

12 May 2025

## FREQUENTLY ASKED QUESTIONS ("FAQ") FOR UNITHOLDERS

Falcon Capital Limited (In Liquidation)

ACN 119 204 554 (the "Company")

The purpose of this FAQ is to provide Unitholders with information about the Liquidation of the Company and address queries from various Unitholders received to date which the Liquidators consider relevant to all Unitholders.

On 9 April 2025, Ross Blakeley and Paul Harlond were appointed as Joint and Several Liquidators ("**Liquidators**") of the Company by order of the Federal Court of Australia including being directed to wind up the following funds which the Company is the trustee of ("**Funds**"):

Fund	ABN
First Guardian Master Fund (ARSN 635 429 113) (" <b>Master Fund</b> ")	59 219 164 349 (cancelled)
First Guardian Global Income Fund	47 581 264 061
First Guardian Australian Development Fund	29 113 076 414
First Guardian Absolute Equities Fund	26 829 155 891 (cancelled)
First Guardian Truett Innovation Fund	90 699 290 693
First Guardian Global Equity Fund	81 990 326 957

Information provided in this FAQ is general in nature only and does not take into account the personal objective, financial situation or needs of any particular Unitholder. If you are unsure of any of the information in this FAQ, you should obtain professional advice tailored to your personal circumstances.

Question	Answer
<b><i>What is the current status of the Liquidation?</i></b>	<p>Since appointment, the Liquidators have taken steps to identify the Unitholders of the Funds and where possible effect direct control of the Funds' assets. The Liquidators have held discussions with the Company's Directors, associated parties, service providers, the Australian Securities and Investment Commission ("<b>ASIC</b>") and various other stakeholders to understand the assets, their current position and the recoverability of the Funds' investments. The Liquidators have taken additional steps such as securing data and attending to statutory requirements.</p> <p>The Company's records indicate that it was the responsible entity or trustee for investments made by the Funds. These investments were predominantly by way of equity investments and loans ("<b>Investments</b>").</p> <p>The Liquidators recognise the impact the Company's Liquidation has had and is continuing to have on Unitholders. The Liquidators further appreciate Unitholders' interest regarding the likely outcome of the Liquidation, particularly in relation to the potential amount and timing of recoveries.</p> <p>At this stage, it remains too early to provide such guidance. As noted above, the Liquidators continue to gather information, engage with various parties, and assess the Investments, with much still to be determined.</p>

Question	Answer
	<p>Further, many of the matters are legally and commercially sensitive which, at least at this time, limits what the Liquidators can publicly report in order to preserve the rights of the Company and Funds, particularly with respect to the recoverability and value of the underlying assets.</p> <p>The Liquidators will keep Unitholders informed and provide updates progressively throughout the Liquidation, in particular with respect to any material developments.</p> <p>Unitholders in the Funds are not specifically Creditors of the Company. Unitholders typically differ from creditors of a company because of the nature of their legal standing and dealings.</p> <p>Creditors are parties that are owed money by the Company directly, or as a result of an indemnity given by the Company to the relevant Funds/Trusts that it acts as Trustee for.</p> <p>Unitholders are primarily parties who in this case have invested in, and been issued units in respect of, three main investment classes (as well as additional discrete classes, which were closed to new investors at the time of appointment) of the Master Fund:</p> <ul style="list-style-type: none"> <li>(a) the First Guardian Defensive Strategies Class;</li> <li>(b) the First Guardian Diversified Strategies Class; and</li> <li>(c) the First Guardian Growth Strategies Class.</li> </ul> <p>The assets of the Master Fund are held on trust by the Company as the responsible entity or trustee for the benefit of either the Unitholders or their relevant trustee. Each unit in an investment class of the Master Fund represents (via units issued in the other Funds) a beneficial interest in the assets of one of the other Funds (with the weighted interest in each of the other Funds depending on the investment class selected).</p> <p>The Liquidators are still investigating the entitlements of the Unitholders, and assessing how their claims will be treated in the winding up of the Company and the Funds.</p> <p>The ASIC Information Sheet 43 (INFO 43) provides further information regarding insolvency for investors and shareholders.</p>
<p><b><i>What updates have been issued to Creditors of the Company?</i></b></p>	<p>Unitholders are referred to the FTI Consulting Creditors Portal to access all reports by the Liquidators issued to Creditors. You can access and download all reports at <a href="http://www.fticonsulting.com/creditors/falcon-capital-limited">www.fticonsulting.com/creditors/falcon-capital-limited</a>.</p>
<p><b><i>How many funds is the Company responsible for and why have liquidators not been tasked with winding up all of these funds?</i></b></p>	<p>On the information presently available, the Company is the trustee for other funds including but not limited to:</p> <ul style="list-style-type: none"> <li>- First Guardian Master Fund (ARSN 635 429 113), ABN 59 219 164 349 (cancelled)</li> <li>- First Guardian Global Equity Fund, ABN 81 990 326 957</li> <li>- First Guardian Global Income Fund, ABN 47 581 264 061</li> <li>- First Guardian Global Property Fund (formerly First Guardian Australian Development Fund), ABN 29 113 076 414</li> <li>- First Guardian Trulet Innovation Fund, ABN 90 699 290 693</li> <li>- First Guardian Pan Asia Fund (merged into First Guardian Global Equity Fund)</li> <li>- First Guardian Private Equity Fund (merged into First Guardian Global Equity Fund)</li> <li>- First Guardian Absolute Equities Fund (merged into First Guardian Global Equity Fund), ABN 26 829 155 891 (cancelled)</li> </ul>

Question	Answer
	<ul style="list-style-type: none"> <li>- First Guardian Innovation Fund</li> <li>- First Guardian Income Solutions Fund</li> <li>- First Guardian Trade Finance Fund</li> <li>- First Guardian Emerging Companies Fund</li> <li>- First Guardian Fintech Opportunities Fund</li> <li>- First Guardian Gold and Precious Metals Fund</li> <li>- First Guardian Secured Property Income Fund</li> <li>- First Guardian Secured Convertible Bond Fund</li> <li>- First Guardian Boutique Development Fund</li> <li>- Australian Food &amp; Farming Fund</li> <li>- Australian Food &amp; Farming Loan Fund</li> <li>- Australian Food &amp; Farming Regenerative Farming Fund</li> <li>- Rajomon Opportunities Fund</li> <li>- Specialised Fund</li> <li>- Silver Fund</li> </ul> <p>The Liquidators have been ordered by the Federal Court of Australia to wind up certain funds as described above. However, investigations into all funds are currently taking place and each will be dealt with in the ordinary course of the Liquidation. In the event that the Company is the responsible entity or Trustee of a fund, subject to the terms of the trust deed, the Company under the Liquidators' control will remain as Trustee.</p>
<p><b><i>How long will the Liquidation process take?</i></b></p>	<p>The duration of the Liquidation will depend on several factors, including the time and actions required to identify and realise the underlying assets in the Funds, together with any broader investigations and potential recovery actions.</p> <p>Noting that the Liquidation has only just commenced, with investigations being conducted into the affairs of the Company, it is not possible to definitively determine when the Liquidation process will be completed. However, in the Liquidators' experience, noting the number of stakeholders and existence of multiple entities/trusts, nature of investments including in foreign jurisdictions, matters preliminarily identified in the Liquidation including required investigations, and potential for litigation, it is likely that the Liquidation could take three years or longer to conclude.</p> <p>However, dependant on recoveries being made, the general position of the Liquidation, and all claims having been established, the Liquidators will, if possible, make progressive distributions to Unitholders during the Liquidation process.</p>
<p><b><i>How will the value of my holdings be determined during the Liquidation?</i></b></p>	<p>The Liquidators cannot provide an update at this stage as to the potential current value of your units.</p> <p>Where it will not compromise potential recoveries in doing so, the Liquidators will provide general updates as to recoveries made and claims identified, together with estimates of potential returns, as the Liquidation progresses.</p>
<p><b><i>What has happened to the assets the Funds invested in, are</i></b></p>	<p>The majority of Investments held by the Funds are comprised of what appear to be illiquid loans and equity holdings in private companies, both in Australia and foreign jurisdictions.</p>

Question	Answer
<b><i>they under the Liquidator's control?</i></b>	<p>The Liquidators are currently identifying and assessing these assets and their recoverability, and will update Unitholders when possible. It is possible that certain Investments, if successfully realised, may not yield the value of the principal funds invested.</p> <p>Where possible, the Liquidators have taken control of assets noting the bulk of which are financial interests, such as equity holdings or loans. The Liquidators have written to various parties informing them of their appointment and thus that only the Liquidators have the authority to deal with any assets, to the exclusion of the Directors.</p>
<b><i>Can I still find information regarding my holding balance through my superannuation / wealth management platform?</i></b>	<p>The Liquidators understand many Unitholders have historically managed their investments via third party superannuation and wealth management platforms. These may include but are not limited to:</p> <ul style="list-style-type: none"> <li>■ Netwealth Superannuation Services</li> <li>■ YourChoice Super via Diversa Trustees Limited ("<b>Diversa</b>")</li> <li>■ AusPrac Super via Diversa</li> <li>■ Equity Trustees also known as EQT</li> </ul> <p>You should continue to access your holding balances, details of your investment and other information via your current platform. If you have a holding through these platforms, any queries should be directed to your provider. If you cannot recall your login details, please contact your provider.</p> <p>The Liquidators will provide copies of updates to the providers to ensure all Unitholders receive copies of all correspondence issued by the Liquidators. The Liquidators have met with all providers and this approach has been affirmed with them.</p>
<b><i>What amount or percentage of my investment can be recovered, and what is the estimated timeframe for recovery?</i></b>	<p>It is too early to advise on the potential quantum and timing of any return to Unitholders. Factors which may impact any return include:</p> <ol style="list-style-type: none"> <li>1. the value and realisation of recoverable assets (i.e. Investments);</li> <li>2. whether there are other potential sources of recovery;</li> <li>3. the steps and costs required to effect recoveries;</li> <li>4. the general costs of the Liquidation; and</li> <li>5. the quantum of any creditor claims and their respective ranking.</li> </ol> <p>The Liquidators' preliminary assessment is that nearly all the assets are of an illiquid nature. Consequently, it will take time to realise these assets and commercially assess any potential recoveries of the initial principal invested in each Investment. Therefore, should any recoveries be made, a distribution to unitholders in 2025 is considered unlikely.</p>
<b><i>Can I transfer or withdraw my investment from the Funds, including on the grounds of hardship?</i></b>	<p>No. As at the date of this document, the overall financial position of each Fund is still being assessed. To treat all Unitholders equally, Unitholders are not able to transfer their units or withdraw their investment from the Funds. All redemptions have been frozen as a result of the Liquidation. This includes any redemption requests which are considered under hardship or special needs conditions, such as redemptions referable to pension payments, life insurance premium payments and other special needs.</p> <p>The majority of Unitholders' funds are allocated and invested across the individual Funds and their respective Investments, the position and recoverability of which are still to be determined.</p>

Question	Answer
	<p>Any surplus monies from the winding up of the Funds will be distributed having regard to the relevant Funds' constitution, the <i>Corporations Act 2001 (Cth)</i> (the "<b>Act</b>") and any orders of the Court where direction is required. As a result, it is expected that it could take some time for the Funds to be fully wound up and any potential distributions made to Unitholders, albeit interim distributions will be made if possible.</p>
<p><b>What documentation do I have to provide to prove my claim?</b></p>	<p>At this stage, Unitholders are encouraged to complete the Unitholder Claim Form attached to the Initial Information for Unitholders dated 17 April 2025.</p> <p>This is to assist the Liquidators in having current and independent detail of claims, and to enable a reconciliation and verification against the records of the Company and Funds. However, completion of the Unitholder Claim Form, at this stage, is not compulsory.</p> <p>Please provide any available supporting documents related to your Unitholding (Portfolio Valuation, Holding Statements etc.).</p> <p>Please only complete this claim form if you have a direct investment. If you hold units via the following or any other providers, please direct any queries you have to your provider as they will be the registered Unitholder:</p> <ul style="list-style-type: none"> <li>■ Netwealth Superannuation Services</li> <li>■ Diversa</li> <li>■ AusPrac Super via Diversa</li> <li>■ Equity Trustees also known as EQT</li> </ul> <p>You can access and download all correspondence to Unitholders at the FTI Consulting Creditor Portal at <a href="http://www.fticonsulting.com/creditors/falcon-capital-limited">www.fticonsulting.com/creditors/falcon-capital-limited</a>.</p> <p>Providers will liaise with the Liquidators directly regarding your indirect interest.</p>
<p><b>How can I obtain the Company's financial statements?</b></p>	<p>As the Liquidators' assessment of the Company and the financial position of each Fund is incomplete, and given the complexity of the affairs of the Company and Funds, the Liquidators are not currently in a position to finalise and provide financial statements.</p>
<p><b>Do I need to seek my own advice?</b></p>	<p>The Liquidators act in the interests of all creditors as a collective. Subject to the respective priorities between creditors and Unitholders, which the Liquidators are still considering, the Liquidators also act in the interests of all Unitholders as a collective.</p> <p>You are entitled, and the Liquidators recommend, that you seek your own independent legal, accounting and financial advice to consider your individual circumstances. This will have to be at your own cost, however, details of financial support services are provided below.</p> <p>The Liquidation process is governed by the Corporations Act and subject to regulatory overview by ASIC. The Liquidators will continue to report to all stakeholders on the progress and outcome of the Liquidation in accordance with the Corporations Act.</p>
<p><b>Who pays for the Liquidation?</b></p>	<p>The Liquidators' professional fees and expenses will generally be paid from the Company's and the Fund's assets, including those realised in the Liquidation or any other external funding which may be agreed to by the Liquidators.</p>

Question	Answer
	<p>The Liquidators and their staff charge professional fees based on the time spent on the Liquidation, with hourly rates determined by their level of skill and experience. In minimising overall fees, the Liquidators allocate tasks to different staff members based on their complexity and required skills and experience. Before these fees can be paid from the Company's assets, the Liquidators must seek approval from either the Creditors or the Court.</p> <p>Under the Act, the Liquidators' fees rank in priority to the claims of Creditors in the Company.</p> <p>Neither ASIC nor the Government are responsible for funding the Liquidators' fees and costs.</p>
<b><i>What information has ASIC provided?</i></b>	<p>ASIC has provided specific updates to Unitholders in the lead up to and following the appointment of the Liquidators.</p> <p>ASIC's updates can be found here: <a href="https://asic.gov.au/about-asic/asic-investigations-and-enforcement/enforcement-activities/first-guardian-master-fund/">https://asic.gov.au/about-asic/asic-investigations-and-enforcement/enforcement-activities/first-guardian-master-fund/</a>.</p>
<b><i>When will further updates be provided?</i></b>	<p>The Liquidators are committed to providing ongoing updates to Unitholders by way of email and via FTI Consulting's Creditors' Portal at <a href="http://www.fticonsulting.com/creditors/falcon-capital-limited">www.fticonsulting.com/creditors/falcon-capital-limited</a>.</p> <p>The Corporations Act prescribes that a liquidator must provide their statutory report to creditors within three months of their appointment (i.e. by 9 July 2025 in this matter).</p> <p>Whilst those reports are required to be provided to Creditors, the Liquidators intention at this time is to share them with Unitholders appreciating that they are also a stakeholder. The Liquidators will also endeavour to provide specific updates to Unitholders approximately every 2-3 months or as circumstances warrant during the course of the Liquidation.</p> <p>The Liquidators do not intend to hold a formal meeting of Unitholders at this time, however, should matters in the Liquidation warrant such a meeting to be held, the Liquidators will update and provide the appropriate notice to Unitholders.</p>
<b><i>Does the appointment of liquidators remove the Company as Trustee of the various Trusts and Funds?</i></b>	<p>The Liquidators have determined that none of the Company's or Funds' constitutions automatically eject the Company as trustee upon the appointment of liquidators to the Company (or any other insolvency event). As a result, the Liquidators assume all the powers of the Company as Trustee / Responsible Entity of the various Funds.</p> <p>The Liquidators are in control of the various underlying assets, including the loans and the equity holdings, and will realise these assets in accordance with their statutory duties.</p>
<b><i>Will each of the funds be treated as distinct funds, with their own distinct unit holdings for the purposes of any realisations/ distributions?</i></b>	<p>In principle and as the starting point, each of the Funds are treated as distinct funds, with their own distinct unit holdings and assets. The Liquidators are however considering this position further and will need to consider if any Funds had monies comingled or had assets and cash transferred between the various Funds.</p> <p>If the Liquidators determine that comingling has occurred, it is possible the Liquidators may need to make an application to Court for directions as to whether the Funds should be pooled. Should the Liquidators form this view, all Unitholders will be advised of any application and will have the opportunity to provide their views or object to any application that is made.</p>

Question	Answer
	<p>Given that this determination will follow the Liquidators' investigations, and given the number of transactions that have been entered into by the Company and the Funds since their inception, it will take some time to assess and conclude this point. Further the Liquidators understand certain funds were consolidated / merged in 2024. The Liquidators' investigations will also analyse these transactions and determine whether Unitholders' positions were compromised or unfairly treated.</p> <p>Ultimately, the Liquidators are bound by the duties set out in the Corporations Act, the relevant constitutions and trust deeds of the various Funds, and other applicable laws, and are required to act impartially. Consequently, any and all realisations/distributions will be made in accordance with the Corporations Act, the trust constitutions or subject to the Court's directions.</p>
<p><b><i>If my units were purchased by a Trust (my Self Managed Superannuation Fund) do they belong to the unit holder Trust?</i></b></p>	<p>Your individual holdings will depend on the documentation that you completed when you opened your account with one of the Funds.</p> <p>If your holding is via one of the third party superannuation and wealth management platforms, the Liquidators suggest that you liaise with your platform provider. In those circumstances the units in the Funds are held by those platforms.</p>
<p><b><i>Are the First Guardian Funds covered by any Superannuation Funds regulations?</i></b></p>	<p>The Funds of the Company are governed primarily by provisions of Chapter 5C and other relevant provisions of the Corporations Act. These provisions apply to the operation of registered and unregistered managed investment schemes.</p> <p>The Funds are not superannuation funds and therefore not directly regulated by superannuation regulations.</p>
<p><b><i>What are the Rules and Guidelines relating to Superannuation Fund Liquidations?</i></b></p>	<p>The ordinary liquidation procedure under Part 5.4 of the Corporations Act applies in relation to the process for winding up an insolvent trustee. Chapter 5C also applies in relation to the winding up of managed investment schemes. The terms of the trust deeds also require consideration. If necessary the Liquidators may apply to and seek direction of a court on any contentious matters.</p>
<p><b><i>When will the Liquidators revalue my unit holdings?</i></b></p>	<p>The Liquidators are currently engaging with relevant parties in relation to all underlying investments to determine the realisable value of these assets.</p> <p>This assessment is still in its infancy and, having regard to the illiquid nature of the majority of the assets, could take a significant amount of time.</p>
<p><b><i>Are the Liquidators required to prepare financials in relation to the Funds?</i></b></p>	<p>The Liquidators will seek to rely on relief from preparing financials statements and various reporting obligations in connection with the Funds, in accordance with ASIC Regulatory Guide 174 and ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251.</p>

Question	Answer
<b><i>What other reporting requirements are there?</i></b>	<p>Section 1017B of the Corporations Act requires an issuer of units to notify Unitholders of changes and events in relation to financial products that it has issued.</p> <p>The Liquidators will periodically update Unitholders in relation to this section as material or significant events are identified as part of their investigations.</p> <p>Creditors and members otherwise will have access to information prepared and lodged with ASIC by the liquidator under Chapter 5 and Schedule 2 of the Corporations Act. As explained above, the Liquidators are committed to providing ongoing updates to Unitholders by way of email and via FTI Consulting's Creditors' Portal at <a href="http://www.fticonsulting.com/creditors/falcon-capital-limited">www.fticonsulting.com/creditors/falcon-capital-limited</a>.</p>
<b><i>When will end of year statements be issued?</i></b>	<p>The Liquidators are currently considering the requirement to provide end of year statements to Unitholders of the various funds. At present, the Liquidators have formed the view that the realisable values of the underlying assets are still unknown and as such it would not be appropriate to provide end of year statements for the year ending 30 June 2025.</p> <p>Unitholders should seek their own legal and/or financial advice in this regard.</p>
<b><i>Was there any insurance in place to protect investors and cover lost funds?</i></b>	<p>The Liquidators are not in a position to comment on this given that disclosing the existence of certain insurance policies may cause the insurer to deny cover and/or liability. Generally, the Liquidators have a duty to take reasonable steps to realise potential assets of the Company.</p>
<b><i>Can you provide copies of the First Guardian Tax Statements and Periodic Statements for my account to assist in the completion of my tax return?</i></b>	<p>Unitholders who have historically managed their investments via third party superannuation and wealth management platforms should continue to access and request such information via your current platform provider. The Company and the Funds have no direct relationship with the individual investors of these platforms.</p> <p>Unitholders who invested directly into one or more of the Funds should liaise with the Liquidators' office in relation to their unitholdings.</p>
<b><i>Can third party superannuation and wealth management platforms continue to charge administration fees on my units whilst frozen due to the ASIC order / Liquidation?</i></b>	<p>Unitholders should refer to the terms of their service agreements and direct questions regarding third party superannuation and wealth management platforms to their provider.</p>



Question	Answer
<b><i>Is David Anderson's personal property subject to your investigations?</i></b>	<p>The Federal Court of Australia has ordered that Mr Paul Allen of PKF Melbourne be appointed as receiver to the personal property of Mr Anderson.</p> <p>The Liquidators are in contact with Mr Allen and have put Mr Allen on notice that the Company may have a claim against Mr Anderson personally on various grounds given his position as a Director.</p>
<b><i>Who do I contact if I do not understand or know the answer to a question on the claim form?</i></b>	<p>Questions in relation to the Unitholder Claim Form should be directed to <b>falcon.investors@fticonsulting.com</b>.</p> <p>Please only complete this claim form if you have a direct investment.</p>
<b><i>When and how will the next update to investors be issued?</i></b>	<p>The Liquidators will update this <b>FAQ for Unitholders</b>, which will be made available through FTI Consulting's Creditors' Portal, as progress is made in the Liquidation:  <a href="http://www.fticonsulting.com/creditors/falcon-capital-limited">www.fticonsulting.com/creditors/falcon-capital-limited</a></p> <p>Future updates will be provided as milestones are reached, including realisation of specific Investments, outcomes of court proceedings and/or distribution announcements.</p>
<b><i>Can I make a complaint against the Company as Trustee or Responsible Entity?</i></b>	<p>Generally it is now the role of the Liquidator to represent the interests of all Creditors and Unitholders regarding the historical conduct of the Company. If you have specific information regarding the actions of the Company or Directors, please provide that information to :  <a href="mailto:falcon.investors@fticonsulting.com">falcon.investors@fticonsulting.com</a>.</p> <p>As the Company was the holder of an Australian Financial Services Licence, its' conduct is normally subject to the review of the Australian Financial Complaints Authority ("<b>AFCA</b>"). AFCA's contact details are:</p> <ul style="list-style-type: none"> <li>■ Website: <a href="http://www.afca.org.au">www.afca.org.au</a></li> <li>■ Telephone: 1800 931 678</li> <li>■ Email: <a href="mailto:info@afca.org.au">info@afca.org.au</a></li> <li>■ Post GPO Box 3, Melbourne VIC 3001</li> </ul>
<b><i>Who do I contact if I need further support?</i></b>	<p>The Liquidators understand that the Company's Liquidation may cause financial hardship and distress for some Unitholders, and will provide information and support to Unitholders collectively and regarding individual claims when distributions are possible.</p> <p>If you need support, you are encouraged to seek your own individual advice from a lawyer, accountant or financial planner that takes into consideration your individual circumstances.</p> <p>You can contact a free financial counsellor through the National Debt Helpline on 1800 007 007 or live chat at <a href="https://ndh.org.au/">https://ndh.org.au/</a>.</p> <p>There are also a number of free professional services you can reach out to, including community legal centres who can provide free and confidential legal help. Find your closest legal centre at:</p>

Question	Answer
	<ul style="list-style-type: none"><li>■ VIC: <a href="https://www.fclc.org.au/find_a_community_legal_centre">https://www.fclc.org.au/find_a_community_legal_centre</a></li><li>■ NSW: <a href="https://findlegalhelp.clcnsw.org.au/">https://findlegalhelp.clcnsw.org.au/</a></li><li>■ QLD: <a href="https://www.communitylegalqld.org.au/find-legal-help/">https://www.communitylegalqld.org.au/find-legal-help/</a></li><li>■ WA: <a href="https://communitylegalwa.org.au/">https://communitylegalwa.org.au/</a></li><li>■ ACT: <a href="https://www.actlawsociety.asn.au/for-the-public/legal-help/community-legal-centres">https://www.actlawsociety.asn.au/for-the-public/legal-help/community-legal-centres</a></li><li>■ NT: <a href="https://www.legalaid.nt.gov.au/">https://www.legalaid.nt.gov.au/</a></li></ul>

## Appendix A | ASIC information sheet for Investors and Shareholders

### Insolvency for investors and shareholders

This is **Information Sheet 43 (INFO 43)**. It gives general information for shareholders on:

- liquidation
- voluntary administration
- receivership

If a company is in financial difficulty, it can be put under the control of an independent external administrator (liquidator or voluntary administrator) or receiver. The role of the external administrator or receiver depends on the type of appointment.

### Liquidation

There are two types of liquidation for an insolvent company – creditors' voluntary liquidation and court liquidation. The most common type is a creditors' voluntary liquidation, which usually begins when:

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

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

### The liquidator's role

The liquidator's role is to:

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

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

### The directors' role

Directors cannot use their powers after a liquidator has been appointed. They must help the liquidator, including providing the company's books and records, and a report about the company's affairs.

### Shareholders and liquidation

The liquidator's main duty is to all the company's creditors. The shareholders will only get paid any return on their shares in an insolvent liquidation after all creditors get paid in full. If shareholders also have a claim as a creditor, then they may receive a payment as a creditor (separate from any return on shares).

### Reporting to shareholders

An external administrator or receiver is not required to report to shareholders on the progress or outcome of the liquidation.

An external administrator (liquidator or voluntary administrator) must keep books that give a complete and correct record of the administration of the company's affairs — and shareholders are entitled to inspect these books at the external administrator's office. A managing controller (or receiver and manager) must also keep books that correctly record and explain all transactions entered into as managing controller — and allow shareholders to inspect these records.

Every year, on the anniversary of their appointment and at the end of the liquidation (or administration or receivership), the liquidator (or voluntary administrator or receiver) must lodge with ASIC a detailed list of receipts and payments (i.e. an annual administration return). A copy of these returns can be found on ASIC Connect.

### Transfer or alteration of shares

A transfer of shares in a company or alteration of status of shareholders during liquidation (or voluntary administration or receivership) will not be effective unless the liquidator (or voluntary administrator or receiver) gives written consent or the court permits. The liquidator (or voluntary administrator or receiver) or court will need to be satisfied the transfer of shares, or the alteration in the status of shareholders, is in the best interest of the company's creditors and does not breach the rights of shareholders under the Corporations Act.

When giving written consent to a transfer of shares in a company or alteration of status of shareholders, the liquidator (or voluntary administrator or receiver) can impose conditions that must be satisfied before the transfer or alteration is effective. For share transfers, the affected shareholder, prospective shareholder or creditor may apply to the court to set aside any or all these conditions.

Similarly, a shareholder or a creditor may apply to the court to set aside any or all conditions that must be satisfied for an alteration in the status of shareholders to have effect. A shareholder or creditor may also apply to the court to authorise an alteration in the status of shareholders if the liquidator (or voluntary administrator or receiver) refuses the alteration.

A liquidator can call on the holders of any unpaid or partly paid shares in the company to pay the amount outstanding on those shares to the company.

If a liquidator makes a written declaration that they have reasonable grounds to believe there is no likelihood shareholders will receive any further distribution in the winding up, shareholders can realise a capital loss. To realise a loss, the shares in the company must have been purchased on or after 20 September 1985. If no such declaration is made by a liquidator, the deregistration of a company at the end of a liquidation also enables realisation of any capital loss.

### Financial reporting and annual general meeting (AGM) requirements

The Corporations Act imposes financial reporting obligations on listed and very large companies. These obligations do not apply if the company is in liquidation. Companies in liquidation that are also AFS licensees may only rely on our relief from the financial reporting and AFS licensee reporting obligations if they have cancelled and do not hold an AFS license on the date they would be required to lodge the relevant report with ASIC. For more information, see ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251.

Public companies in liquidation do not need to hold AGMs.

## Voluntary administration

Voluntary administration is designed to resolve a company's future direction quickly. An independent registered liquidator (the voluntary administrator) takes full control of the company to try save the company or the company's business.

The voluntary administrator aims to administer the company's affairs to obtain a better return to creditors than if the company had been placed straight into liquidation. A better return may be achieved through a DOCA which is generally proposed by the directors or other third-parties, usually in consultation with the voluntary administrator.

### The voluntary administrator's role

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

- end the voluntary administration and return the company to the directors' control
- approve a DOCA 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, including an opinion on any DOCA proposal and recommend which option is in the best interests of creditors.

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

The voluntary administrator is also responsible for reporting possible offences committed by people involved with the company to ASIC.

If a DOCA proposal is approved, the voluntary administrator will usually become the deed administrator and oversee its operation.

### The directors' role

Directors cannot use their powers while the company is in voluntary administration. They must help the voluntary administrator by providing the company's books and records and completing ASIC form Report on Company Activities and Property (ROCAP) – as well as any further information about these that the voluntary administrator reasonably requires.

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

If the DOCA is not completed and the company goes into liquidation, the directors cannot use their powers.

## Shareholders and voluntary administration

### Reporting to shareholders

Shareholders do not get to vote on the future of the company. A voluntary administrator (or receiver) is not required to report to shareholders on the progress or outcome of the voluntary administration.

### Transfer or alteration of shares

Shareholders are bound by a DOCA approved by creditors. The deed administrator may transfer shares in the company with the written consent of the shareholder or with the court's permission. A shareholder, a creditor, ASIC or any other interested person can oppose a court application to approve a share transfer.

## Financial reporting and annual general meeting (AGM) requirements



While subject to voluntary administration or under a DOCA (or in receivership), listed and very large companies must still comply with their statutory financial reporting obligations.

ASIC provides relief so that a company in voluntary administration (or receivership) automatically has a six-month extension of time for lodging financial reports that are due when the administrator (or receiver and manager) is appointed or will become due in the six-month period after the appointment. The automatic relief applies even if the company enters a DOCA during the six-month period after the voluntary administrator's appointment. If a voluntary administrator is appointed before a receiver and manager is appointed, then our automatic deferral relief will apply from the date the voluntary administrator is appointed.

To get the benefit of this automatic deferral relief, the voluntary administrator (or receiver and manager) must have arrangements during the deferral period to answer, free of charge, reasonable questions from shareholders about the administration (or receivership). At the end of this deferral period, if the company remains in voluntary administration or under a DOCA (or in receivership), the company may apply to ASIC for further deferral relief.

A public company in voluntary administration (or receivership) may also apply for an extension of time to hold an AGM. A public company under a DOCA may also apply for an extension of time to hold an AGM in certain circumstances.

Listed companies should also inform the relevant securities exchange if the company relies on automatic relief or is granted further relief or an extension of time to hold an AGM. This information should also be available on the company's website and the voluntary administrator's (or receiver and manager's) website.

For more information on ASIC's automatic relief or applying for other relief, see [Regulatory Guide 174 Relief for externally administered companies and registered schemes being wound up](#) (RG 174).

## Receivership

A company goes into receivership when an independent registered liquidator (the receiver) is appointed by a secured creditor or by the court to take control of some or all the company's assets.

Court receiverships and controllerships are not covered in this information sheet.

A secured creditor is someone who holds a security interest, such as a mortgage, in some or all the company's assets, to secure a debt owed by the company. Lenders 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 given 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.

The powers of the receiver are set out in the security agreement between the company and the secured creditor, the appointment documentation and the Corporations Act.

Under the terms of appointment, if a receiver has the power to manage the company's affairs, they are known as a receiver and manager or a managing controller.

### The receiver's role

Generally, the receiver's role is:

- to collect and sell enough of the secured assets to repay the debt owed to the secured creditor
- if they have been appointed under a non-circulating security interest (e.g. over land, plant or equipment), to pay the money collected:
  - first, to the secured creditor
  - second, to the company or an external administrator (if appointed) if there are any funds left over

- if they have been appointed under a circulating security interest (e.g. over cash, debtors or stock), to pay the money collected:
  - first, to priority creditors (including certain employee entitlements)
  - second, to the secured creditor
  - third, to the company or an external administrator (if appointed) if there are funds left over
- to report to ASIC any possible offences or irregular matters.

The receiver is usually paid from the money collected during the receivership.

### The directors' role

Receivership does not affect the legal existence of the company. The directors continue to hold office, but their powers depend on the powers of the receiver and the extent of the assets over which the receiver is appointed. Control of the secured assets, including the company's business, is taken away from the directors.

Directors must provide the receiver with a ROCAP and must allow the receiver access to books and records relating to the charged property.

### Shareholders and receivership

The receiver's main duty is to the company's secured creditor. The duty owed to unsecured creditors and shareholders is an obligation to take reasonable care to sell the secured assets for not less than its market value or, if there is no market value, the best price reasonably obtainable. A receiver also has the same general duties as a company director.

### Reporting to shareholders

See above for information on reporting to shareholders.

### Financial reporting and annual general meeting (AGM) requirements

See above for information on financial reporting and AGM requirements.

## More information

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

## Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. We encourage you to seek your own professional advice to find out how the applicable laws apply to you, as it is your responsibility to determine your obligations.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases, your particular circumstances must be taken into account when determining how the law applies to you.

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

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