

Insolvency and consumer rights

Where to go for help

For any queries or complaints regarding an insolvent company, you should contact the appointed external administrators. Notices advising of most appointments of external administrators are published in newspapers or on the administrators' website.

If you know the name of the external administrator concerned, you can enter their details into our [search function](#). It will provide you with the relevant contact details.

Your local Office of Fair Trading may also have information about the appointment of external administrators for insolvent companies.

If the external administrator fails to deal with your queries or complaints, you can lodge a [complaint](#) online or by calling 1300 300 630.

How insolvency may affect you as a consumer

If a company becomes insolvent and goes into external administration, as a consumer you may become an unsecured creditor.

An insolvent company is one that is unable to pay its debts when they are due. The three most common insolvency procedures are voluntary administration, liquidation and receivership.

What is external administration?

External administration is a term which covers all types of insolvency arrangements. Liquidator, voluntary administrator and receiver are all external administrators, although their duties and responsibilities differ. An external administrator is sometimes referred to as an insolvency practitioner.

As an unsecured creditor, you will be affected by their appointment in much the same way, regardless of which type of appointment is made.

How do I know if a company I'm dealing with is insolvent?

Insolvency notices are published in newspapers or can be found through an online search engine.

Am I an unsecured creditor?

You will be affected by the appointment of an external administrator and may be an unsecured creditor if you have:

- paid in full for goods or services to be collected or delivered later
- paid a deposit, such as in a lay-by agreement or interest-free offer
- bought a gift card or voucher and have not used it
- returned a product and been issued a credit note.

I am an unsecured creditor. What does this mean?

The Corporations Act determines the order in which the external administrator is to repay money owed by a company to certain creditors. Consumers will generally be [ordinary unsecured creditors](#) and as such do not have any priority under the Corporations Act and will only be paid after monies owing to other classes of creditors have been repaid.

The company I am having issues with is under administration, but they are still trading. Are they allowed to do that?

Yes. During a period of external administration companies often continue trading under the control of the external administrator.

If the external administrator has announced that the company will honour the specific offers or transactions – such as gift cards or lay-bys – you should follow the directions given by the administrator. For any queries regarding goods or services you have paid for, contact the external administrator.

What can I do if the company has stopped trading?

If the company ceases trading, you will need to register with the external administrator as an ordinary unsecured creditor to recover your money. The insolvency process will determine whether you receive the goods paid for, a full or partial refund, or nothing.

In certain circumstances where you have paid for a product or service by way of a credit arrangement (credit card or loan arrangement) and the product or service does not arrive because the company has gone into external administration, you may be able to request a chargeback on the transaction from your financial institution or bank that issued the credit card. You should make this request as soon as possible as there may be time limits on chargeback claims.

What about my product guarantees or warranties?

If you are concerned about guarantee or warranty claims on goods purchased through the company, you should contact the external administrator. You may also have rights against a manufacturer, in circumstances where they offer a voluntary warranty. It is important to remember that the consumer guarantees in the Australian Consumer Law give consumers rights against the manufacturer or importer in certain circumstances. Further information on the consumer guarantees is available on the [ACCC website](#).

Compensation funds may be available for specific industries.

Some states and territories have programs in place where consumer losses in specific industries may be redressed through a compensation fund or similar arrangement. In some instances you may be able to apply for compensation where a company is insolvent.

Contact your local Office of Fair Trading to find out what is available in your state or territory.

Legal terms

What is voluntary administration?

Voluntary administration is a mechanism for insolvent companies which allows them to carry on running their business. It is done when, in the opinion of the voluntary administrator, it is in the best interests of the company, its creditors and members to do so.

The role of the voluntary administrator allows them to investigate the company's affairs and to report to creditors about the future of the company.

When a company goes into voluntary administration, the voluntary administrator takes full control of the company with a view to managing the company's affairs during which period decisions are taken about whether the company should continue trading, and if so, what arrangements need to be put in place to give the company the best chance of remaining viable.

A voluntary administrator is usually appointed by a company's directors, after they decide that the company is insolvent or likely to become insolvent.

What is liquidation?

Liquidation is the process of winding up a company's financial affairs in order to provide for an orderly dismantling of the company's structure, appropriate investigations, and the fair distribution of the company's assets to its creditors. This occurs either because the company can't pay all of its debts, or its shareholders want to end the company's existence. In limited circumstances, a liquidator might be in a position to continue the business of a company to enhance the prospects of a sale.

What is receivership?

A receiver is appointed by a secured creditor/s, typically a bank or other financial institution. This can occur during voluntary administration or liquidation. The role of the receiver is to realise sufficient funds to repay the debt owed to the secured creditor/s. When a company is in voluntary administration or liquidation, an appointment of a receiver is intended to protect the interests of the company's secured creditor/s.

Priority of creditors

There are various laws that govern the ranking of creditors and their priority. Generally speaking, the ranking of creditors is as follows:

1. The expenses of the external administrator and money owed to secured creditors (who may hold a security such as a mortgage over land). Depending upon the type of security held by a secured creditor, employees who are owed wages, payments and superannuation, may have priority over secured creditors.
2. Unsecured creditors given priority under the Corporations Act including:
 - costs and fees of the external administrator;
 - wages, payments, and superannuation contributions payable to the employees; and
 - amounts due in respect of injury compensation.

Ordinary unsecured creditors

An ordinary unsecured creditor has a debt owed by the company but no collateral security. Under Australian legislation, apart from shareholders, ordinary unsecured creditors are last in line to recover their debts and often there are insufficient funds remaining to repay unsecured debts (in full or in part).