PO Box 409 Dickson ACT 2602
Ph 02 5104 9620

Slaven Torline
ABN 34 631 903 172

Deed of Company Arrangement Fact Sheet

Deed of Company Arrangement Overview

A deed of company arrangement (**DOCA**) is a binding arrangement between a company and its creditors setting out how the company's affairs will be dealt with to resolve the company's debt problems without having to liquidate the company.

A DOCA is formulated and proposed by the directors and/or a third party during the voluntary administration of a company and is detailed and assessed in the administrator's major report. Creditors then are asked to accept the terms of the DOCA by passing a resolution that the company execute a DOCA at the major meeting of creditors.

Objective

A DOCA aims to maximise the chances of the company, or as much as possible of its business, continuing and provide a better return for creditors than from a winding up.

In many instances, a DOCA proposal will provide for a lump sum payment funded from external sources and periodic payments over a time period specified in the DOCA.

A DOCA can also provide for the re-capitalisation of a company and the sale of all or a portion of the its assets.

If the company business continues to trade, DOCA contributions can be made from ongoing trading profits.

If creditors vote for the DOCA proposal, the company must execute the DOCA within 15 business days of the creditors' meeting at which the resolution to accept the DOCA was passed. In certain circumstances, the Court may allow a longer time for a company to execute the DOCA.

If the DOCA is not executed, the company will automatically go into liquidation, with the voluntary administrator becoming the liquidator.

A DOCA will end when:

- the terms of the DOCA are met in full by the company;
- it is terminated under the terms of the DOCA due to a default;
- the creditors resolve to terminate the DOCA due to a default; or
- the Court orders that the DOCA be terminated due to a default or any other reason

Role of the deed administrator

The DOCA will set out who is to be the deed administrator. Generally the person who is appointed as the voluntary administrator will then by a resolution of creditors, be appointed as the deed administrator.

The deed administrator's role is to ensure that the company complies with the DOCA terms. The deed administrator usually does not play an active role in the management of the company and is not liable for debts incurred by the company during the period it is subject to a DOCA.

When all of the DOCA funds are received (or where applicable, prior to receiving the total), the deed administrator is responsible to review and adjudicate on creditors' claims and pay the funds to creditors in proportion to their claims.

In circumstances where the DOCA is not complied with, the deed administrator can convene a meeting of creditors to resolve to vary the DOCA in a way that may better ensure it is complied with or terminate the DOCA and wind up the company.

PO Box 409 Dickson ACT 2602
Ph 02 5104 9620

Slaven Torline
ABN 34 631 903 172

Consequences to officeholders, employees, members & creditors of a DOCA

Officeholders

Upon execution of a DOCA, the company is returned to the hands of the director(s) and they are bound by the terms of the DOCA.

In circumstances where the directors have provided personal guarantees, the temporary suspension of creditors holding personal guarantees from exercising their respective guarantees is lifted.

Employees

Employee entitlements are put on hold upon the appointment of a voluntary administrator. Any DOCA proposal must ensure that employee entitlements are paid in priority to other creditors and that employees are no worse off that they would be in a winding up of the company.

This ultimately means that a DOCA must provide for employee entitlements (excluding superannuation) to be paid in full as these entitlements are provided for in a winding up under the Commonwealth Governments Fair Entitlements Guarantee Scheme.

Superannuation must also be paid as a priority prior to any funds flowing to unsecured creditors in a DOCA.

In circumstances where a DOCA does not provide for payment of outstanding entitlements (excluding superannuation) in full, employees can, at an eligible employee meeting convened by the voluntary administrator, vote to accept the return offered under the DOCA. This would generally only occur in circumstances where there is a bona fide benefit to employees (e.g. if it ensured continued employment with the company). Outstanding superannuation must be paid in full and cannot be compromised by a resolution of employees.

Members

Members are, like directors, bound by the terms of the DOCA.

Shares in a company subject to a DOCA may be transferred with the deed administrators consent.

Creditors

Secured creditors are not bound by the DOCA and are not prevented from realising or dealing with their respective securities.

The exception to the above is in circumstances where a secured creditor votes for the DOCA then, that secured creditor is bound by the terms of the DOCA.

Owners or lessors of property are also not bound by the DOCA and are not prevented from any rights they have regarding their property.

The exception to the above is in circumstances where an owner or lessor votes for the DOCA then, that owner or lessor is bound by the terms of the DOCA.

A DOCA binds all ordinary unsecured creditors, even if they voted against the proposal. The return to ordinary unsecured creditors under the DOCA represents full and final satisfaction of their debt as at the date of the appointment of the voluntary administrator by the Company.

Advantages of a DOCA

- The company is provided with the opportunity to start fresh.
- Creditors are provided a better return than they would receive from a winding up.
- Directors are not subject to insolvent trading or voidable transactions claims.
- DOCAs are a commercial versatile tool for returning a company to financial health.
- Employees have a better chance of retaining their employment with the restructured entity

Disadvantages of a DOCA

- Secured creditors are not restricted from enforcing their security.
- Personal guarantee holders are not prevented from enforcing their guarantees.
- There is often uncertainty surrounding the company's ongoing viability and ability to meet the terms of a DOCA.

For more information on deed of company arrangements visit: slaventorline.com.au