



PERSONAL BANKRUPTCY AND LIQUIDATION OF A COMPANY

This publication has been jointly prepared between Australian Financial Security Authority (AFSA), Australian Securities and Investments Commission (ASIC) and the Australian Restructuring Insolvency and Turnaround Association (ARITA).

This publication is about how personal bankruptcy and the liquidation of a company can interact. It is for people in business and their advisers. It sets out:

- when you may be liable for your business's debts
- what happens when you become bankrupt or your company goes into liquidation
- what happens to your company if you become bankrupt
- what happens to your personal liabilities if your company goes into liquidation
- how to get the right advice
- how to avoid untrustworthy advisers.

When are you liable for your business's debts?

Many people operate their business through a company to avoid personal liability for the company's trading debts and to protect their personal assets if the business fails.

If the company cannot pay its debts, and you cannot pay your debts either, the company could go into liquidation and you may become bankrupt. If you operate a business in your own name or in partnership with someone, rather than through a company, you will be personally liable for its debts and may become bankrupt if you are unable to pay them.

It is important to understand what is involved in both bankruptcy and liquidation and how they interact.

If you operate a business through a company, the company owns the assets of the business and is liable for any debts incurred in running that business. You, as a director or shareholder, are generally not personally liable for the company's trading debts and other liabilities.

However, you may become personally liable for director penalties equal to the unpaid or estimated amounts if your company fails to:

- meet a pay as you go (PAYG), goods and services tax (GST) or superannuation guarantee charge (SGC) liability in full, or
- lodge returns by the due date.

Banks or suppliers may also require you to give a personal guarantee against any unpaid liabilities of the company. This means that if the company cannot pay, you become legally responsible for the debts.

In a situation where the business is not doing well, both the company and you may come under pressure from people you owe money to (creditors) demanding payment. It is important that you seek appropriate trustworthy professional advice and act on that advice. Seeking this advice early may mean you have more options to deal with the debts.

If the company continues to trade after becoming insolvent and incur debts that it cannot pay when they become due, you may become personally liable for those debts if the company is placed into liquidation, regardless of whether you gave a personal guarantee or not.

What happens when you become bankrupt or your company goes into liquidation?

You can become bankrupt in one of two ways:

- by your own choice through a debtor's petition – this is known as a voluntary bankruptcy, or
- because a court orders that you become bankrupt, on the application of one of your creditors (creditor's petition).

When you become bankrupt, a trustee in bankruptcy is appointed. A trustee is a qualified registered professional responsible for administering your bankrupt estate. Visit the AFSA website for [more information about bankruptcy](#).

Your company can go into liquidation in one of two ways:

- by a resolution of shareholders – this is known as a voluntary liquidation, or
- because a court orders that your company be wound up, usually based on a creditor's winding-up application – this is known as a court liquidation.

When your company goes into liquidation, a liquidator is appointed. A liquidator is a qualified registered professional responsible for administering the liquidation of your company. Visit the ASIC website for [more information about company liquidations](#).

There are other types of appointments that can help you deal with the debts owed by a company and may enable the business to continue trading, such as small business restructuring or voluntary administration. You can find out if these options are suitable for your circumstances by speaking to a trustworthy and professional adviser as early as possible.

To find out more about small business restructuring, visit ASIC's [Restructuring and the restructuring plan FAQs](#) and read ARITA's [Small business restructuring factsheet](#).

What happens to your company if you become bankrupt?

If you become bankrupt, you cannot continue as a company director. Any shares you own in the company pass to (or vest in) your trustee in bankruptcy. You no longer own the shares and it is up to the trustee to decide what happens next.

Depending on the circumstances, the trustee may liquidate the company if this has not already occurred or sell shares if they can and use the money to pay your creditors.

If the trustee does place the company into liquidation, you have an obligation to help the liquidator and provide information to them about the company's business, property, affairs and financial circumstances.

The trustee may decide not to take any action if the company has no assets or if there is little or no value in the company. If this occurs, a creditor may make a court application to put the company into liquidation and appoint a liquidator.

Bankruptcy has serious consequences and you should seek trustworthy advice if you are considering it.

What happens to your personal liabilities if your company goes into liquidation?

If your company is put into liquidation, responsibility for administering the company is passed to the liquidator. As a director, you must help the liquidator and provide information to them about the company's business, property, affairs and financial circumstances. However, you are no longer in control of the company and the liquidator decides how the liquidation proceeds.

Unless you are bankrupt, you remain liable for your separate personal debts (e.g. your personal credit card) and any company debts you guaranteed. You remain responsible for any debts you may owe to the company (e.g. to repay a loan received from the company). You may also be responsible for unpaid employer superannuation contributions, some tax debts and debts incurred if the company traded while insolvent.

The liquidator will investigate the company's business, property, affairs and financial circumstances. This includes determining if there are any assets worth recovering for the creditors' benefit. They will also look to see if a claim exists against you as a director or shareholder; including for:

- failing to prevent the company from trading and incurring debt while insolvent
- breaches of directors' duties (visit the ASIC website for [more information on directors' duties](#)).

They will also investigate whether there are any transfers of assets that can be recovered for creditors.

If you do not become bankrupt, the company's liquidation only resolves the company's obligation to its creditors. It does not resolve your separate personal debts or guarantees, and you will need to pay these.

Get the right advice

Business failure can result in legally complicated outcomes. These outcomes can include asset recovery actions and penalties against you, if you do not comply with your legal obligations.

You should consult a qualified specialist as soon as possible if you suspect that you or your company cannot pay debts when they are due. For example, you can consult:

- a registered trustee (to discuss your personal financial situation)
- a registered liquidator (to discuss your company's financial situation), or
- a trusted accountant or lawyer.

Many registered trustees are also registered liquidators, however they cannot generally act in both capacities at the same time for you and your company.

Often, a registered trustee or registered liquidator will meet with you at no cost to provide preliminary advice on your options. However, it is important to know that, once appointed, a liquidator or trustee does not act for you personally or your adviser – they act for the benefit of your creditors or your company's creditors.

Be wary of untrustworthy advisers

Certain advisers will target individuals or company directors whose businesses or individual circumstances may be in financial distress and suggest taking actions that could be illegal. For example, they may suggest you transfer assets to another person or company without that person or company paying full value for them.

These actions can lead to serious consequences for individuals and company directors, including potentially large fines or imprisonment. It is important you know what you are paying for and that the advice you are given does not cause you to break the law or breach your duties.

There are warning signs that an adviser is untrustworthy. For example, they may:

- contact you unexpectedly
- suggest you transfer assets owned by you, or your company, to another person or company for low or no payment. This can damage the claims of your or the company's creditors
- be reluctant to provide their advice in writing. You should always ask for any advice to be provided in writing, so you have a record
- tell you they use a 'friendly' trustee or liquidator. However, by law a registered liquidator or trustee, if formally appointed to externally administer your company or administer your bankrupt estate, cannot act for you personally or your adviser. By law they must act independently
- tell you to withhold or delay providing your records to your trustee or the company's books and records to the liquidator. This is an offence.

Visit the AFSA website for [more information about untrustworthy advisers](#).

Visit the ASIC website for [more information about seeking appropriate advice as a company director](#).

Glossary

If there are any terms in this document that you are not familiar with, you can visit [AFSA's online glossary](#) and [ASIC's glossary of insolvency terms](#) for definitions of key terms.

Disclaimer: The material contained in this publication is general advice only. You are encouraged to seek independent professional advice for your circumstances.