

## CIRCULAR TO CREDITORS

3 April 2014

Dear Sir/Madam

**OCEANLINX LIMITED  
(ADMINISTRATORS APPOINTED) (RECEIVERS AND MANAGERS APPOINTED)  
ACN 077 104 404  
(the “Company”)**

As you are aware, the Company was placed into Administration on 21 March 2014. At the first meeting of creditors on 2 April 2014 held pursuant to *Section 436A* of the *Corporations Act 2001 (Cth)* (“the Act”), creditors resolved to appoint Jason Mark Tracy and I as Joint and Several Administrators, replacing David Ross and Brent Kijurina of Hall Chadwick.

### **Committee of Creditors**

At the meeting, creditors also resolved to appoint a Committee of Creditors. The following creditors volunteered and were elected as members of the committee:

<b>Representative</b>	<b>Company</b>
1. Ali Nanehkaran (director)	Oceanlinx Limited
2. Tibor Vertes (director)	Oceanlinx Limited
3. Caroline Chen (employee)	Oceanlinx Limited
4. Harley Flett	Polaris Marine Pty Ltd
5. Tom Wilson	Ocean Energy Construction Pty Ltd

The purpose and function of the Committee (as per Section 436F of the Act) include:

- (a) To consult with the Administrators about matters relating to the Administration; and
- (b) To receive and consider reports by the Administrators.

The Committee has a consultative function and will receive reports on the conduct of the Administration. The Committee can also approve the Administrators’ fees.

### **Receivers and Managers**

As you may be aware, the Company is subject to the control of a Receivers and Managers, Mr Rahul Goyal and Ms Cassandra Mathews of Korda Mentha, who were appointed subject to a security interest held by Macquarie Bank Limited. The assets and undertakings of the Company are currently subject to this appointment, and the trading of the Company is under the Receivers’ direction.

It is requested that creditors complete the Informal Proof of Debt Form attached with the details of amounts owed to you by the Company. In addition, I enclose the following for your information:

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/au/about](http://www.deloitte.com/au/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

1. A Declaration of Independence / Indemnities & Relevant Relationships for the purposes of Section 436DA of the Act
2. ASIC/ARITA Information Sheet
3. Remuneration Proposal.

The effect of our appointment is to place a moratorium on the payment of unsecured creditors' accounts in relation to trading and other debts incurred up to the date of our appointment, until creditors make a decision about the future of the Company. Creditors with security interests including retention of title creditors will have their entitlements determined in accordance with relevant processes under applicable law.

### **Intention to extend convening period**

Subject to receiving funding from either the Receivers and Managers, a secured creditor or director, we intend to make a Court application to extend the convening period for a period of up to 90 days. We believe the extension of the convening period will be in the best interest of creditors and allows: the Administrators time to complete their investigations; for a sale of the business and assets of the Company to be completed; and allows time to receive and consider any restructuring proposals for the Company including any Deed of Company Arrangement that may be forthcoming.

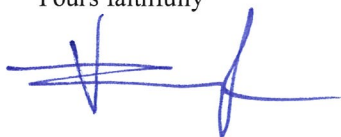
An extension will also allow additional time for a claim for a Research and Development rebate to be completed and submitted.

It is our opinion that the receipt of the aforementioned Research and Development rebate together with either a sale of the business and assets or a Deed of Company Arrangement is likely to result in a better return to creditors as a whole, compared to a liquidation of the Company.

We are convening a meeting of the Committee of Creditors, to discuss in more detail the extension of the convening period and to seek their support for the extension.

Creditors and employees are not required to take any further action at this stage unless they object to the Administrators' application seeking an extension to the convening period for a period of up to 90 days. Creditors who object to the Administrators' application or require further information can contact Dean Pogroske of this office at [dpogroske@deloitte.com.au](mailto:dpogroske@deloitte.com.au) or on (02) 9322 3571.

Yours faithfully



**Vaughan Neil Strawbridge**  
Joint and Several Administrator

Encl.

INFORMAL PROOF OF DEBT FORM

Regulation 5.6.47

OCEANLINX LIMITED  
(ADMINISTRATORS APPOINTED) (RECEIVERS AND MANAGERS APPOINTED)  
ACN 077 104 404

Name of creditor: .....

Address of creditor: .....

.....

ABN: .....

Telephone number: .....

Amount of debt claimed: \$ ..... (including GST \$.....)

Consideration for debt (i.e, the nature of goods or services supplied and the period during which they were supplied):

.....

.....

.....

Is the debt secured? YES/NO

If secured, give details of security including dates, etc:

.....

.....

.....

Other information:

.....

.....

.....  
Signature of Creditor  
(or person authorised by creditor)

**Notes:**

Under the Corporations Regulations, a creditor is not entitled to vote at a meeting unless (Regulation 5.6.23):

- a. his or her claim has been admitted, wholly or in part, by the Joint Administrators; or
- b. he or she has lodged with the Joint Administrators particulars of the debt or claim, or if required, a formal proof of debt.

At meetings held under Section 436E and 439A, a secured creditor may vote for the whole of his or her debt without regard to the value of the security.

Proxies must be made available to the Joint Administrators.



## Declaration of Independence, Relevant Relationships and Indemnities

Oceanlinx Ltd (ACN 077 104 404)

*("the Company")*

This document requires the Practitioners 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 and 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 ourselves, our partners and Deloitte Touche Tohmatsu (Deloitte).

### A. Independence

We, Vaughan Neil Strawbridge and Jason Mark Tracy of Deloitte have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Administrators of the Company in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to our independence. We are not aware of any reasons that would prevent us from accepting this appointment.

### B. Declaration of Relationships

#### i. Circumstances of appointment

On the evening of 31 March 2014, Rahul Goyal of KordaMentha contacted Dan Rose of Deloitte requesting a Consent to Act from partners of Deloitte in the capacity as Administrators on behalf of the Company. Mr Goyal advised that he had been appointed as Receiver and Manager of the Company. Mr Goyal is also a former employee of Deloitte between November 2009 and August 2013.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/au/about](http://www.deloitte.com/au/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Liability limited by a scheme approved under Professional Standards Legislation.

Member of Deloitte Touche Tohmatsu Limited

During this call discussions took place for the purpose of obtaining sufficient information about the Company to make a decision about agreeing to accept the appointment.

We received no remuneration for this advice.

In our opinion this call does not affect our independence as it was in the nature of a pre-appointment discussion and was limited to the financial position of the Company.

We have provided no other information or advice to the Company, the directors and its advisors prior to our appointment beyond that outlined in this DIRRI.

## ii. Relevant Relationships (excluding Professional Services to the Company)

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

Name	Nature of relationship	Reasons why not an impediment or conflict
Rahul Goyal, Executive Director at KordaMentha	Former Deloitte employee and referrer of the appointment	We do not have any referral arrangement with Mr Goyal. No commissions, inducements or benefits have been obtained by Mr Goyal in respect to this appointment. There is no arrangement with Mr Goyal that we will provide any referral work to him. There is no relationship with Mr Goyal which in our view would restrict us from properly exercising our judgment and duties in relation to the appointment.
Macquarie Bank Limited (Macquarie)	<p>Macquarie holds an All Present and After- acquired property security interest over the property of the Company.</p> <p>We have undertaken a number of advisory engagements for Macquarie in the usual course of business.</p> <p>Deloitte has provided and continues to provide Accounting, Advisory, Assurance, Consulting, Forensic, Risk Services and Tax services to Macquarie.</p>	<p>We have never undertaken any work for Macquarie in respect of the Company.</p> <p>We do not consider previous advisory engagements accepted for Macquarie to present a conflict as there is no connection between these engagements and the Company.</p> <p>The provision of Accounting, Advisory, Assurance, Consulting, Forensic, Risk Services and Tax services to Macquarie brings about a commercial relationship that in our opinion does not present a conflict or impediment as it does not impact upon the position of the Company.</p> <p>We are not paid any commissions, inducements or benefits to undertake any</p>

		<p>engagements with Macquarie and do not consider ourselves to be bound or in any way obligated to deliver a favourable outcome to any party.</p> <p>Therefore there is no relationship with Macquarie which in our view would restrict us from properly exercising our judgment and duties in relation to the appointment.</p>
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### iii. Prior Professional services to the Company

Neither we, nor our firm, have provided any professional services to the Company in the previous 24 months.

We did provide audit services to the Company between 2007 and 2009. The provision of these services to the Company did not take place in the 24 months prior to the acceptance of this appointment. We are not aware of any issues in relation to these services that may be material to the insolvency.

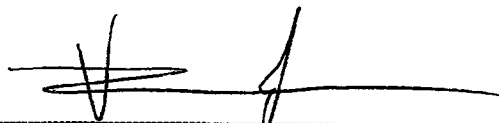
### iv. No other relevant relationships to disclose

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

### C. Indemnities and up-front payments

We have not been indemnified in relation to this administration, other than any indemnities that we may be entitled to under statute and we have not received any up-front payments in respect of our remuneration or disbursements.

Dated: 1 April 2014

  
Vaughan Neil Strawbridge

  
Jason Mark Tracy

### Note:

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





**ASIC**

Australian Securities & Investments Commission

## INFORMATION SHEET 74

# Voluntary administration: a guide for creditors

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

This information sheet provides general information for unsecured creditors of companies in voluntary administration.

## 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.

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 has a 'charge', such as a mortgage, over some or all of the company's assets, to secure a debt owed by the company. Lenders usually require a charge over company assets when they provide a loan.
- An unsecured creditor is a creditor who does not have a charge over 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 ASIC's information sheet INFO 75 *Voluntary administration: a guide for employees*.

## The purpose of voluntary administration

Voluntary administration is designed to resolve a company's future direction quickly (Figure 1 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.

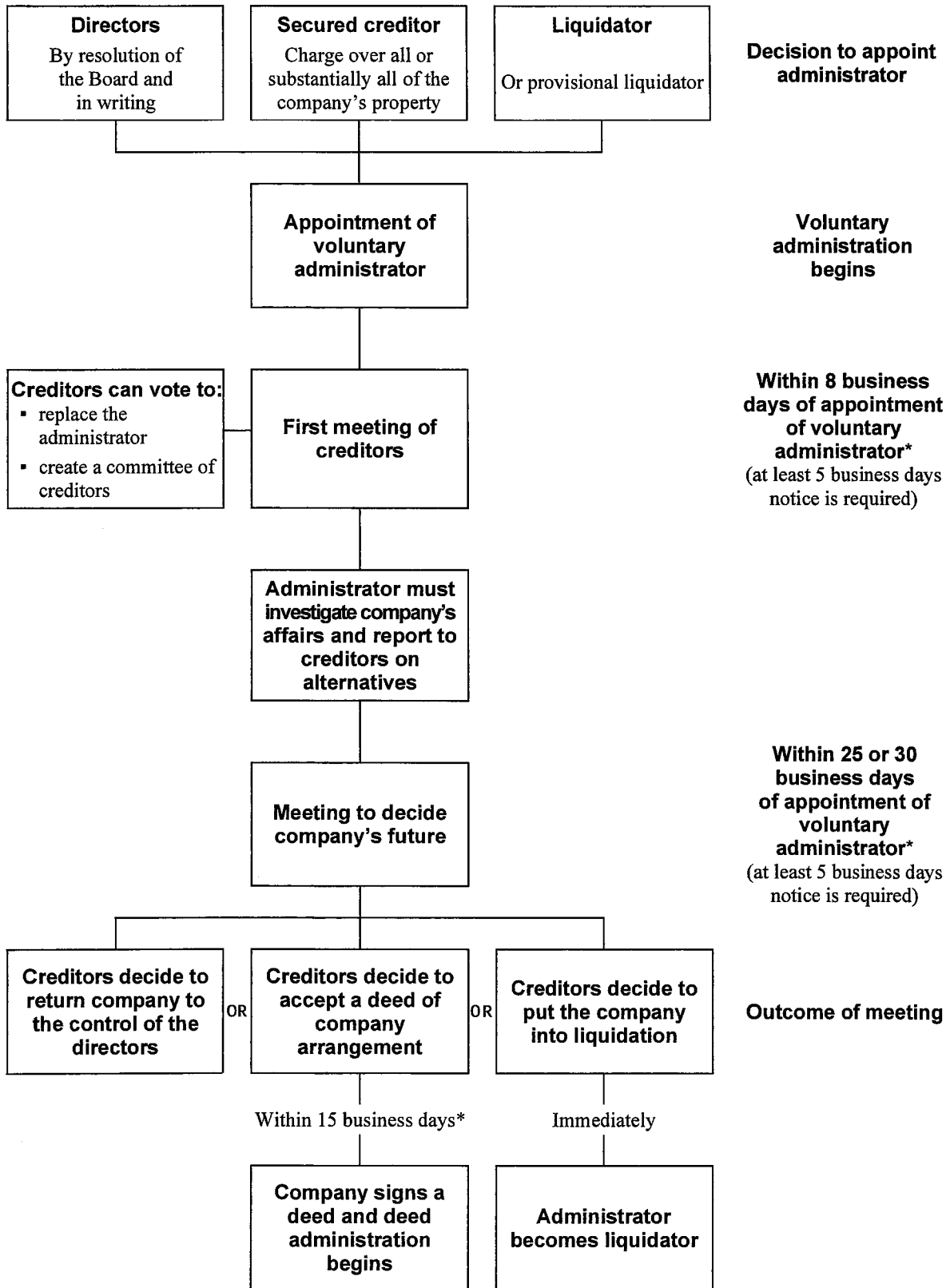
If it isn't possible to save the company or its business, the aim is to administer the affairs of the company in a way that results in a better return to creditors than they would have received if the company had instead been placed straight into liquidation. A mechanism for achieving these aims is a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

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



Figure 1: The voluntary administration process



\* Unless the court allows an extension of time.

A company in voluntary administration may also be in receivership: see ASIC information sheet INFO 54 *Receivership: a guide for creditors*.

## 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, or
- 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.

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 charge over company property
- a court application to put the company in liquidation can't be commenced, and
- 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 as costs of the voluntary administration. If there are insufficient funds available from asset realisations to pay these costs, the voluntary administrator is personally liable for the shortfall. To have the benefit of this protection, 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. If the voluntary administrator decides to continue to do so, they will be personally liable for any rent or amounts payable arising after the end of the five business days.

Amounts that become due to employees after the date of the appointment of the voluntary administrator have a priority claim against the company's assets as a cost of the administration. However, the voluntary administrator does not become personally liable for such amounts unless the voluntary administrator adopts employees' contracts of employment or enters into new employment contracts with them.

## **Creditors' meetings**

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

### **First creditors' meeting**

The voluntary administrator must call 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 in a newspaper circulating in the states or territories in which the company has its registered office or carries on its business.

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

The role of a committee of creditors is to consult with the voluntary administrator about matters relevant to the voluntary administration and receive and consider reports from the voluntary administrator. The committee can also require the voluntary administrator to report to them about the voluntary administration. It may also approve the voluntary administrator's fees.

A creditor who wishes to nominate an alternative voluntary administrator 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 at Christmas and 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, and
- a statement about any proposals for a deed of company arrangement.

These will be accompanied by:

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

The meeting must also be advertised.

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 and affairs, and the reasons for the current financial situation, 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.

Finally, the report should include the voluntary administrator's opinion on each of the options available to creditors, as well as an opinion on which 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), or
- put the company into liquidation.

### **Voluntary administrator's statement about deed**

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 report to creditors does 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 or the amount of the debt cannot be determined with any certainty at the date of the meeting. In this case, they may not allow the creditor to vote at all, or only to vote for a debt of \$1. 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 14 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.

### **Voting by proxy**

You may appoint a proxy to attend and vote at a meeting on your behalf. A proxy can be any person who is at least 18 years old. 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. You can fax the proxy form to the voluntary administrator, but must lodge the original within 72 hours of sending the faxed copy.

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 e-mailing 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 show of hands. Sometimes a more formal voting procedure called a 'poll' is taken.

If voting is by show of hands or 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 a show of hands, they may decide to conduct a poll.

Alternatively, a poll can be demanded by at least two people present who are entitled to vote, or someone who holds more than 10% of the votes of those entitled to vote at the meeting. 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 show of hands or voices.

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

- more than half the number of creditors who are voting (in person or by proxy) vote in favour of the resolution, and
- 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 either in favour of or against the resolution. The chairperson may also decide not to use their casting vote.

The chairperson must inform the meeting, and include in the written minutes of meeting that are lodged with ASIC, of the reasons why they cast their 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 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 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 14 days of the meeting. A copy may be obtained from any ASIC Business Centre on payment of 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 ASIC information sheet INFO 45 *Liquidation: a guide for creditors*.

## 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, and
- 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.

The deed administrator must lodge a detailed list of receipts and payments with ASIC every six months.

## Varying the deed

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

Creditors owed at least 10% in value of all creditor claims can, by written request, also require the deed administrator to call such a meeting. However, it is unusual for this to happen, as those who make the request must 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, and creditors vote to end the deed. This may occur because 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, or
- 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 a creditors' committee, creditors or the court. Creditors, the voluntary administrator/deed administrator or ASIC can ask the court to review the amount of fees approved.

If you are asked to approve fees, either at a meeting of a creditors' committee or in a general meeting of creditors, 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 description of the major tasks performed
- the costs of completing these tasks, and
- such other information that will assist in assessing the reasonableness of the fees claimed.

For further information, see ASIC's information sheet INFO 85 *Approving fees: a guide for creditors*. 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 does not usually require approval.

### **Creditors' committee**

A creditor's committee may be formed, following a vote of creditors, to consult with the voluntary administrator or deed administrator and receive reports on the conduct of their administration. A creditors' committee can also approve the administrator's fees.

In a voluntary administration, this committee is called a 'committee of creditors' and may be formed at the first creditors' meeting. While the company is under a deed of company arrangement, it is called a 'committee of inspection'.

All creditors, including a representative of the company's employees, are entitled to stand for committee membership to represent the interests of all creditors. However, to operate efficiently, the committee should not be too large.

If a creditor is a company, the creditor can nominate a director or employee to represent it on the committee.

### **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.

## 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 complaint with ASIC at [www.asic.gov.au/complain](http://www.asic.gov.au/complain), or write to:

ASIC Complaints  
PO Box 9149  
TRARALGON VIC 3844

ASIC will usually not become involved in matters of commercial judgement by a voluntary administrator or deed administrator. Complaints against companies and their officers can also be made to ASIC. For other enquiries, email ASIC through [infoline@asic.gov.au](mailto:infoline@asic.gov.au), or call ASIC's Infoline on 1300 300 630 for the cost of a local call.

## To find out more

For an explanation of terms used in this information sheet, see ASIC information sheet INFO 41 *Insolvency: a glossary of terms*. For more on external administration, see ASIC's related information sheets at [www.asic.gov.au/insolvencyinfosheets](http://www.asic.gov.au/insolvencyinfosheets):

- INFO 75 *Voluntary administration: a guide for employees*
- INFO 45 *Liquidation: a guide for creditors*
- INFO 46 *Liquidation: a guide for employees*
- INFO 54 *Receivership: a guide for creditors*
- INFO 55 *Receivership: a guide for employees*
- INFO 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*
- INFO 85 *Approving fees: a guide for creditors*

These are also available from the Insolvency Practitioners Association (IPA) website at [www.ipaa.com.au](http://www.ipaa.com.au). The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.

**Oceanlinx Limited**  
**(Administrators Appointed) (Receivers and Managers Appointed)**  
**ACN 077 104 404**

**Remuneration Proposal**

**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.

**Method Chosen**

Given the nature of this administration, I propose that my remuneration be calculated on the time based / Hourly rates method. In my opinion, this is the fairest method for the following reasons:

- We will only be paid for work done, subject to sufficient realisations of the company assets.
- It ensures creditors are only charged for work that is performed. Our time is recorded and charged in six minute increments and staff are allocated to duties according to their relevant experience and Qualifications.
- We are required to perform a number of tasks which do not relate to the realisation of assets, e.g. responding to creditor enquiries, reporting to the ASIC, distributing funds in accordance with the provisions of the Corporations Act 2001.
- We are unable to estimate with certainty the total amount of fees necessary to complete all tasks required in this administration.

### Explanation of Hourly Rates

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

<b>Title</b>	<b>Description</b>	<b>Hourly Rate (excl GST)</b>
<b>Appointee</b>	Registered liquidator. Brings his or her specialist skills to the administration or insolvency task.	\$ 600.00
<b>Partner</b>	Registered liquidator. Brings his or her specialist skills to the administration or insolvency task.	\$ 600.00
<b>Director/ Consultant</b>	Typically CA or CPA qualified with in excess of 8 years' experience on insolvency matters with a number of years at manager level. Answerable to the appointee but otherwise responsible for all aspects of an administration. Capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in his/her own right.	\$ 460.00
<b>Manager</b>	Typically CA or CPA qualified with 6 to 8 years' experience working on insolvency matters. Will have experience conducting administrations and directing a number of staff.	\$ 300.00
<b>Senior Analyst</b>	Typically completed or near completion of CA or CPA qualifications with 4 to 6 years insolvency experience. Assists in planning and control of smaller matters as well as performing some more difficult tasks on larger matters.	\$ 230.00
<b>Analyst</b>	Typically studying towards CA or CPA qualification with 2 to 4 years insolvency experience. Works under supervision of more senior staff in performing day-to-day fieldwork.	\$ 175.00
<b>Graduate</b>	Junior staff member who has completed a university degree with less than one year's experience working on insolvency matters. Works under supervision of more senior staff in performing day-to-day fieldwork.	\$ 145.00
<b>Secretary</b>	Advanced secretarial skills	\$ 160.00

Our best estimate for our remuneration of the cost of the administration to 30 April 2014 is \$50,000, plus GST and disbursements.

Dated this 3<sup>rd</sup> day of April 2014.



**VAUGHAN NEIL STRAWBRIDGE**  
**ADMINISTRATOR**