vote, and particularly whether to vote for any deed proposal, you can ask for a resolution to be put to creditors that the meeting be adjourned (up to a maximum of 45 business days in total) and for the administrator to provide more information. You must make this request before a vote on the company's future. This resolution must be passed for the adjournment to take place.

Creditors also have the right, when a deed of company arrangement is proposed and considered at the meeting, to negotiate specific requirements into the terms of the deed – including, for example, how the deed administrator is to report to them on the progress of the deed.

Any request to vary the deed proposal to include such requirements should be made before the deed proposal is voted on.

## Minutes of meeting

The chairperson must prepare minutes of each meeting and a record of those who were present at each meeting.

The minutes must be lodged with ASIC within 10 business days of the meeting. A copy of the minutes of meeting may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

## Company returned to directors

If the company is returned to the directors, they will be responsible for ensuring that the company pays its outstanding debts as they fall due. It is only in very rare circumstances that creditors will resolve to return the company to the control of its directors.

## Liquidation

If creditors resolve that the company go into liquidation, the voluntary administrator becomes the liquidator unless creditors vote at the second meeting to appoint a different liquidator of their choice. The liquidation proceeds as a creditors' voluntary liquidation with any payments of dividends to creditors made in the order set out in the *Corporations Act 2001* (Corporations Act). To find out more, see [Information Sheet 45 Liquidation: A guide for creditors](#) (INFO 45).

## Deed of company arrangement

If creditors vote for a proposal that the company enter a deed of company arrangement, the company must sign the deed within 15 business days of the creditors' meeting, unless the court allows a longer time. If this doesn't happen, the company will automatically go into liquidation, with the voluntary administrator becoming the liquidator.

The deed of company arrangement binds all unsecured creditors, even if they voted against the proposal. It also binds owners of property, those who lease property to the company and secured creditors, if they voted in favour of the deed. In certain circumstances, the court can also order that these people are bound by the deed even if they didn't vote for it. The deed of company arrangement does not prevent a creditor who holds a personal guarantee from the company's director or another person taking action under the personal guarantee to be repaid their debt.

## Contents of the deed

Whatever the nature of the deed of company arrangement, it must contain certain information, including:

- the name of the deed administrator
- the property that will be used to pay creditors
- the debts covered by the deed and the extent to which those debts are released
- the order in which the available funds will be paid to creditors (the deed of company arrangement must ensure that employees have a priority in payment of outstanding employee entitlements unless the eligible employees agree by a majority in both number and value to vary this priority)
- the nature and duration of any suspension of rights against the company
- the conditions (if any) for the deed to come into operation
- the conditions (if any) for the deed to continue in operation
- the circumstances in which the deed terminates.

There are also certain terms that will be automatically included in the deed, unless the deed says they will not apply. These are called the 'prescribed provisions'. They include such matters as the powers of the deed administrator, termination of the deed and the appointment of a committee of creditors (called a 'committee of inspection').

The voluntary administrator's report should tell you which prescribed provisions are proposed to be excluded or varied, and, if varied, how.

## Monitoring the deed

It is the role of the deed administrator to ensure the company (or others who have made commitments under the deed) carries through these commitments. The extent of the deed administrator's ongoing role will be set out in the deed.

Creditors can also play a role in monitoring the deed. If you are concerned that the obligations of the company (or others) under the deed are not being met, you should take this up promptly with the deed administrator. Matters that may give rise for concern include deadlines for payments or other actions promised under the deed being missed.

Creditors also have the right when a deed of company arrangement is proposed and considered at the second meeting to negotiate consequences of failure to meet such deadlines into the terms of the deed. Any request to vary the deed proposal to include such consequences should be made before the deed proposal is voted on.

A director must notify the deed administrator if they become aware that there has been, or is likely to be, a material contravention of the deed. In addition, the deed administrator must give notice to creditors as soon as practicable after becoming aware of the material contravention or if there is likely to be a material contravention of the deed.

A deed administrator must lodge with ASIC a detailed list of their receipts and payments (known as the annual administration return) annually on the anniversary of their appointment and at the end of their administration. A copy of the receipts and payments may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

**Note:** If the deed of company arrangement commenced prior to 1 September 2017, the deed administrator will continue to lodge the six-monthly [Form 524 Presentation of accounts and statement](#) until the six-month period ending on the first anniversary of their appointment date. Thereafter, they will lodge the annual administration return.

## Varying the deed

The deed administrator can call a creditors' meeting at any time to consider a proposed variation to the deed. The proposed resolutions must be set out in the notice of meeting sent to creditors.

The deed administrator must also call a meeting to consider a resolution to vary the deed if:

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

The deed administrator is not required to comply with a direction by the committee of inspection or creditors to call a meeting if that direction is not reasonable.

If the deed administrator considers the direction is not reasonable, they must notify the person or body that gave the direction and set out the reasons why it is not reasonable. In this circumstance, the deed administrator may still convene a meeting to consider varying the deed if the person or body who gave the direction agree to pay the costs of calling and holding the meeting.

## Payment of dividends under a deed

The order in which creditor claims are paid depends on the terms of the deed. Sometimes the deed proposal is for creditor claims to be paid in the same priority as in a liquidation. Other times, a different priority is proposed.

The deed must ensure employee entitlements are paid in priority to other unsecured creditors unless eligible employees have agreed to vary their priority.

Before you decide how to vote at the creditors' meeting, make sure you understand how the deed will affect the priority of payment of your debt or claim.

You may wish to seek independent legal advice if the deed proposes a different priority to that in a liquidation, or if creditors approve such a deed.

## Establishing your claim under a deed

How debts or claims are dealt with under a deed of company arrangement depends on the deed's terms. Sometimes the deed incorporates the Corporations Act provisions for dealing with debts or claims in a liquidation.

Before any dividend is paid to you for your debt or claim, you will need to give the deed administrator sufficient information to prove your debt. You may be required to complete a claim form (this is called a 'proof of debt' in a liquidation). You should attach copies of any relevant invoices or other supporting documents to the claim form, as your debt or claim may be rejected if there is insufficient evidence to support it.

If a creditor is a company, the claim form should be signed by a person authorised by the company to do so.

When submitting a claim, you may ask the deed administrator to acknowledge receipt of your claim and advise if any further information is needed.

If the deed administrator rejects your claim after you have taken the above steps, first contact the deed administrator. You may also wish to seek your own legal advice. This should be done promptly. Depending on the terms of the deed, you may have a limited time in which to take legal action to challenge the decision.

If you have a query about the timing of the payment, discuss this with the deed administrator.

## How a deed comes to an end

A deed may come to an end because the obligations under the deed have all been fulfilled and the creditors have been paid. Alternatively, the deed may set out certain conditions where the deed will automatically terminate.

The deed may also provide that the company will go into liquidation if the deed terminates due to these conditions being met.

Another way for the deed to end is if the deed administrator calls a meeting of creditors (either on their own initiative or at the direction of creditors or the committee of inspection if one has been formed), and creditors vote to end the deed. This may occur because there has been a breach of the deed or it appears unlikely that the terms of the deed can be fulfilled.

At the same time, creditors may be asked to vote to put the company into liquidation.

The deed may also be terminated if a creditor, the company, ASIC or any other interested person applies to the court and the court is satisfied that:

- creditors were provided false and misleading information on which the decision to accept the deed proposal was made
- the voluntary administrator's report left out information that was material to the decision to accept the deed proposal
- the deed cannot proceed without undue delay or injustice
- the deed is unfair or discriminatory to the interests of one or more creditors or against the interests of creditors as a whole.

If the court terminates the deed as a result of such an application, the company automatically goes into liquidation.

## Approval of administrator's fees

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

The fees cannot be paid until the amount has been approved by creditors, a committee of inspection or the court. Creditors, the voluntary administrator/deed administrator or ASIC can ask the court to review the amount of fees

approved. Alternatively, the voluntary administrator or deed administrator may put a proposal to creditors to approve their fees without holding a meeting.

If you are asked to approve fees, either at a general meeting of creditors or at a meeting of a committee of inspection, the voluntary administrator or deed administrator must give you, at the same time as the notice of the meeting, a report that contains sufficient information for you to assess whether the fees claimed are reasonable. This report should be in simple language and set out:

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

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

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

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

## Proposals to creditors without a meeting

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

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

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

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

Creditors can vote 'yes' or 'no' on the proposal and/or object to the proposal being resolved without a creditors' meeting. You should return your response to the 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 not more than 25% in value of the creditors who responded objected to the proposal being resolved without a creditors' meeting.

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

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

## Committee of inspection

A committee of inspection may be formed to assist and advise the voluntary administrator or deed administrator. The committee of inspection also monitors the conduct of the voluntary administrator or deed administrator, may approve



certain steps in the voluntary administration or deed administration and may give directions to the voluntary administrator or deed administrator. The voluntary administrator or deed administrator must have regard to, but is not always required to comply with, such directions.

In a voluntary administration, the committee may be formed at the first creditors' meeting.

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

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

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

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

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

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

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

The external administrator or deed administrator is not required to comply with a direction to convene a meeting or give information if that request is not reasonable.

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

Minutes of meetings of the committee of inspection must be prepared and lodged with ASIC.

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

## Directors and voluntary administration

Directors cannot use their powers while the company is in voluntary administration. They must help the voluntary administrator, including providing the company's books and records, and a report about the company's business, property, affairs and financial circumstances, as well as any further information about these that the voluntary administrator reasonably requires.

If the company goes from voluntary administration into a deed of company arrangement, the directors' powers depend on the deed's terms. When the deed is completed, the directors regain full control, unless the deed provides for the company to go into liquidation on completion.

If the company goes from voluntary administration or a deed of company arrangement into liquidation, the directors cannot use their powers. If creditors resolve that the voluntary administration should end, control of the company goes back to the directors.

## Other creditor rights

### Request for information

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

The voluntary administrator or deed administrator must comply with this request if:

- the information, report or document is relevant to the administration
- the voluntary administrator or deed administrator would not breach their duty if they comply with the request
- the request is reasonable.

If the voluntary administrator or deed administrator, acting in good faith, believes it is not reasonable to comply with the request they must notify the requesting party and set out their reason for believing the request is not reasonable.

The voluntary administrator or deed administrator may consider the request not reasonable if, for example, complying with the request would substantially prejudice the interests of one or more creditors, the information would otherwise be privileged from production in legal proceedings or if the administration does not have sufficient funds to pay the cost of complying with the request.

If there are insufficient funds, the voluntary administrator or deed administrator may decide to comply with the request if the requesting party agrees to pay the cost of providing the information.

### Appoint a reviewing liquidator

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

**Note:** A creditor can also apply to ASIC in the approved form for it to appoint a reviewing liquidator (see Form 5605 *Application for ASIC to appoint a reviewing liquidator*).

This review is limited to:

- remuneration approved within the six months before the reviewing liquidator is appointed
- costs or expenses incurred during the 12-month period before the reviewing liquidator is appointed (unless the voluntary administrator or deed 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 a written consent from that person that they would be prepared to act as reviewing liquidator. The person must also make a written declaration about any relationships they or their firm may have that might affect their independence to act as reviewing liquidator.

The voluntary administrator or deed administrator, 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 external administration of the company. If one or more creditors appoint the reviewing liquidator with the consent of the voluntary administrator or deed administrator without passing a resolution, the reviewing liquidator's costs are borne by the creditor(s) appointing the reviewing liquidator.

## Queries and complaints

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

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

ASIC usually does not become involved in matters of a voluntary administrator's or deed administrator's commercial judgement.

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

If you cannot report misconduct to ASIC online, you can contact us on 1300 300 630.

## Where can I get more information?

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

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

## Important notice

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

This is **Information Sheet 74 (INFO 74)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Last updated: 01/09/2017 07:51

CORPORATIONS ACT 2001  
 Insolvency Practice Rules (Corporations)  
 75-25 & 75-150

APPOINTMENT OF PROXY  
 CREDITORS MEETING

SETTLERS COMPANY PTY LIMITED ACN 606 610 904  
 ATF SETTLERS PROPERTY TRUST ABN 78 694 717 061  
 (ADMINISTRATOR APPOINTED) (RECEIVERS & MANAGERS APPOINTED)  
 ("THE COMPANY")

*I/*We <sup>(1)</sup>	
Of	
being a creditor of the Company, appoint <sup>(2)</sup> or in his or her absence	
to vote for me/us on my/our behalf at the meeting of creditors to be held on, or at any adjournment of that meeting.	

Please mark any boxes with an

Proxy Type:       General       Special

	For	Against	Abstain
<b>Resolution 1</b> Appointment of a Committee of Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 2</b> Removal of the Administrator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 3</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 4</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED this                      day of                      2018.

\_\_\_\_\_  
 Signature

---

**CERTIFICATE OF WITNESS**

*This certificate is to be completed only if the person giving the proxy is blind or incapable of writing. The signature of the creditor, contributory, debenture holder or member must not be witnessed by the person nominated as proxy.*

I, ..... of .....  
certify that the above instrument appointing a proxy was completed by me in the presence of and at the request of the person appointing the proxy and read to him or her before he or she signed or marked the instrument.

Dated:

Signature of Witness:

Description:

Place of Residence:

---

\* Strike out if inapplicable

- (1) If a firm, strike out "I" and set out the full name of the firm.
- (2) Insert the name, address and description of the person appointed.
- (1)

CORPORATIONS ACT 2001  
 Insolvency Practice Rules (Corporations)  
 75-25 & 75-150

APPOINTMENT OF PROXY  
 CREDITORS MEETING

SETTLERS OPERATIONS PTY LIMITED ACN 609 526 605  
 (ADMINISTRATOR APPOINTED) (RECEIVERS & MANAGERS APPOINTED)  
 ("THE COMPANY")

*I/*We <sup>(1)</sup>	
Of	
being a creditor of the Company, appoint <sup>(2)</sup> or in his or her absence	
to vote for me/us on my/our behalf at the meeting of creditors to be held on , or at any adjournment of that meeting.	

Please mark any boxes with an

Proxy Type:       General       Special

	For	Against	Abstain
<b>Resolution 1</b> Appointment of a Committee of Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 2</b> Removal of the Administrator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 3</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 4</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED this                      day of                      2018.

\_\_\_\_\_  
 Signature

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**CERTIFICATE OF WITNESS**

*This certificate is to be completed only if the person giving the proxy is blind or incapable of writing. The signature of the creditor, contributory, debenture holder or member must not be witnessed by the person nominated as proxy.*

I, ..... of .....  
certify that the above instrument appointing a proxy was completed by me in the presence of and at the request of the person appointing the proxy and read to him or her before he or she signed or marked the instrument.

Dated:

Signature of Witness:

Description:

Place of Residence:

---

\* Strike out if inapplicable

- (1) If a firm, strike out "I" and set out the full name of the firm.
- (2) Insert the name, address and description of the person appointed.
- (1)

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Administrator of Settlers Company Pty Limited ATF Settlers Property Trust ABN 78 694 717 061 (Administrator Appointed)  
(Receivers & Managers Appointed)

1. This is to state that the company was, on 26 August 2019 <sup>(1)</sup> and still is, justly and truly indebted to<sup>(2)</sup> (full name):

.....  
(‘Creditor’)

.....  
of (full address)

for \$ .....dollars and .....cents.

Particulars of the debt are:

Date	Consideration <sup>(3)</sup> state how the debt arose	Amount \$	GST included \$	Remarks <sup>(4)</sup> include details of voucher substantiating payment

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any manner of satisfaction or security for the sum or any part of it except for the following: .....

Insert particulars of all securities held. Where the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, specify them in a schedule in the following form:

Date	Drawer	Acceptor	Amount \$ c	Due Date

I am **not** a related creditor of the Company <sup>(5)</sup>

I am a related creditor of the Company <sup>(5)</sup>  
relationship: \_\_\_\_\_

3A.<sup>(6)\*</sup> I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

3B.<sup>(6)\*</sup> I am the creditor's agent authorised to make this statement in writing. I know that the debt was incurred and for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

DATED this                      day of                      2018

Signature of Signatory .....

NAME IN BLOCK LETTERS .....

Occupation .....

Address.....

**See Directions overleaf for the completion of this form**

**OFFICE USE ONLY**

POD No:		ADMIT (Voting / Dividend) - Ordinary	\$
Date Received:	/ /	ADMIT (Voting / Dividend) – Preferential	\$
Entered into CORE IPS:		Reject (Voting / Dividend)	\$
Amount per CRA/RATA	\$	Object or H/Over for Consideration	\$
<b>Reason for Admitting / Rejection</b>			
PREP BY/AUTHORISED		<b>TOTAL PROOF</b>	\$
DATE AUTHORISED	/ /		



### Proof of Debt Form Directions

- \* Strike out whichever is inapplicable.
- (1) Insert date of Court Order in winding up by the Court, or date of resolution to wind up, if a voluntary winding up.
- (2) Insert full name and address (including ABN) of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor.
- (3) Under "Consideration" state how the debt arose, for example "goods sold and delivered to the company between the dates of .....", "moneys advanced in respect of the Bill of Exchange".
- (4) Under "Remarks" include details of vouchers substantiating payment.
- (5) Related Party / Entity: Director, relative of Director, related company, beneficiary of a related trust.
- (6) If the Creditor is a natural person and this proof is made by the Creditor personally. In other cases, if, for example, you are the director of a corporate Creditor or the solicitor or accountant of the Creditor, you sign this form as the Creditor's authorised agent (delete item 3A). If you are an authorised employee of the Creditor (credit manager etc), delete item 3B.

### Annexures

- A. If space provided for a particular purpose in a form is insufficient to contain all the required information in relation to a particular item, the information must be set out in an annexure.
- B. An annexure to a form must:
  - (a) have an identifying mark;
  - (b) and be endorsed with the words:
    - i) "This is the annexure of *(insert number of pages)* pages marked *(insert an identifying mark)* referred to in the *(insert description of form)* signed by me/us and dated *(insert date of signing)*;  
and
  - (c) be signed by each person signing the form to which the document is annexed.
- C. The pages in an annexure must be numbered consecutively.
- D. If a form has a document annexed the following particulars of the annexure must be written on the form:
  - (a) the identifying mark; and
  - (b) the number of pages.
- E. A reference to an annexure includes a document that is with a form.

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Administrator of Settlers Operations Pty Limited (Administrator Appointed) (Receivers & Managers Appointed)

1. This is to state that the company was, on 26 August 2019 <sup>(1)</sup> and still is, justly and truly indebted to<sup>(2)</sup> (full name):

.....  
(‘Creditor’)

.....  
of (full address)

for \$ .....dollars and .....cents.

Particulars of the debt are:

Date	Consideration <sup>(3)</sup> state how the debt arose	Amount \$	GST included \$	Remarks <sup>(4)</sup> include details of voucher substantiating payment

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any manner of satisfaction or security for the sum or any part of it except for the following: .....

Insert particulars of all securities held. Where the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, specify them in a schedule in the following form:

Date	Drawer	Acceptor	Amount \$ c	Due Date

- I am **not** a related creditor of the Company <sup>(5)</sup>
- I am a related creditor of the Company <sup>(5)</sup>  
relationship: \_\_\_\_\_

3A.<sup>(6)\*</sup> I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

3B.<sup>(6)\*</sup> I am the creditor's agent authorised to make this statement in writing. I know that the debt was incurred and for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

DATED this                      day of                      2018

Signature of Signatory .....

NAME IN BLOCK LETTERS.....

Occupation .....

Address.....

See Directions overleaf for the completion of this form

OFFICE USE ONLY

POD No:		ADMIT (Voting / Dividend) - Ordinary	\$
Date Received:	/ /	ADMIT (Voting / Dividend) – Preferential	\$
Entered into CORE IPS:		Reject (Voting / Dividend)	\$
Amount per CRA/RATA	\$	Object or H/Over for Consideration	\$
<b>Reason for Admitting / Rejection</b>			
PREP BY/AUTHORISED		<b>TOTAL PROOF</b>	\$
DATE AUTHORISED	/ /		

### Proof of Debt Form Directions

- \* Strike out whichever is inapplicable.
- (1) Insert date of Court Order in winding up by the Court, or date of resolution to wind up, if a voluntary winding up.
- (2) Insert full name and address (including ABN) of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor.
- (3) Under "Consideration" state how the debt arose, for example "goods sold and delivered to the company between the dates of .....", "moneys advanced in respect of the Bill of Exchange".
- (4) Under "Remarks" include details of vouchers substantiating payment.
- (5) Related Party / Entity: Director, relative of Director, related company, beneficiary of a related trust.
- (6) If the Creditor is a natural person and this proof is made by the Creditor personally. In other cases, if, for example, you are the director of a corporate Creditor or the solicitor or accountant of the Creditor, you sign this form as the Creditor's authorised agent (delete item 3A). If you are an authorised employee of the Creditor (credit manager etc), delete item 3B.

### Annexures

- A. If space provided for a particular purpose in a form is insufficient to contain all the required information in relation to a particular item, the information must be set out in an annexure.
- B. An annexure to a form must:
  - (a) have an identifying mark;
  - (b) and be endorsed with the words:
    - i) "This is the annexure of *(insert number of pages)* pages marked *(insert an identifying mark)* referred to in the *(insert description of form)* signed by me/us and dated *(insert date of signing)*;  
and
  - (c) be signed by each person signing the form to which the document is annexed.
- C. The pages in an annexure must be numbered consecutively.
- D. If a form has a document annexed the following particulars of the annexure must be written on the form:
  - (a) the identifying mark; and
  - (b) the number of pages.
- E. A reference to an annexure includes a document that is with a form.

**SETTLERS COMPANY PTY LIMITED ACN 606 610 904  
ATF SETTLERS PROPERTY TRUST ABN 78 694 717 061  
SETTLERS OPERATIONS PTY LIMITED ACN 609 526 605  
(ADMINISTRATOR APPOINTED)  
("THE COMPANIES")**

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

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

Should you wish to receive notices and documents relating to the administration of Companies by email, please complete this form and return it to Jenny Kim at the address set out below.

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

Where the external administration has evolved into another form of external administration (such as a voluntary administration becoming a deed of company arrangement or creditors voluntary administration) I/We authorise the External Administrator of the Company whether as voluntary administrator or deed administrator or liquidator of the Company and his employees and agents to send and give notices and documents where such notices and documents may be sent by email to me/us using the email address provided below.

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

Return to: DEM Australasia Pty Limited

Via Email: [jenny.kim@demasiagroup.com](mailto:jenny.kim@demasiagroup.com)

Via Post: Suite 4.02, Level 4, 249 Pitt Street, Sydney NSW 2000