



McGrathNicol

Voluntary Administration

Restructure and rehabilitate your business.

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Reorganise, restructure and refinance a business

Voluntary Administration ("VA") provides a statutory framework for directors of a company to reorganise, restructure and refinance a business.

The objective of the VA process is to enable an insolvent company, or a company that in the opinion of the directors may become insolvent, to be administered in a way that:

- maximises the opportunity for all or part of the business to continue; or
- if it is not possible for the business to continue, results in a better return to creditors and members than an immediate liquidation.

If used in the right circumstances and effectively, VA is a powerful tool to restructure and rehabilitate a business.

The outcome of a successful VA is usually a Deed of Company Arrangement ("DOCA"). A DOCA is a binding agreement between the company and its creditors (financiers, suppliers, landlords, ATO, employees, etc.) effectively recording an agreed modification of rights between them. This can be an arrangement to restructure the business, usually by agreement to repay outstanding debt at a lower amount and/or over time.

Advantages of the Voluntary Administration process

Enforces a moratorium against creditor claims and recovery actions, and other protective provisions to facilitate financial rehabilitation.



Facilitates ongoing trading of the company to preserve enterprise value, employment and key relationships with customers and suppliers.



Allows a company and its creditors to consider the merits of a compromise arrangement to maximise the return to creditors.



Provides for an orderly, transparent process under the direction of an independent Administrator.



Can occur quickly, providing a fixed timeframe for dealing with issues, but has flexibility to allow further time if needed to obtain the best outcome.



The Administrator may renegotiate or negate onerous leases and contracts to restructure the business.



Ideal candidate for a Voluntary Administration

If a business is experiencing (or about to experience) solvency issues, the presence of one or more of the conditions opposite suggest that the business may benefit from restructuring via a VA process.

- A viable business that has been burdened by onerous obligations.
- A one-off event that has caused the company to become insolvent.
- Early intervention upon acknowledgement of actual or impending insolvency.
- Realistic plans for ongoing trading which can form the basis of a DOCA.
- Expectation that a party will provide funding for a DOCA or there are sufficient assets and/or trading upside for a DOCA to be 'self-funding'.

Implications for various stakeholders

Directors

- Directors remain in office with their powers suspended and are required to provide information and assistance to the Administrator as requested.
- Directors are protected from enforcement of personal guarantees during the VA.
- Taking the step to place a company that is facing insolvency into VA can mitigate exposure to personal liability for trading the company whilst insolvent, provided the directors took prompt action once serious financial difficulties were encountered.
- Directors are required to prepare a report on the business, property, affairs and financial circumstances of the company within five business days from commencement of the VA.

Employees

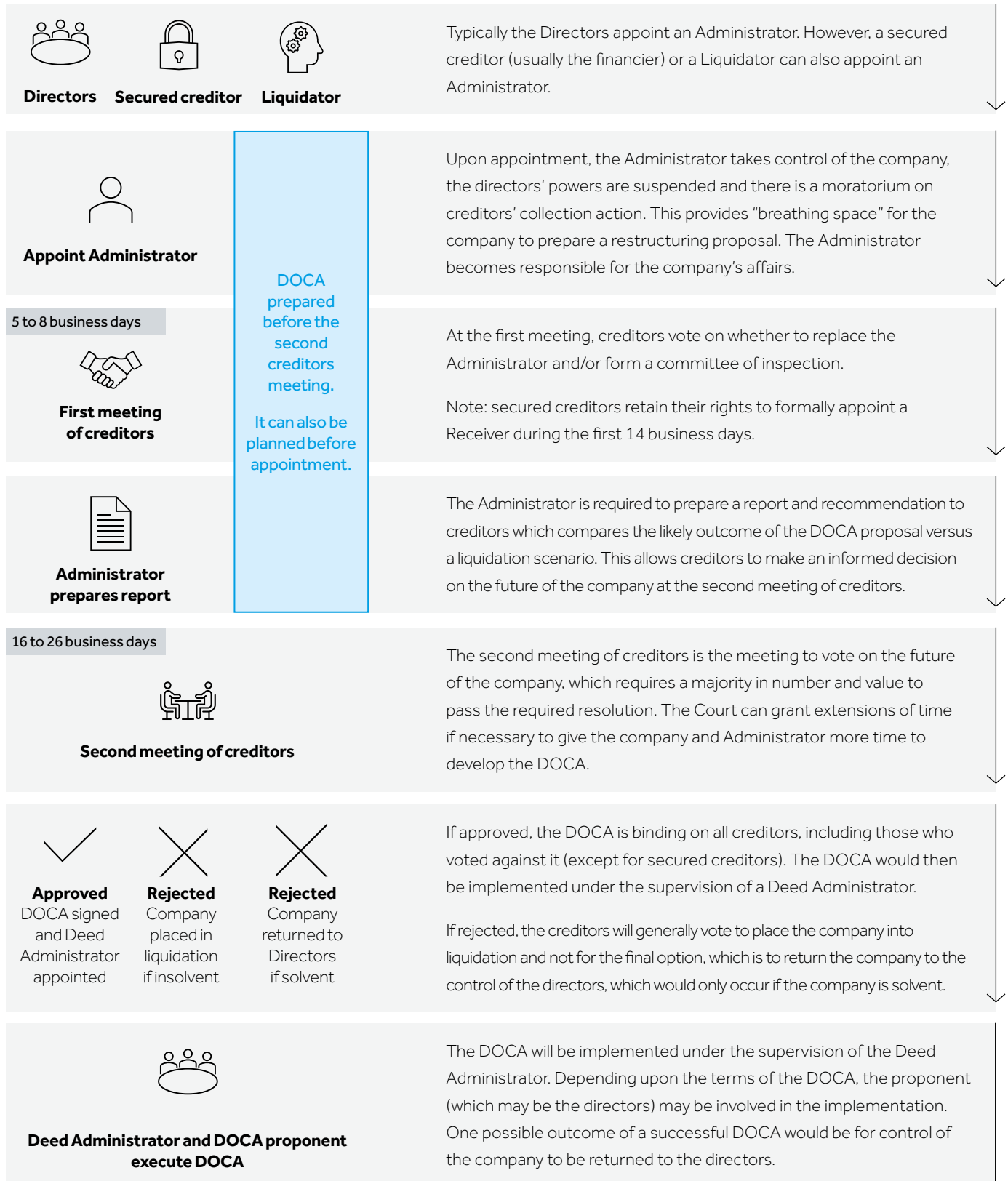
- Upon commencement of the VA, outstanding employee entitlements are preserved and form a priority unsecured claim against the company.
- In circumstances where the Voluntary Administrator continues to trade the company's business, employees may be retained. The Voluntary Administrator is liable to pay all wages and entitlements incurred during the VA.
- Provides an opportunity for employees to remain employed by the business during and after the VA (subject to required staffing), as opposed to a liquidation where generally all employees are terminated.

Creditors

- Enforces a moratorium period whereby most creditor claims against the company's property are placed on hold and "protected" during the VA.
- There is an exception to this moratorium for a financier with security over all, or substantially all, of the assets of the company who may take action including to appoint a Receiver during the initial 14 business days of the VA.
- The following cannot be enforced and/or undertaken without the Voluntary Administrator's consent or leave of the Court:
 - creditors cannot seek to wind up the company or commence civil proceedings;
 - a person cannot enforce a security interest over property of the company;
 - a person cannot enforce a lien or pledge over property of the company; and
 - an owner or lessor of property that is used or occupied by the company cannot take possession of the property.

The Voluntary Administration process and timeline

The practical steps of a Voluntary Administration from the company's perspective, together with the process and the timeline are outlined in the diagram and discussed below.



Deed of Company Arrangement

What is a DOCA?

The DOCA is a formal agreement between the company and its creditors to restructure the business, usually by repaying outstanding debts at a lower amount and/or over time. There are very limited restrictions on the form a DOCA can take which allows maximum flexibility for the company and its creditors to come to an agreement which meets the circumstances of the company and best protects the interests of creditors.

Process to develop a DOCA

1	Directors and/or creditors and/or third party decide to develop a DOCA proposal	The proponent of the DOCA (may be directors or creditors or a third party) generally consult with the Administrator to develop a suitable DOCA that the Administrator can recommend to creditors.
2	Determine causes of distress	Determine the cause(s) of the company's financial distress and how/if it can be remedied. Was it as a result of a one-off event or are operational changes needed? What is the restructuring plan to achieve ongoing viability?
3	Assess short-term cash flow requirements	Assess the short-term cash requirements to determine how much time is available. For example, will the company have enough cash to pay wages?
4	Assess long-term cash generation	Assess the long-term, post restructuring cash flow to determine how much money the company can realistically generate and over what period to repay creditors.
5	Consider how different creditor types will be treated	Consider which creditors will need to be paid in full, including employees and suppliers with specific security over inventory, and which creditors can be paid in part.
6	Outline key terms of proposal	Prepare an outline of the key terms of the restructuring proposal, including which groups of creditors will be paid specified amounts and over what period of time.
7	Test proposal with key creditors	Discuss the restructuring proposal with any secured creditors (usually the company's financier) to get buy-in, as support from the secured creditors will likely be a key driver of success.
8	Allow creditors to vote on the DOCA	The second meeting of creditors provides the opportunity for creditors to vote for or against the DOCA. A majority of creditors in number and value is required to pass the required resolution.