

20 June 2019

AUSMART SERVICES PTY LTD (IN LIQUIDATION) ACN 162 278 953
EZYROL TRADING PTY LTD (IN LIQUIDATION) ACN 165 223 932
GAMMA ONE PTY LTD (IN LIQUIDATION) ACN 166 675 172
GOYX PTY LTD (IN LIQUIDATION) ACN 611 357 914
MONDEX GROUP PTY LTD (IN LIQUIDATION) ACN 165 224 064
NEWING GLACIER PTY LTD (IN LIQUIDATION) ACN 600 515 857
ROCUBE HOLDING PTY LTD (IN LIQUIDATION) ACN 165 224 028
SPARK LABOUR SOLUTIONS PTY LTD (IN LIQUIDATION) ACN 601 010 315
(COLLECTIVELY "THE COMPANIES")

CIRCULAR TO EMPLOYEES

APPOINTMENT OF LIQUIDATORS

On 28 November 2018, Mr Paul Allen, Mr Ross Blakeley and Mr Quentin Olde were appointed as joint and several Provisional Liquidators of the Companies. On 15 May 2019, Mr Allen, Mr Blakeley and Mr Joseph Hansell were subsequently appointed as joint and several Liquidators of the Companies.

We are writing to explain how the appointment of the Liquidators affects you. Our appointment means that the powers and authority of the Companies' directors have been suspended. Control of the Companies business, property and affairs now rests with us as Liquidators.

Your contract of employment will not be personally adopted by the Liquidators. We understand that you are former employee of one of the Companies and that you may have a claim for amounts owed to you under your contract of employment as at the date of our appointment.

Amounts owned to employees generally have priority over the claims of other creditors of the Companies under the applicable provisions of the *Corporations Act 2001*. The payment of priority claims is made from certain asset realisations and can only be paid if and when sufficient assets have been realised to meet these claims.

We are reviewing the entitlements owing to employees based upon the Companies' records, including the deduction of any bonds which represents a priority claim. We will write to you in due course once this review is complete. At this stage we cannot confirm what assets may be available to pay employee entitlements.

Under the Fair Entitlements Guarantee ("FEG"), the Australian Government provides financial assistance to cover certain unpaid employment entitlements to eligible employees who lose their job due to the liquidation of their employer. For further information and details around eligibility you

should refer to the FEG website and register with FEG Online. Details are provided below and a fact sheet from FEG is also attached.

- Website: www.employment.gov.au/feg
- Email: FEG@employment.gov.au
- Telephone: 1300 135 040
- FEG Online: www.extranet.employment.gov.au/feg

It is our understanding that employees subject to Temporary Work (Skilled) visas will not be eligible for assistance under the FEG scheme, however, we understand that they can submit a claim to FEG for formal processing. Irrespective of the ultimate adjudication as to FEG eligibility, affected employees are still entitled to submit a claim and participate directly in the respective liquidation in regard to their outstanding entitlements.

For more information generally, we have attached an ASIC information sheet for employees. Additional information sheets can be obtained at www.asic.gov.au (search for 'insolvency information sheets').

If you have any questions about the contents of this letter please contact our office of (03) 9604 0600.

Yours faithfully



Paul Allen
Liquidator



How do I apply for FEG assistance?

This fact sheet provides information about how to lodge a claim for assistance under the Fair Entitlements Guarantee (FEG). Decisions about eligibility for FEG assistance are made in accordance with the *Fair Entitlements Guarantee Act 2012* (FEG Act). For information about eligibility requirements and what assistance is available please refer to the [Eligibility for FEG assistance](#) and the [What assistance can FEG provide?](#) fact sheets available on the [FEG website](#) (www.jobs.gov.au/FEG).

Making a claim

Making a claim is easy. Just go to [FEG Online Services](#) (www.jobs.gov.au/FEGonline) to register and complete your claim. For more information about making your claim please refer to the [How do I access FEG Online Services](#) fact sheet available on the [FEG website](#) (www.jobs.gov.au/FEG).

If you are unable to lodge a claim online, you can submit a [paper based form](#) available from the [FEG website](#).

For information about eligibility requirements and what assistance is available please refer to the [Eligibility for FEG assistance](#) and the [What assistance can FEG provide?](#) fact sheets available on the [FEG website](#) (www.jobs.gov.au/FEG).

How long do I have to make a claim?

You must make an effective claim to be eligible for FEG assistance. It is important that you submit your claim as soon as possible because FEG has strict time limits.

To make an effective claim, you must:

- lodge a FEG claim form
- include all mandatory information and documentation requested on the form
- lodge your claim no more than 12 months after the end of your employment or the date your employer entered liquidation or bankruptcy (whichever is later) and
- lodge your claim before the discharge of your former employer's bankruptcy (if your employer was a bankrupt sole trader or partnership).

If your claim is not made within this timeframe, or does not include all required information and

documentation, it will not be effective and you will not be eligible for FEG assistance.

Mandatory and Supporting documentation

It is in your interest to provide us with any supporting documentation that may assist us in deciding your claim. The provision of some documents is mandatory.

Mandatory documents

It is mandatory that you provide documentary evidence of your residency or citizenship status at the time your employment ended to assist us in assessing your eligibility for FEG assistance (see s. 10 of the FEG Act).

Where the name on the document does not match the name that you are claiming under you will also need to provide proof of the change of name by providing a:

- Change of name certificate, or
- Marriage certificate.

Acceptable evidence of your citizenship or residency status includes a copy of at least one of the following categories of documents:

- Australian passport current at, or expired within two years of the end of your employment
- Full Australian birth certificate. Extracts of birth certificates are insufficient
- Australian citizenship certificate issued prior to the end of your employment including both sides. If there is anything on the reverse side
- ImmiCard issued prior to the end of your employment
- Registration by descent document Where appropriate, for the purpose of proving you hold a permanent visa, a copy of a passport that is linked to an official online record of your

permanent Australian visa, or a copy of the visa label from your passport (passport details must be visible), or a copy of the Visa Grant Notice that includes the details of your passport you used to apply for that visa.

- Where appropriate, for the purpose of proving you held a Special Category visa at the end of your employment, a current New Zealand passport that is linked to an official online record of your Special Category visa, or a New Zealand passport that was current at the end of your employment, or if your passport had expired, the most recent expired New Zealand passport that you held at the time you entered Australia prior to working for the employer
- a [Confirmation of Identity or Citizenship for Aboriginal and Torres Strait Islander people](#) form if you are an Aboriginal or Torres Strait Islander person and you have never been issued with any of the above documents.

Please note that your driver's licence is not acceptable evidence of your citizenship or residency status.

If submitting a paper form, you should include copies **not** originals.

Other supporting documents

We will usually rely on information provided by the insolvency practitioner using the company books and records to tell us what you were owed. If this is not possible we may request further information from you. Examples of the other types of documents that may help us to assess your claim include:

- signed employment contract or letter of appointment
- payslips

- PAYG payment summaries
- bank statements for the 13 weeks prior to the initial appointment of the insolvency practitioner (or if your employment ended before the appointment of the insolvency practitioner, bank statements for the 13 week period prior to the end of your employment)
- bank statements for the 30 days immediately after your employment ended
- evidence of weekly or annual wage rate
- separation certificate
- letter of termination.

For information about how the department may use and disclose your personal information please refer to the Information Management provisions of the FEG Act (see ss. 42–45).

Want more information?

You can contact the FEG Hotline if you would like more information about how to make your claim or you are unsure about the types of supporting documentation to include.

To contact the FEG Hotline:

- phone 1300 135 040
Mon - Fri, 9 am - 5 pm (AEST/ADST)
- email FEG@jobs.gov.au

If you speak a language other than English, call the Translating and Interpreting Service (TIS) on 13 14 50 for free help anytime. If you speak an Indigenous language, call the Aboriginal Interpreter Service on 1800 334 944.

Further information about FEG is also available on the [FEG website](http://www.jobs.gov.au/FEG) (www.jobs.gov.au/FEG).

The information contained in this fact sheet is of a general nature and explains, in summary form, the intended operation of the *Fair Entitlements Guarantee Act 2012* - it is not legal advice. Where necessary, you should seek your own independent legal advice relevant to your particular circumstances. The Commonwealth does not make any representation or warranty about the accuracy, reliability, currency or completeness of the information contained in this fact sheet and is not liable for any loss resulting from any action taken or reliance made by you on the information contained in this fact sheet.



ASIC
Australian Securities &
Investments Commission

Liquidation: A guide for employees

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

This information sheet (INFO 46) provides general information for employees of companies in liquidation. It covers:

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

Employees should also read [Information Sheet 45 Liquidation: A guide for creditors](#) (INFO 45).

Who is an employee?

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

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

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

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

The purpose of liquidation

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

There are two types of insolvent liquidation:

- creditors' voluntary liquidation
- court liquidation.

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

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

In a court liquidation, a liquidator is appointed by the court to wind up a company following an application (usually by a creditor). Others, including a director, a shareholder and ASIC, can also make a winding-up application to the court. It is possible for a company in liquidation to also be in receivership: see [Information Sheet 55 Receivership: A guide for employees](#) (INFO 55) for more information.

The liquidator's role

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

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

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

Employee entitlements

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

Employees have the right, if there are funds left over after payment of the fees and expenses of the liquidator, to be paid their outstanding entitlements in priority to other unsecured creditors. Priority employee entitlements are grouped into classes and paid in the following order:

- outstanding wages and superannuation
- outstanding leave of absence
- retrenchment pay.

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

The priority claims of directors and their spouses or relatives for the period they are a director, spouse or relative of a director are limited to a maximum of \$2,000 for outstanding wages and superannuation, and \$1,500 for outstanding leave entitlements. Directors and their spouses or relatives are not entitled to any priority retrenchment pay for the period they are a director, spouse or relative of a director.

Employees may also be entitled to make a claim against the Fair Entitlements Guarantee (FEG) (see below).

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

Attempts to avoid employee entitlements

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

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

compensation recovered by a liquidator.

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

Proving your claim

Before any amount is paid to you for your outstanding entitlements, you will need to give the liquidator sufficient information to prove your debt. The relevant form is called a 'proof of debt', and can be obtained from the liquidator.

The liquidator will notify you if there are likely to be funds available for distribution and will call for proofs of debt to be lodged.

The liquidator may be able to tell you what the company records state is owed to you. However, as the records of a company in liquidation are often not well maintained, it is important that you keep your pay records or other records of the terms of your employment. You may also need these records to help you complete your income tax return and establish your entitlement to the FEG.

If company records are inadequate and you have insufficient information to justify your claim, it may be rejected.

When submitting your claim, ask the liquidator to acknowledge receipt of your claim and advise if any further information is needed.

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

If the liquidator rejects your claim and you are dissatisfied with the decision, your first step should be to promptly contact the liquidator to see if you can resolve the matter. If you can't, you have a limited time to appeal to the court. The liquidator will notify you of this time in the notice of rejection. It must be at least 14 days after you receive the notice. The court has the power to extend the time to appeal. If you don't appeal within this time, the liquidator's decision on your claim is final.

A liquidator may also ask you to submit a proof of debt for the purposes of voting at a creditors' meeting.

The Fair Entitlements Guarantee (FEG)

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

This help is available through the FEG.

The FEG is a scheme of last resort, to assist employees who have lost their job because their employer entered liquidation. The FEG operates in relation to claims for assistance for unpaid employee entitlements for all employer insolvency events that occur on or after 5 December 2012. For more information visit the [FEG website](#), call the FEG hotline on 1300 135 040 or email FEG@employment.gov.au.

FEG does not cover unpaid superannuation contributions. To pursue your outstanding superannuation entitlements, you may wish to contact the Australian Taxation Office. For more information about unpaid superannuation contributions, visit the Australian Taxation Office website.

Payment Summaries and Separation Certificates

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

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

If you can't obtain a PAYG Payment Summary for any period, contact the Australian Taxation Office on 13 28 61 to find out how to meet your obligations.

Also contact the liquidator to find out if they are going to prepare your Separation Certificate. Contact Centrelink on 13 10 21 to find out what you should do if you can't obtain a Separation Certificate.

Committee of inspection

A committee of inspection may be formed to assist and advise the liquidator. The committee of inspection also monitors the conduct of the liquidation, may approve certain steps in the administration and may give directions to the liquidator. The liquidator must have regard to, but is not always required to comply with, such directions. To find out more about committees of inspection see [INFO 45](#).

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

Right to request information

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

The liquidator must provide this information, report or document provided that the request is reasonable, relevant to the liquidation of the company and complying with the request will not cause the liquidator to breach their duties in relation to the liquidation.

Queries and complaints

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

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

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

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

If you are unable to report misconduct online to ASIC, 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 46 (INFO 46)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

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