



Voyager Resort Limited
(In Liquidation)
ACN 010 547 618
(the “Company”)

REPORT TO SHAREHOLDERS

Appointees:

Mr Bradley Vincent Hellen
and Mr Nigel Robert Markey
Pilot Partners

Contact:

voyager@pilotpartners.com.au

Date: 1st day of May 2024

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APPENDICES	DOCUMENT DESCRIPTION
A	Summary of Lot Holdings Owned by Voyager Resort Limited
B	Summary of Receipts and Payments
C	Australian Taxation Office Class Ruling for Lot Owners
D	Court Order
E	ASIC Information Sheet – Insolvency: A Guide for Shareholders



Section | ONE

1. SUMMARY

1.1 Background

We refer to our reports dated 30 May 2023, 21 August 2023, 13 October 2023 and 14 November 2023. This report should be read in conjunction with our previous reports.

The purpose of this report is to provide you with an update on the progress of the liquidation.

1.2 Distribution from Statutory Trustees

The Statutory Trustees of the Voyager Resort ("the Trustees") have made payment to Voyager Resort Limited ("VRL or the Company") for:

	\$
Outstanding levies from Lot Owners	2,088,372.72
Lot holdings owned within the Voyager Resort	15,320,298.57
Total	17,408,671.29

Now these funds have been received, we are able to proceed with the liquidation.

1.3 Matters requiring Court Approval

There are several matters we intend to seek the direction of the Court on. These include:

- Verification of the Company's shareholder list;
- The treatment of levies still owed by Lot Owners entitled to a distribution as a shareholder of the Company;
- Approval to pay a distribution to shareholders in a court liquidation; and
- The Liquidators' remuneration.

These matters are discussed in more detail at Section 4 of this report. The progress of these proceedings will have significant influence over the timeframe for finalisation of the administration.

1.4 Costs of the Administration

Please refer to Section 4.4 of this report for details on the cost of this administration.

1.5 Distribution to Shareholders

The timeframe and quantum of a distribution to shareholders is dependent on the progress of the matters discussed in the body of this report, particularly the matters requiring Court direction discussed at Section 4.

Further updates on the progress of these matters and the administration will be provided in due course.

1.6 Who Can I Contact?

An updated list of Frequently Asked Questions can be found at Section 6 of this report.

Should you have any further queries relating to the liquidation, please contact our office.

	Details
Email:	voyager@pilotpartners.com.au

Should you have any further queries or information to provide relating to the Trustees' distribution, please contact the Trustees.

	Details
Email:	trustees@voyagerresort.com.au

Dated this 1st day of May 2024



BRADLEY HELLEN
JOINT & SEVERAL LIQUIDATOR

Section | TWO

2. TRUSTEES' DISTRIBUTION TO LOT OWNERS

The Trustees have requested we provide the below update on their behalf.

2.1 Distribution from the Trustees to Lot Owners

The Trustees have now made payment of all but twelve entitlements resulting from the sale of the Voyager Resort (the "Resort"). Lot Owners who have been paid have been issued with distribution statements detailing how their payments were calculated.

If you have not received payment, the Trustees have withheld your payment because at the date of distribution:

- You had not provided your bank account details; and/or
- You had not provided all requested authorisation documents; and/or
- Your lot holding was disputed.

The withheld funds, currently totalling \$118,878.49, remain under the control of the Trustees and continue to accrue interest.

The Trustees intend to proceed with investigating these cases, collecting the required information, and making payment where appropriate.

Any queries relating to payment of the Trustees' distribution should be sent directly to the Trustees at trustees@voyagerresort.com.au

2.2 ATO Class Ruling

The Trustees requested a Class Ruling from the Australian Taxation Office ("ATO") to confirm the following for Lot Owners:

- Which year the capital gain should be reported in; and
- That the ATO will not apply interest or penalties to any amended tax returns for Lot Owners.

The ATO has now published their decision. A copy of the Ruling is attached at **Appendix C**.

2.3 Foreign Resident Capital Gains Withholding

There were nine Lots within the Resort that:

- Were owned in part by a non-resident of Australia for tax purposes; and
- Had an apportioned sale value exceeding \$750,000.

Due to the above, the ATO assessed the nine Lots for Foreign Residents Capital Gains Withholding ("FRCGW") and the Trustees were required to withhold 12.5% of the sale proceeds from these Lots.

The Trustees sought guidance from the ATO to determine if the FRCGW could be applied to non-residents only. Ultimately, the Trustees were required to withhold FRCGW from all owners within these nine Lots.

This FRCGW was paid to the ATO by the Trustees and withheld from the distribution of impacted owners.

If you were impacted and believe you are an Australian resident for tax purposes, we recommend you seek guidance from your tax agent on how to claim for the withheld FRCGW.

A list of Lots impacted by FRCGW and the withheld amounts is below:

Lot	Proportion of Net Contract Price (\$)	Withholding (\$)
45	756,248.12	94,531
49	763,000.33	95,375
53	776,504.77	97,063
56	756,248.12	94,531
57	783,256.98	97,907
58	756,248.12	94,531
60	763,000.33	95,375
61	790,009.20	98,751
62	763,000.33	95,375
TOTAL	6,907,516.30	863,439

2.4 Foreign Resident Interest Withholding

If you are or were suspected to be a foreign resident for tax purposes, the Trustees have paid a portion of the interest you were entitled to the ATO as interest withholding. Please consult your own tax agent on the treatment of this withholding.

2.5 Sale Proceeds Reconciliation

The combined contract price for all lots at the Resort was \$45,301,680.00. A breakdown of sale proceeds is below:

	\$	\$
Funds to be distributed		
Resort sale proceeds	45,301,680.00	
Interest earned by the Trustees	<u>810,969.07</u>	46,112,649.07
Distributions paid to VRL		
Lots 1 and 2	1,751,667.07	
Lots 3 to 62	15,320,298.57	
Debtor recovery	<u>2,088,372.72</u>	19,160,338.36
Distributions paid to Lot Owners		
1 st payment group	23,516,880.19	
2 nd payment group	<u>813,861.96</u>	24,330,742.15
Payments to the ATO		
FRCGW	863,439.00	
Foreign resident interest withholding	<u>4,845.65</u>	868,284.65
Trustees' costs (incl. agent commission, legal costs, consultants' fees, etc.)		1,634,405.42
Funds held by the Trustees		118,878.49

Section | THREE

3. COMPANY INFORMATION

3.1 Company (VRL) Assets and Liabilities

A breakdown of the Company's assets and liabilities is below. Please refer to **Appendix B** for a full summary of receipts and payments in the administration to date.

	Note	Liquidators' ERV* \$
Assets		
Pre-appointment cash at bank	1	3,338,481
Pre-appointment debtors – recovered	2	2,107,879
Pre-appointment debtors – unrecovered	2	Unknown
Distribution from the Trustees	3	15,320,299
ASIC security bond	4	20,000
FRCGW refund	5	Unknown
Liabilities		
Unsecured creditors	6	7,101
Taxation liabilities	5	Unknown
Net Surplus/(Deficiency)		Unknown

*Estimated Realisable Value.

Notes:

1. Pre-Appointment Cash at Bank

At the date of liquidation there was \$3,338,481 in the Company's accounts with the Bank of Queensland ("BOQ").

These accounts were frozen shortly after our appointment. The funds are under the control of the Liquidators and are currently bearing interest.

2. Pre-Appointment Debtors

At the date of our appointment, the Company's records disclosed debtors of \$5,153,894.11. This amount represented unpaid levies owed to the Company by Lot Owners.

	Note	\$
Outstanding levies on appointment		5,153,894.11
Levies recovered directly	A	19,506.40
Levies paid to VRL by the Trustees	B	2,088,372.72
Adjustment to debts by the Liquidators	C	154,328.10
Levies remaining outstanding	D	2,891,686.89

A. We issued demand notices to the debtors and recovered \$19,506.40 of outstanding levies as a result of these notices.

B. \$2,088,372.72 was recovered during the Statutory Trustees distribution by offsetting outstanding debts against the funds owed by Owners, pursuant to the Court Order dated 25 March 2022 (attached at **Appendix D**).

- C. Amounts written off by the Liquidators for disputed debts or due to being incorrectly recorded in the Company's records.
- D. Clarification from the Court is required for the Liquidators to offset outstanding debts against any distribution the debtors are entitled to as a shareholder of the Company. Please refer to Section 4.3 of this report for further information on this process. Until clarification is received, the recoverable amount is unable to be determined.

3. Distribution from Statutory Trustees

Over time, the Company acquired 1,126.5 timeshare weeks within the Resort. A full breakdown of weeks owned by VRL can be found at **Appendix A**.

The Trustees have made payment to the Company of \$15,320,298.57 for these holdings. These funds are now under control of the Liquidators.

4. ASIC Security Bond

The Company ceases to hold an AFS licence with the Australian Securities and Investments Commission ("ASIC"). ASIC held a security bond of \$20,000 relating to licence. The security bond is currently held in a term deposit with the Australia and New Zealand Banking Group Ltd ("ANZ").

The Liquidators have lodged forms with ASIC in July 2023 to discharge the security bond and recover the funds. On 8 February 2024, ASIC posted a public notice to discharge the security bond. This notice must appear on the website for three months prior to the bond being discharged and the funds being recovered by the Liquidators.

5. Taxation Matters

The Liquidators are required to bring the Company's tax obligations up to date prior to paying a dividend to creditors or a distribution to shareholders.

Mutuality Principle

We lodged a Private Ruling application with the ATO regarding the use of the mutuality principle for the Company.

The mutuality principle is based on the proposition that an organisation cannot derive income from itself. The principle provides that where a number of persons, such as the members of a club, contribute to a fund created for a common purpose, any surplus arising from the use of that fund is not income.

The Liquidators sought clarification regarding the application of this principle to maintenance levies and late fees on those levies earned by VRL. Ultimately, the ATO ruled that maintenance levies and late fees on those levies are not assessable income.

The Liquidators also sought clarification as to whether the mutuality principle applied to disregard any net capital gain the Company has from the sale of its interest in the resort and business. The private ruling clarified the mutuality principle cannot be applied in such regard.

Now this ruling has been received, we are preparing and will lodge the final tax return for the Company.

FRCGW

A number of the Lot entitlements owned by the Company within the building were subject to FRCGW. Refer to Section 2.3 for a list of Lots subjected to FRCGW, and **Appendix A** for details of Lots owned by the Company.

We will be claiming FRCGW in the Company's final tax return. Given there may be a significant liability due to the capital gain from the sale of the Timeshare weeks. Any refund of the FRCGW is yet to be determined.

Taxation Clearance

We are required to seek clearance from the ATO prior to paying a dividend to creditors. This clearance will be sought as soon as we are in a position to do so.

Shareholder Distribution – Tax implications

A shareholder distribution from a liquidator can give rise to a number of tax implications for shareholders. The distribution may be capital or revenue in nature, impacting shareholders' taxable positions. The distribution may also be eligible for franking credits currently held by the Company.

These are matters we are currently reviewing to ensure the best outcome for shareholders.

6. Unsecured Creditors

Currently, unsecured creditor claims total \$7,101.

The exact amount due to unsecured creditors will not be determined until such time as:

- The tax payable by the Company has been determined;
- All creditors have lodged their Proof of Debt; and
- We have adjudicated those Proofs of Debt.

A dividend to creditors must be paid prior to a distribution of surplus funds to shareholders.

Section | FOUR

4. MATTERS REQUIRING COURT DIRECTION

We intend to seek direction from the Court in relation to the following matters. We have engaged legal representatives for this purpose. The timeline of future steps in the administration are dependent on the progress of these Court proceedings.

It also means the estimated timeline and work required to be completed in this administration could change drastically, should the proceedings not progress as anticipated.

We intend to report to shareholders following completion of the matters set out below, and in the event our legal advice indicates to us an alternative approach ought to be taken.

4.1 Shareholder Clarification

The Company's articles of association provide that:

- in order to qualify as a member (i.e., a shareholder) of the Company a person must be a "co-owner" of a Lot (meaning they must either be a registered owner or entitled to be registered as owner of one of a 1/51 fractional interests in a Lot); and
- the Company is entitled to treat the registered holder of any share as the absolute owner of that share.

In effect, the ownership of shares in the Company is stapled to the ownership of Lots at the Resort.

As discussed in previous reports, the Company's member registry was not maintained in accordance with the requirements of the articles of association and does not match the list of registered owners per Titles Queensland's Registry.

We have identified that:

- certain shares have been transferred without the associated fractional interest in a Lot being transferred;
- certain fractional interests in Lots have been transferred without the membership register being updated to reflect the transfer; and
- certain fractional interests in Lots have been further divided (for example, by multiple people sharing a 1/51 fractional interest).

As a consequence, distribution in accordance with the current register would lead to a situation where people who do not have any entitlement to a distribution would receive one, and people who ought to be entitled to a distribution would not.

Extensive work has been conducted throughout Trustees' appointment to establish a list of those who rightly have a claim to the Resort's sale proceeds.

We intend to seek confirmation from the Court that a distribution from the Liquidators ought to be made to those parties paid by the Trustees.

4.2 Distribution to Shareholders in Court Liquidations

The Company was wound up pursuant to 461(k) of the *Corporations Act 2001* (Cth) (the "Act"). In a Court ordered liquidation, the liquidator is required to seek approval from the Court prior to paying a distribution of surplus funds to shareholders, pursuant to section 488(2) of the Act.

This approval is not required prior to making a payment to creditors.

4.3 Outstanding Levies Offset

At the date of our appointment, the Company records disclosed debtors of \$5,153,894.11. Over \$2 million was recovered during the Statutory Trustees distribution by offsetting debts against funds owed to Lot Owners, pursuant to the Court Order dated 25 March 2022.

Over \$2.8 million in pre-appointment debtors remains outstanding. We have sought legal advice as to whether the amount owed by those members may be set-off against any distribution which may be made to them, and are advised that there is no express mechanism within the Act which entitles a liquidator to offset amounts payable by members against distributions which may be owed to them.

We intend to seek directions from the Court under cl 90-15(1) of the *Insolvency Practice Schedule (Corporations)* ("IPSC") as to whether we are entitled to offset the levy debts that remain outstanding against any distribution the debtors are entitled to as a shareholder of the company.

We have estimated these debtors could be entitled to approximately \$1.4 million, meaning if successful, these funds would instead be available for distribution to non-debtor shareholders.

In the event the Court does not allow the set-off of those debts against distributions then we will need to take advice on, and consider, whether it is feasible to pursue debt claims against the delinquent members.

4.4 Liquidators' Remuneration

It is estimated the costs of the administration will be approximately \$550,000 to \$800,000 (excluding GST).

This has increased from our initial estimate due to more work than anticipated being required surrounding the following:

- Level of enquiries from shareholders;
- Verification around shareholdings and the Lot title interests;
- Correspondence with ASIC regarding the release of their bond;
- Preparation and investigations into the Company's tax liabilities including;
 - Preparation of multiple tax returns;
 - Obtaining a private ruling on mutuality of income;
 - Work surrounding the quantification and classification of the income received by the Liquidators from the Statutory Trustees.
 - Advice on tax effective shareholder distributions (i.e. franking credit, revenue vs capital);
- Seeking approval from the Court to pay a distribution to members;
- Seeking direction from the Court on the shareholders of the company; and

- Work required and directions on the offsetting of outstanding entitlements of shareholders with outstanding levies.

The Company was wound up by the Court pursuant to section 461(k) of the Act. In a Court ordered liquidation, a liquidators' remuneration determination can, relevantly, be made by:

- a resolution of creditors; or
- if approval is not made by creditors, by the Court.

Pursuant to 60-10 of the IPSC, any person with a financial interest in this external administration may make an application to the Court for a review of the remuneration determination, unless the determination was made by the Court.

Given the scale of our fees in comparison to creditor claims, and financial interest of shareholders in our fees, we intend to seek approval of our remuneration by the creditors and advise the Court of our remuneration approved.

In the event our remuneration is not approved by the creditors we will be required to apply to the Court for approval.

Section | FIVE

5. WHAT HAPPENS NEXT

We are proceeding with the liquidation, including:

- Responding to shareholder enquiries;
- Responding to creditor enquiries;
- Completing and lodging the outstanding Company's final tax returns;
- Calling and holding a creditor meeting (shareholders are not entitled to attend this meeting);
- Adjudicating on creditor claims;
- Paying a dividend to creditors;
- Obtaining control of ASIC security bond funds;
- Obtaining legal advice on the matters discussed in Section 4, with a view to, where appropriate, seeking direction of the Court in respect of:
 - Verification of the Company's shareholder list;
 - Approval to distribute surplus funds to shareholders in a Court liquidation;
 - The Liquidators' ability to offset outstanding levies against distributions to shareholders; and
 - Liquidators' remuneration
- Reporting to shareholders on the progress of the administration;
- Investigating tax implications of a distribution to shareholders and identifying the most efficient way of distributing surplus funds;
- Calculation of shareholder distribution entitlements; and
- Paying a distribution of surplus funds to shareholders;

Further updates will be provided when information becomes available and warrants a further report.

Section | SIX

6. FREQUENTLY ASKED QUESTIONS – UPDATED

6.1 What do I need to do?

We will contact you if we require any action from you.

6.2 Why haven't I received a distribution from the Trustees?

The Trustees have now made a distribution to Lot Owners.

If you have not received payment, the Trustees have withheld your payment because:

1. You have not confirmed your bank account details, and/or
2. You have not provided all requested authorisation documents, and/or
3. Your lot holding is disputed.

The Trustees are now investigating these matters further.

If you have been requested to provide further documentation, please send these documents to trustees@voyagerresort.com.au

6.3 How was my distribution from the Trustees calculated?

Please refer to your distribution statement, including the notes to the statement, for information about how your payment has been calculated.

6.4 Why have I received multiple distribution statements?

Lot Owners have received a distribution statement from the Trustees for each Lot they held weeks in, as the calculation differs between each Lot.

For example, if you hold 2 weeks in Lot 5 and 1 week in Lot 6, you will receive one statement for Lot 5 and one statement for Lot 6.

6.5 Why is the HTW Valuation Report amount different to the sale price?

This valuation was performed in accordance with the Court Order dated 25 March 2022. This is the assessed value attributed by Herron Todd White.

6.6 Are the funds held by the Liquidators earning interest?

The Liquidators have transferred \$19.5 million into a 3-month term deposit at market rates.

The Liquidators approached a broker to find the best available rate.

The remaining funds are held in an interest-bearing account with Macquarie Bank at market rates.

Refer to **Appendix B** for a summary of receipts and payments in the administration to date.

6.7 When will I receive my distribution from the Liquidators?

The timeframe for a distribution to shareholders is dependent on the progress of the matters discussed in this report, particularly matters requiring Court approval discussed at Section 4.

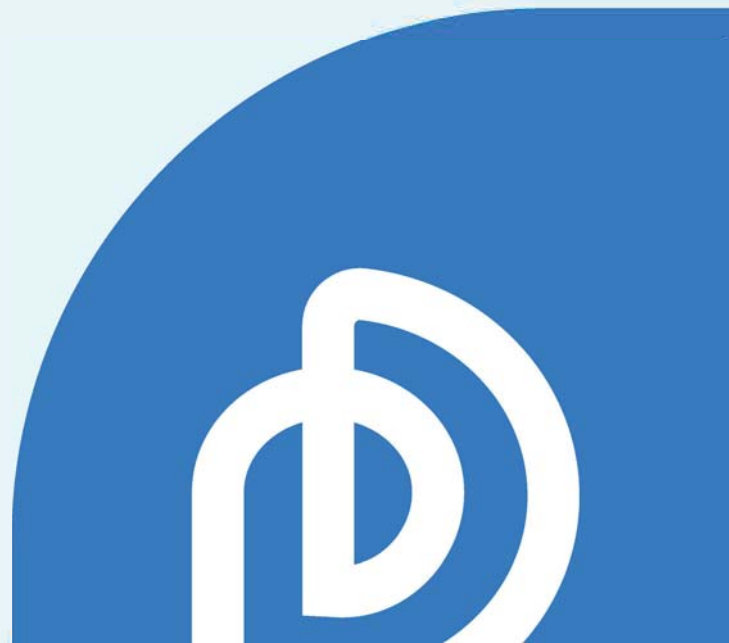
We are unable to provide an estimated date for payment at this time. Further updates on the progress of the administration will be provided in due course.

6.8 Who can I contact if I have a question?

For any enquiries relating to the liquidation and a payment to shareholders, please contact voyager@pilotpartners.com.au

For any enquires relating to the Trustees' distribution, please contact trustees@voyagerresort.com.au

Appendix A



Lot Number	Percentage of Lot Owned by VRL	No. of Weeks Owned by VRL	Distribution Received by VRL (\$)
3	29.41%	15	180,683.59
4	54.90%	28	352,266.08
5	43.14%	22	288,558.38
6	47.06%	24	301,942.35
7	54.90%	28	344,771.06
8	58.82%	30	385,458.32
9	64.71%	33	441,671.00
10	58.82%	30	385,458.32
11	49.02%	25	311,177.29
12	37.25%	19	246,666.56
13	39.22%	20	270,356.19
14	54.90%	28	363,508.61
15	52.94%	27	339,685.15
16	54.90%	28	367,256.13
17	43.14%	22	300,336.28
18	35.29%	18	236,093.22
19	27.45%	14	183,628.06
20	49.02%	25	341,291.22
21	39.22%	20	283,740.16
22	23.53%	12	163,819.79
23	29.41%	15	198,751.95
24	62.75%	32	441,135.64
25	29.41%	15	214,812.71
26	31.37%	16	220,567.82
27	25.49%	13	173,991.60
28	58.82%	30	417,579.85
29	50.98%	26	375,821.87
30	19.61%	10	139,193.28
31	23.53%	12	162,213.71
32	21.57%	11	154,584.85
33	25.49%	13	189,650.85
34	25.49%	13	182,691.18
35	37.25%	19	259,381.33
36	31.37%	16	226,992.12
37	39.22%	20	294,447.33
38	19.61%	10	141,870.08
39	27.45%	14	192,996.84
40	11.76%	6	85,925.08
41	47.06%	24	356,548.95
42	23.53%	12	171,850.17
43	21.57%	11	153,112.61
44	50.98%	26	375,821.87
45	50.98%	26	341,548.91
46	41.18%	21	303,548.43
47	25.49%	13	182,691.18
48	33.33%	17	248,004.96
49	29.41%	15	198,806.80
50	31.37%	16	233,416.43
51	25.49%	13	186,171.02
52	56.86%	29	430,829.98
53	45.10%	23	310,232.44
54	30.39%	15.5	230,271.20
55	9.80%	5	72,273.44
56	33.33%	17	223,320.44
57	19.61%	10	136,056.57
58	29.41%	15	197,047.45
59	25.49%	13	189,650.85
60	33.33%	17	225,314.38
61	35.29%	18	247,013.05
62	21.57%	11	145,791.65
TOTAL		1126.5	15,320,298.57

*All figures have been rounded to 2 decimal places. The actual amounts paid may vary slightly due to being calculated with the maximum accuracy allowable with our software.

Appendix B



Voyager Resort Limited (In Liquidation)
ACN 142 651 965
Receipts and Payments
For the Period 2 May 2023 to 26 April 2024

Amount (\$)

RECEIPTS

Pre-appointment cash at bank	3,357,228.20
Pre-appointment debtors	19,506.40
Pre-appointment debtors (received from Statutory Trustees)	2,088,372.72
Lot holdings owned within Resort	15,320,298.57
Refund from Telstra	17.03
Interest income	90,837.02
	<u>20,876,259.94</u>

PAYMENTS

Commission on recovery of debts	1,662.94
IT consulting fees	11,000.00
Legal costs paid pursuant to QLD Supreme Court Order dated 2 May 2023	89,064.06
Legal fees	7,557.00
Website subscription	19.95
	<u>109,303.95</u>

Net Receipts (Payments) **20,766,955.99**


REPRESENTED BY

Cash at Bank as at 26 April 2024	1,266,955.99
Term Deposit with BOQ	19,500,000.00
	<u><u>20,766,955.99</u></u>

Appendix C



CR 2024/23 - The Trustee for the Voyager Resort - tax consequences for former timeshare owners

 This cover sheet is provided for information only. It does not form part of *CR 2024/23 - The Trustee for the Voyager Resort - tax consequences for former timeshare owners*



Status: **legally binding**

Class Ruling

The Trustee for the Voyager Resort – tax consequences for former timeshare owners

❶ Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences arising for the former timeshare owners of Voyager Resort at 167 Old Burleigh Road, Broadbeach, Queensland from the sale of that property and from related events.
2. Details of this scheme are set out in paragraphs 16 to 27 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if all of the following apply:
 - You are a former timeshare owner in the Voyager Resort (Resort).
 - You were entitled to a share of the proceeds from the sale of the property at 167 Old Burleigh Road, Broadbeach, Queensland.
 - You were an Australian tax resident during the 2021–22, 2022–23, or 2023–24 income years.

When this Ruling applies

5. This Ruling applies from 1 July 2021 to 30 June 2024.

Status: **legally binding**

Ruling

Capital gains tax

6. CGT event A1 happened in respect of your timeshare interest in the Resort when the statutory trustees were appointed by court order on 25 March 2022, and the time of that event is in the 2021–22 income year.
7. Your capital proceeds from this CGT event A1 were the share of the sale proceeds you were entitled to receive from the trustees – that is from the sale of the property at 167 Old Burleigh Road, Broadbeach, Queensland.
8. You will have a capital gain from CGT event A1 if your share of the sale proceeds exceeded the cost base of your former timeshare interest.
9. You can disregard any capital gain or capital loss if you acquired your whole timeshare interest before 20 September 1985.

Interest income

10. You include a proportionate share of the interest income derived by the trustees in your assessable income for each of the 2022–23 and 2023–24 income years. For each year, your proportion of the total interest income (received by the trustees in that year) will be the same proportion as your share of the sale proceeds.
11. The trustees will advise you of the amount of interest income to be included in your assessable income for each of the 2022–23 and 2023–24 income years.

Penalties and interest charges

12. We will remit all penalties that may apply because you failed to lodge a tax return for the 2021–22 or 2022–23 income years, provided:
- you lodge your return by 31 May 2024, and
 - the requirement to lodge a return arises because of the matters dealt with in this Ruling.
13. We will remit all penalties that may apply to any false or misleading statements made on your tax returns for the 2021–22 or 2022–23 income years provided:
- those statements related to the omission of income connected to the ending of your timeshare interest in the Resort, and
 - you request an amendment of your income tax assessment to include this income and to reflect the Commissioner's position in this Ruling by 31 May 2024.
14. We will remit all applicable interest charges where you request we amend your assessment, or you lodge your tax return, consistent with this Ruling by 31 May 2024.
15. In the event any penalty or interest charge is applied by our systems, you will need to phone **13 11 42**, and explain that you are requesting a remission of interest and penalties consistent with this Ruling and to quote the reference number CR 2024/23.

Status: **legally binding**

Scheme

16. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, you cannot rely on this Ruling.

17. Voyager Resort was a block of apartments at 167 Old Burleigh Road, Broadbeach, Queensland, with 62 strata-titled lots.

18. Lots 1 and 2 and the common areas of the Resort were owned by Voyager Resort Limited (the company) since the 1980s.

19. Lots 3 to 62 each had 51 timeshare ownership rights which were held by 1,017 timeshare owners. The company was one of the timeshare owners.

20. When a timeshare owner acquired a timeshare interest in the Resort, they acquired a share in the company, and a fractional interest in a lot of the Resort.

21. The titles of Lots 3 to 62 show the fractional ownership of each timeshare owner for the relevant lot. The titles also show that the lots are subject to 99-year leases made by the timeshare owners to the company. Those leases began on 27 December 1984.

22. The trustees were appointed as statutory trustees for sale of Lots 3 to 62 of the Resort, by an order of the Supreme Court of Queensland, made on 24 March 2022, under section 38 of the former *Property Law Act 1974* (Qld).

23. The court order:

- vested all scheme lots in the trustees, to be held upon trust to sell them and hold the proceeds, after paying costs and expenses, and any net income until sale (after paying rates, taxes, insurance, et cetera properly payable out of that income)
- required the trustees to appoint a valuer to determine the proportionate share of each Lot (a share) in the purchase price
- authorised the trustees to sell all lots jointly, together with the company selling Lots 1 and 2.

24. The court order required the trustees to distribute the proceeds in this order:

- (i) discharge encumbrances
- (ii) pay fees and costs associated with holding or selling the Resort (including agents fees, rates, et cetera)
- (iii) reimburse trustees for properly incurred expenses
- (iv) pay the proceeds for Lots 1 and 2 to the company
- (v) divide the balance into shares (1 for each Lot), with each share being divided into 51 co-owner shares, and pay the co-owner share to the co-owner (after deducting any debts), with different procedures for any outstanding mortgages.

25. The Resort was sold in the 2022 calendar year, with settlement occurring in late December 2022. The sale was effected by 2 interdependent sale contracts – one for the trustees, and one for the company.

26. The trustees and the purchasing entity were both willing but not anxious participants in the contract.

CR 2024/23

Status: **legally binding**

27. The trustees placed the sale proceeds of Lots 3 to 62 of the Resort into interest-earning bank accounts while they began finalising distributions to timeshare owners.

Commissioner of Taxation

10 April 2024

Status: **not legally binding**

Appendix – Explanation

❶ ***This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.***

Table of Contents	Paragraph
Capital gains tax	28
Interest income	39
Administrative penalties	43
Interest charges	47

Capital gains tax

28. CGT event A1 happens if you dispose of a capital gains tax (CGT) asset. See subsection 104-10(1).

29. You dispose of a CGT asset if a change of ownership occurs from you to another entity, whether because of some act or event or operation of law. However, a change of ownership doesn't occur if you stop being the asset's legal owner but you continue to be its beneficial owner. See subsection 104-10(2).

30. The Commissioner's view is that CGT event A1 happens when a court appoints statutory trustees for sale. ATO Interpretative Decision ATO ID 2009/129 *Capital gains tax: land vested in a statutory trustee for sale, CGT event A1 or CGT event E1?* says a court order appointing statutory trustees for the sale of co-owned property effects a disposal. The order vests the property in the trustees and authorises them to convert the property into money. The co-owners lose their interest in the property, and receive a personal claim against the trustees to collect their share of the proceeds of sale.

31. Following ATO ID 2009/129, CGT event A1 happened to the timeshare owners' interests in Lots 3 to 62 when the statutory trustees were appointed.

32. Subsection 104-10(3) says the time of the event (for CGT event A1) is:

- when you enter into the contract for the disposal, or
- if there's no contract, when the change of ownership occurs.

33. The time of the event will be the court order date. The trustees were appointed by court order in March 2022, so the timeshare owners didn't enter a contract disposing of their timeshare interests in the Resort. Therefore, the time of the event will be when the court orders effected the change of ownership in March 2022, which is during the 2021–22 income year.

34. You have a capital gain from CGT event A1 if your capital proceeds for the CGT event are more than your cost base. See subsection 104-10(4).

35. Section 116-20 says the capital proceeds are the money and market value of property you have received (or are entitled to receive) in respect of the event happening.

36. Section 116-30 says that if you received no capital proceeds from a CGT event, you are taken to have received the market value of the CGT asset that's the subject of the CGT event.

Status: **not legally binding**

37. On these facts, the Commissioner accepts that timeshare owners capital proceeds in respect of the disposal of their timeshare interests (to the trustees) is equal to the share of the sale proceeds they will later receive from the trustees.

38. Timeshare owners will have a capital gain if their share of the sale proceeds is more than the cost base for their timeshare interest.

Interest income

39. Interest income is ordinary income under section 6-5, and derived when it's received or credited.

40. Division 6 of Part III of the *Income Tax Assessment Act 1936* applies to trust income. The interest derived by the trustees is trust income and is included in the net income of the trust estate in the income year they received it.

41. Under section 97 of the *Income Tax Assessment Act 1936*, beneficiaries who are presently entitled to a share of the income of the trust estate include their share of the net income of the trust estate in their assessable income for the corresponding income year.

42. In these circumstances, the Commissioner accepts that each timeshare owner was presently entitled to a percentage share of the total interest income derived by the trustees equal to their percentage share of the total sale proceeds.

Administrative penalties

43. Subdivision 284-B of Schedule 1 to the *Taxation Administration Act 1953* (TAA) is about administrative penalties for making false or misleading statements. Taxpayers may be liable for penalties if they make a statement to the Commissioner that's false or misleading in a material particular.

44. Division 286 of Schedule 1 to the TAA is about penalties for failing to lodge documents on time. Taxpayers may be liable for an administrative penalty if they are required to give a document to the Commissioner by a particular day and fail to do so.

45. The Commissioner has a discretion to remit administrative penalties under section 298-20 of Schedule 1 to the TAA.

46. The Commissioner will remit any penalties for timeshare owners that may be applicable if the timeshare owners lodge their returns or seek amendments of their assessments by 31 May 2024 and comply with the requirement in paragraphs 12 and 13 of this Ruling.

Interest charges

47. There are 2 types of interest charges. Shortfall interest charge (SIC), worked out under Division 280 of Schedule 1 to the TAA, applies on any additional income tax payable as a result of an amended assessment. General interest charge (GIC), worked out under section 5-15 and Part IIA of the TAA, applies to late payments. Section 280-160 of Schedule 1 to the TAA allows the Commissioner to remit SIC, and section 8AAG of the TAA allows the Commissioner to remit GIC, in circumstances specified in those provisions.

48. Law Administration Practice Statement PS LA 2006/8 *Remission of shortfall interest charge and general interest charge for shortfall periods* says it may be appropriate to remit SIC in some circumstances, including where the delay in reporting correctly

Status: **not legally binding**

arose from circumstances outside the taxpayer's control, or where the taxpayer couldn't have been aware of the shortfall when lodging the return.

49. Law Administration Practice Statement PS LA 2011/12 *Remission of General Interest Charge* says it may be appropriate to remit GIC where:

- the Commissioner is satisfied that the circumstances contributing to delayed payment arose because of events beyond their control, and they took reasonable steps to mitigate, or
- ordinary and reasonable members of the community (who pay tax on time) would agree that it's fair and reasonable for the Commissioner to remit GIC.

50. The Commissioner considers that it's appropriate to remit SIC and GIC so long as:

- the SIC or shortfall GIC is solely attributable to shortfalls or tax liabilities arising from the income tax issues addressed in this Ruling
- the timeshare owners amend their assessments or lodge the relevant tax returns by 31 May 2024
- the relevant amendments or lodgments adopt the position outlined in this Ruling.

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 Div 6
- ITAA 1936 97
- ITAA 1997 5-15
- ITAA 1997 6-5
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(2)
- ITAA 1997 104-10(3)
- ITAA 1997 104-10(4)
- ITAA 1997 116-20
- ITAA 1997 116-30
- TAA 1953 Pt IIA
- TAA 1953 8AAG
- TAA 1953 Sch 1 Div 280
- TAA 1953 Sch 1 280-160
- TAA 1953 Sch 1 Subdiv 284-B
- TAA 1953 Sch 1 Div 286
- TAA 1953 Sch 1 298-20
- Property Law Act 1974 (Qld) 38 (repealed)

Other references:

- ATO ID 2009/129
 - PS LA 2006/8
 - PS LA 2011/12
-

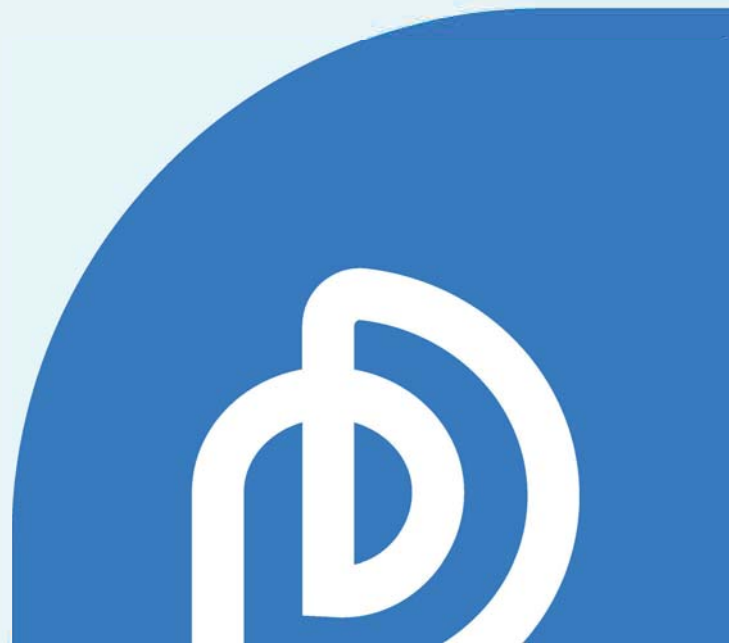
ATO references

NO: 1-10A72FWD
 ISSN: 2205-5517
 BSL: PW
 ATOLaw topic: Administration ~~ Interest charges
 Capital gains tax ~~ CGT events ~~ A1 - disposal of a CGT asset
 Income tax ~~ Trusts ~~ Trust income ~~ Beneficiary assessable - section 97

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Appendix D



Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: BS13638/21

Applicant: **VOYAGER RESORT LTD ACN 010 547 618**

AND

Respondents: **ALAN SKELTON and the others described in the SCHEDULE OF RESPONDENTS**

ORDER

Before: Ryan J

Date: 25 March 2022

Initiating document: Originating Application filed 16 November 2021

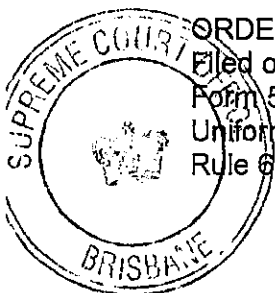
THE ORDER OF THE COURT IS THAT:

1. Service is deemed to have been effected on:
 - (a) the One Hundred and Fourth Respondent;
 - (b) the One Hundred and Forty Eighth Respondent;
 - (c) the One Hundred and Seventy Seventh Respondent;
 - (d) the Two Hundred and Forty Second Respondent;
 - (e) the Two Hundred and Ninety Seventh Respondent;
 - (f) the Three Hundred and Thirty Second Respondent;
 - (g) the Four Hundred and Eleventh Respondent;
 - (h) the Six Hundred and Fifty Seventh Respondent;

ORDER

Filed on behalf of the Applicant
Form 59, Version 1
Uniform Civil Procedure Rules 1999
Rule 661

Mahoneys
Level 18, 167 Eagle Street
Brisbane Qld 4000
Tel: 07 3007 3777
Fax: 07 3007 3778
Ref: 25203



- (i) the Six Hundred and Seventy Third Respondent;
 - (j) the Eight Hundred and Sixty Fourth Respondent;
 - (k) the Nine Hundred and Eighth Respondent;
 - (l) the One Thousandth and Twenty Third Respondent.
2. Notwithstanding non-compliance with paragraphs 3(a) and 6(a) of the Order made on 9 December 2021, the hearing of this application proceed.
 3. Geoffrey Graeme Heaton, Geoffrey Philip Walters and Angela Julian-Armitage (the **Trustees**) be appointed trustees of each of Lots 3 to 62 (inclusive) on BUP 6459 (the **Scheme Lot(s)**), and collectively with Lots 1 and 2 on BUP 6459, the **Property** and **Lot(s)**).
 4. Each Scheme Lot thereupon vest in the Trustees, subject to encumbrances affecting the entirety or any encumbrance which, prior to the appointment of the Trustees, affected any undivided share of a Scheme Lot, to be held by them upon trust to sell the same and to stand possessed of the share of the net proceeds, after payment of costs and expenses, and of the net income until sale after payment of rates, taxes, costs of insurance, repairs properly payable out of income and other outgoing, and pursuant to the priority in Order [11].
 5. The Trustees have liberty to apply without notice for directions in relation to the performance of their duties.
 6. The applicant's costs be paid on the indemnity basis and paid out of the proceeds of sale before division.


THE COURT DIRECTS THAT:

7. The Trustees:
 - (a) keep proper books of account in relation to all amounts received or expended by them;
 - (b) take out and maintain appropriate insurance;
 - (c) shall not be entitled to any remuneration;
 - (d) appoint a registered valuer to determine, following the Trustees entering into a contract of sale, the proportionate share of each Lot in the purchase price payable under the contract of sale, based on the respective value that each Lot represents to the value of all other Lots in the Property (once determined the **Share**), where such determination will, except in the case of manifest error, be final and binding on all respondents.

8. The Trustees may sell all Lots jointly:
 - (a) and so that they settle simultaneously;
 - (b) with the applicant in any sale of Lots 1 and 2 on BUP 6459
9. The Trustees be excused from complying with s 39(1) of the *Property Law Act 1974* (Q).
10. The net income of each Scheme Lot, after payment of rates, taxes, costs of insurance, repairs properly payable out of income and other outgoings, be paid to the applicant.
11. The proceeds of sale after payment of all expenses of and incidental to such sale be distributed in the following manner and priority:
 - (a) First, in discharge of any valid encumbrance over the title to the Property;
 - (b) Second, in payment of agent's commission, auctioneers and auction fees associated with the sale of the Property;
 - (c) Third, in payment of expenses and reasonable legal costs and disbursements incurred upon the sale of the Property;
 - (d) Fourth, in adjustment of council rates, water rates and other statutory imposts;
 - (e) Fifth, in payment of the costs of the applicant's costs of this proceeding;
 - (f) Sixth, in payment of the properly incurred expenses of the Trustees;
 - (g) Seventh, by the Share for Lots 1 and 2 being paid to the applicant;
 - (h) Eighth, by the Trustees retaining and dividing the balance into the Shares, before dividing each Share into fifty-one shares (each such share, a **Co-Owner Share**);
 - (i) Ninth, where a respondent's fractional interest in a Scheme Lot was not the subject of a registered mortgage immediately before sale, by paying the Co-Owner Share to that respondent Co-Owner after deduction of any debt due and owing to the applicant on account of any unpaid contributions;
 - (j) Tenth, where a respondent's fractional interest in a Scheme Lot was the subject of a registered mortgage immediately before sale, by:
 - (i) giving notice in writing to each such respondent Co-Owner and each such mortgagee as to the amount of the Co-Owner Share; and
 - (ii) thereafter, paying the Co-Owner Share as directed in writing by the respondent Co-Owner and the mortgagee, or as otherwise ordered by any court, but in any case where the Co-Owner Share is to be paid or is payable to the Co-Owner respondent, only after deduction of any

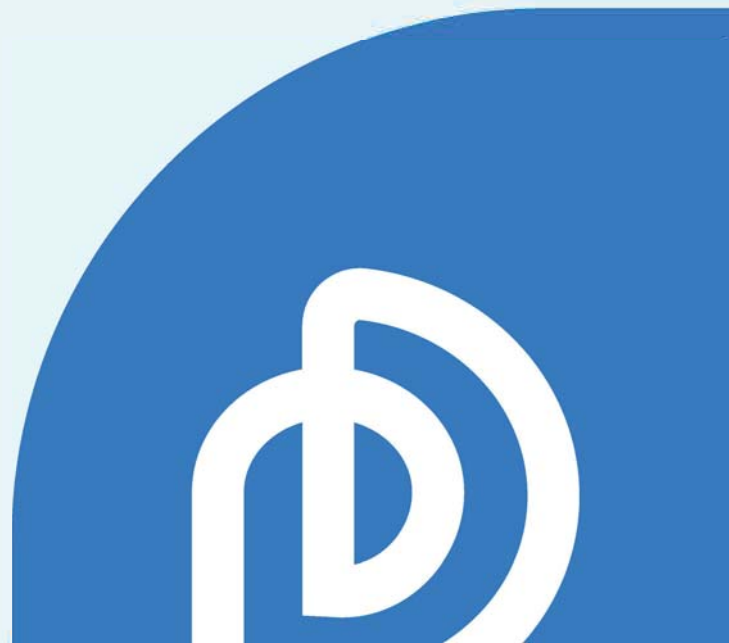
debt due and owing to the applicant on account of any unpaid contributions.

Signed:


Deputy Registrar



Appendix E





ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 43

Insolvency: a guide for shareholders

If a company is in financial difficulty, it can be put under the control of an independent external administrator. The role of the external administrator depends on the type of external administration.

This information sheet gives general information for shareholders on the three most common forms of external administration (liquidation, voluntary administration and receivership). Other forms of external administration are beyond the scope of this information sheet.

Liquidation

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

1. when creditors vote for liquidation following a voluntary administration or a terminated deed of company arrangement, or
2. when an insolvent company's shareholders resolve to liquidate the company and appoint a liquidator. Within 11 days of being appointed by shareholders, the liquidator must call a meeting of creditors who may confirm the liquidator's appointment or appoint another liquidator of the creditors' choice.

In a court liquidation, a liquidator is appointed by the court to wind up a company following an application, usually by a creditor.

The liquidator's role

The liquidator's 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 which may be recoverable, any uncommercial transactions which may be set aside, and any possible claims against the company's officers
- enquire into the failure of the company and possible offences by people involved in 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 unsecured creditors, and

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.

- apply for deregistration of the company on completion of the liquidation.

Except for lodging documents and reports required under the *Corporations Act 2001* (Corporations Act), a liquidator is not required to do any work 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 primary duty is to all of the company's creditors. The shareholders rank behind the creditors and are unlikely to receive any dividend in an insolvent liquidation unless they also have a claim as a creditor.

In a court liquidation, the liquidator is not required to report to the shareholders on the progress or outcome of the liquidation.

The liquidator is not required to hold a meeting of shareholders during a creditors' voluntary liquidation. A joint meeting of the creditors and shareholders must be held at the conclusion of the winding up.

Shareholders in both types of insolvent liquidation can request that the liquidator call separate meetings of shareholders and creditors to decide whether a committee of inspection should be appointed and, if so, who will represent the shareholders and creditors on the committee. However, the shareholder(s) making the request must pay the costs of calling and holding these meetings. A committee of inspection assists the liquidator, approves their fees and, in limited circumstances, approves the use of some of their powers.

A transfer of shares in a company or alteration of status of shareholders during a liquidation will not be effective unless the liquidator gives their written consent or the court permits. The liquidator or the court will need to be satisfied that the transfer of shares, or the alteration in the status of shareholders, is in the best interest of the company as a whole and does not breach other sections of the Corporations Act that deal with the rights of shareholders.

When giving written consent to a transfer of shares in a company or alteration of status of shareholders, the liquidator can impose conditions which must be satisfied before the transfer or alteration is effective. In the case of a transfer of shares, the current shareholder, the prospective shareholder, or a creditor, may apply to the court to set aside any or all of 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 to have effect. A shareholder or a creditor may also apply to the court to authorise an alteration in the status of shareholders if the liquidator refuses the alteration.

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

If a liquidator makes a written declaration that they have reasonable grounds to believe there is no likelihood that 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 the liquidator, the deregistration of a company at the end of the liquidation also enables realisation of any capital loss.

Financial reporting

Listed and very large companies usually have financial reporting obligations under the Corporations Act. ASIC has given relief so that such companies don't need to comply with these obligations if they

are in liquidation. Also, public companies in insolvent liquidation don't need to hold annual general meetings (this does not apply to a section 509 meeting).

The liquidator must lodge a detailed list of their receipts and payments for the liquidation with ASIC every six months. A copy of these statements of receipts and payments may be obtained from any ASIC Business Centre, on payment of the relevant fee. The liquidator must also make them available at their office for inspection by shareholders and creditors.

Voluntary administration

Voluntary administration is designed to resolve a company's future direction quickly. 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 the company's business.

If this isn't possible, 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.

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:

1. end the voluntary administration and return the company to the directors' control
2. 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
3. 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.

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.

The voluntary administrator must also report to ASIC on possible offences by people involved with the company.

If a deed of company arrangement 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, 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 deed is not completed and the company goes into liquidation as a result, the directors cannot use their powers, as discussed in the liquidation section above.

Shareholders and voluntary administration

A voluntary administrator isn't required to report to shareholders on the progress or outcome of the voluntary administration. Shareholders don't get to vote on the future of the company.

A transfer of shares in a company or alteration of status of shareholders during a voluntary administration will not be effective unless the voluntary administrator gives their written consent or the court permits. The voluntary administrator or the court will need to be satisfied that the transfer of shares, or the alteration in the status of shareholders, is in the best interest of the company as a whole and does not breach other sections of the Corporations Act that deal with the rights of shareholders.

When giving written consent to a transfer of shares in a company or alteration of status of shareholders, the voluntary administrator can impose conditions which must be satisfied before the transfer or alteration is effective. In the case of a transfer of shares, the current shareholder, the prospective shareholder, or a creditor, may apply to the court to set aside any or all of 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 to have effect. A shareholder or a creditor may also apply to the court to authorise an alteration in the status of shareholders if the voluntary administrator refuses the alteration.

Shareholders are bound by a deed of company arrangement approved by creditors. Also, 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 an application to the court by the deed administrator to approve a share transfer.

If a deed administrator makes a written declaration that they have reasonable grounds to believe there is no likelihood that shareholders will receive any further distribution at any time in the future, 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.

Financial reporting

The statutory financial reporting obligations of listed and very large companies remain while they are in voluntary administration or under a deed of company arrangement. ASIC has given relief so that a company in voluntary administration may defer meeting its financial reporting obligations for six months after the appointment of the voluntary administrator. ASIC may grant relief to a company under voluntary administration or subject to a deed of company arrangement from the requirement to hold an annual general meeting.

To get the benefit of this relief, ASIC must be notified that it is being relied on and the administrator must answer, free of charge, reasonable inquiries from shareholders about the administration during the deferral period. If the company is listed, the relevant stock exchange must also be told. The relief also provides for the use of alternative methods of distributing an annual report to shareholders at the end of the period.

At the end of this deferral period, if the company is still in voluntary administration or under a deed of company arrangement, ASIC may give the company an exemption or further deferral from all or some of their financial reporting obligations in certain circumstances.

ASIC may also give an extension of time for the annual general meeting or decide to take no action for failure to hold the annual general meeting if a public company is in voluntary administration or under a deed of company arrangement.

A voluntary administrator and a deed administrator must lodge a detailed list of receipts and payments with ASIC every six months and at the end of their administration. A copy of these statements of

receipts and payments may be obtained from any ASIC Business Centre, on payment of the relevant fee.

Receivership

A company goes into receivership when an independent and suitably qualified person (the receiver) is appointed by a secured creditor or, in special circumstances, by the court to take control of some or all of the company's assets. A secured creditor is someone who has a charge, such as a mortgage, over all or some of a company's assets.

Court receiverships are not covered in this information sheet.

The powers of the receiver are set out in the charge document and the Corporations Act.

If a receiver has, under the terms of their appointment, the power to manage the company's affairs, they are known as a receiver and manager.

The receiver's role

The receiver's role is:

- to collect and sell enough of the charged assets to repay the debt owed to the secured creditor
- if they have been appointed under a fixed charge (e.g. over land, plant or equipment), to pay out the money collected:
 - first, to pay the secured creditor, and
 - second, if there are any funds left over, to pay this surplus to the company or its other external administrator if one has been appointed
- if they have been appointed under a floating charge (e.g. over cash, debtors or stock), to pay out the money collected:
 - first, to pay priority claims (including certain employee entitlements)
 - second, to pay the secured creditor, and
 - third, if there are any funds left over, to pay the company or its other external administrator if one has been appointed, and
- to report to ASIC any possible offences or other 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 charged property, which often includes the company's business, is taken away from them.

Directors must provide the receiver with a report about the company's affairs and must allow the receiver access to books and records relating to the charged property.

Shareholders and receivership

The receiver's primary duty is to the company's secured creditor. The main duty owed to unsecured creditors and shareholders is an obligation to take reasonable care to sell charged property 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.

There is no obligation for the receiver to report to the shareholders on the progress or outcome of the receivership.

Financial reporting

The statutory financial reporting obligations of listed and very large companies remain while it is in receivership, as do the requirements for public companies to hold annual general meetings.

However, ASIC has given relief so that a company with a receiver appointed to the whole or substantially the whole of its property may defer meeting its financial reporting obligations for six months after the receiver's appointment.

To get the benefit of this relief, the receiver must tell ASIC they are relying on it, and agree to answer, free of charge, reasonable inquiries from shareholders about the receivership during the deferral period. If the company is listed, the relevant stock exchange must also be told. The relief also provides for the use of alternative methods of distributing an annual report to shareholders at the end of this period.

At the end of this deferral period, ASIC may give an exemption or further deferral from all or some of the financial reporting obligations, in certain circumstances. ASIC may also give an extension of time for the annual general meeting, or decide to take no action for failure to hold the annual general meeting.

The receiver must lodge a detailed list of their receipts and payments for the receivership with ASIC every six months. A copy of these statements of receipts and payments may be obtained from any ASIC Business Centre, on payment of the relevant fee.

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 voluntary administration, liquidation and receivership, see ASIC's related information sheets, available at www.asic.gov.au/insolvencyinfosheets:

- INFO 74 *Voluntary administration: a guide for creditors*
- 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 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. The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.

You may also wish to check the website of the external administrator's firm and the company's website for any information on a particular external administration.