Employees - Deed of company arrangement

What is a deed of company arrangement?

A deed of company arrangement (DOCA) is a binding arrangement between a company and its creditors governing how the company's affairs will be dealt with, which may be agreed to as a result of the company entering voluntary administration. It aims to maximise the chances of the company, or as much as possible of its business, continuing, or to provide a better return for creditors than an immediate winding up of the company, or both.

If creditors vote for a proposal that the company enter a DOCA, 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 DOCA 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.

In some cases the proposed DOCA (or proposed variation to a DOCA) involves the creation of a creditors' trust.

A creditors' trust is a separate legal arrangement used to accelerate a company's exit from external administration. Creditors' claims are generally transferred to a newly created creditors' trust and any return is received from the trustee of the trust, not the deed administrator. The DOCA generally terminates after the creditors' claims against the company are moved to the trust. Because there are different and additional risks for creditors where a DOCA proposal involves a creditors' trust, insolvency practitioners have certain obligations about the information provided to creditors in order to ensure creditors are fully informed of their choices.

For more information on creditors' trusts please refer to Regulatory Guide 82.

How does a DOCA affect me?

If creditors approve a DOCA, the priority in which outstanding employee entitlements are paid depends on the terms of the deed. Sometimes the deed proposal is for these entitlements to be paid in the same priority as in a liquidation. Other times, a different priority is proposed.

A DOCA must ensure that employees' entitlements have the same priority as in a liquidation unless the eligible employees agree by a majority in both number and value to vary this priority.

This means that unless a variation to priority is agreed to, in a DOCA employees have the right, if there are funds left over after payment of the fees and expenses of the voluntary administrator and deed administrator, 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:

1. outstanding wages and superannuation
2. outstanding leave of absence (including annual leave and sick leave, where applicable, and long service leave), and
3. 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).

If a deed proposal seeks to vary the priority for employee entitlements, the voluntary administrator must call a meeting of eligible employees giving at least five business days notice of the meeting. They must give to eligible employees at the same time as the notice of meeting a statement setting out:

- their opinion about whether the proposed variation would result in the same or better outcome for employees than if the company went into liquidation
- their reasons for this opinion, and
- any other information to help them make an informed decision about varying the priority.

Before you make a decision on how to vote at the meeting of eligible employee creditors or the creditors' meeting where the decision is made whether or not to accept the DOCA proposal, make sure you understand how the deed will affect the priority of payment of your outstanding entitlements.

How do I get paid under a DOCA?

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

Regardless of the deed's terms, if the deed administrator must pay outstanding priority employee entitlements, they may advise you beforehand how much they believe you are owed. Contact the deed administrator promptly if you disagree with their calculation.

You may be required to complete an employee entitlement claim form (this is called a 'proof of debt' in a liquidation). In this case, contact the deed administrator's office to agree and settle the amount.

You may need to provide evidence to justify your claim. 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 any entitlement to FEG or GEERS if the company proceeds to liquidation.

When submitting a claim, 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, you may 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.

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.

If you are employed by a company in voluntary administration or subject to a deed of company arrangement you are not eligible for the FEG until and unless the company enters into liquidation.

You may wish to seek independent legal advice on whether the terms of a proposed deed will affect your claim under the FEG if the company subsequently goes into liquidation.

If the deed provides for your ongoing employment, you may also wish to seek advice on how this affects payment of your outstanding entitlements.

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.

Do I receive a payment summary or separation certificate?

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 voluntary administrator or deed administrator 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 voluntary administrator or deed administrator 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.

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.

A voluntary administrator and deed administrator must prepare a Separation Certificate for any employee whose employment is terminated during the voluntary administration or deed of company arrangement. They are not obliged to prepare one for terminations of employment that occurred prior to voluntary administration.

Contact Centrelink on 13 10 21 to find out what you should do if you can't obtain a Separation Certificate.

More information

- FEG website
- Centrelink website

Information sheets

- Insolvency: a glossary of terms (INFO 41)
- Voluntary Administration: a guide for employees (INFO 75)
- Regulatory Guide 82 External Administration: Deeds of company arrangement involving a creditors' trust (RG 82)

Return to Employees

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