



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 194

Protecting yourself when you provide goods and services on credit

This information sheet explains some of things you should consider before choosing to provide credit to a company. It explains:

- secured and unsecured creditors
- which creditors are paid first in instances of liquidation
- the Personal Property Securities Register (PPSR).

Who is a creditor?

You are a creditor of a company if the company owes you money. Usually, a creditor is owed money because they have provided goods or services, or made loans to the company.

There are generally two categories of creditor:

- secured – a creditor who has a security interest, such as a charge or a mortgage over some or all of the company's assets, to secure a debt owed by the company. Lenders usually require security when they provide a loan. The best way for a creditor to secure their interest is by registering it in the PPSR, an online register of all personal property that has security interests registered against it
- unsecured – a creditor who does not have a security interest over the company's assets.

For more information for creditors about liquidation, liquidators and employee entitlements, see:

- Information Sheet 45 *Liquidation: a guide for creditors* (INFO 45)
- Information Sheet 46 *Liquidation: a guide for employees* (INFO 46)
- Information Sheet 160 *Disputes about employee entitlements* (INFO 160).

Who gets paid first when a company is in liquidation?

If a company is in financial difficulty, its shareholders, creditors or the court can put the company into liquidation. Put simply, liquidation is the process by which a company's assets are sold, its debts paid as far as possible and the company is closed or deregistered.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Priority rules are relevant when the same personal property is subject to two or more security interests. If the debtor defaults, the rules determine the order of priority in which the various secured parties can enforce their security interests.

Generally:

- a secured creditor will have priority over an unsecured creditor
- priority between two secured creditors is determined on a first-in-time basis
- there is no priority between unsecured creditors (see below).

Therefore, the liquidator will only pay unsecured creditors if there are funds left over after payment of the costs of liquidation and payment to secured creditors and employees.

Generally, the order in which funds are distributed after payment of liquidation costs and secured creditors is:

1. outstanding employee wages and superannuation
2. outstanding employee leaves of absence, including annual leave, sick leave (where applicable) and long service leave
3. employee retrenchment pay
4. unsecured creditors.

Each category is paid in full before the next category is paid. If there are insufficient funds to pay a category in full, the available funds are paid on a pro rata basis (and the next category or categories will be paid nothing).

How can you protect your interest as a secured creditor?

The best way to protect your security interest as a creditor is by registering the interest in the PPSR, especially if your business:

- includes retention of title clauses in their sale agreements
- manufactures goods for others or provides raw materials that are then processed or assembled as part of another product
- provides goods under hire-purchase agreements or consignment
- leases or bails goods, or
- grants licenses to others to use their products, trademarks and other intellectual property – for example, software licences.

You can register your interest online at www.ppsr.gov.au.

For most security interests, the time at which they are registered affects priority, so you should consider registering your interest early.

You can also search the PPSR at a fee for any other security interests that may have been taken over the assets of the company to which you are providing credit or goods and services.

What you should do

If you intend to provide goods and/or services without being paid first

Consider whether you need to protect yourself against default on payment, or the company going into liquidation.

You can enter an agreement to secure your interests against the property of the company or business. You should get legal advice about how to secure your interest under a contract.

<p>If you have an agreement to secure your interest</p>	<p>Register your interest online at www.ppsr.gov.au.</p> <p>This will assist in tracing any claim you may have to the personal property of the company, and ensure that you are counted among the secured creditors if the company goes into liquidation.</p>
<p>If you have provided goods/services and have not registered an interest</p>	<p>If you have agreed to provide goods and services on credit without a security being provided, you are an unsecured creditor.</p> <p>You can seek legal advice about how to recover your debts from a company that is still trading.</p> <p>If the company is in liquidation, you should contact the liquidator to ensure that they are aware of the debt owed to you.</p> <p>Search for the company name on ASIC's Insolvency Notices website at https://insolvencynotices.asic.gov.au. This will list who the insolvency practitioner is and if there are insolvency notices lodged about the company by an insolvency practitioner, such as notices of creditor meetings.</p>
<p>If you are concerned that a trading partner has obtained goods and services from you on credit when they did not have the ability to pay</p>	<p>You should try to raise your concerns with the company directly and review ongoing trading arrangements.</p> <p>If the company involved is already in liquidation, you should make your concerns known to the liquidator (see the Insolvency Notices website).</p> <p>To check if a company has had a liquidator appointed, you can do an Organisations & Business Names search on ASIC Connect at www.connectonline.asic.gov.au.</p> <p>We recommend you seek legal advice to discuss your options – for example, resolving the matter through mediation, or taking action to wind up the company.</p> <p>If you are unsure about how to access legal advice, contact the Law Society in your state or territory.</p>
<p>If you have questions about the PPSR</p>	<p>Contact the Australian Financial Security Authority (AFSA):</p> <p>Website: www.ppsr.gov.au</p> <p>Tel: 1300 007 777</p> <p>Email: enquiries@ppsr.gov.au</p>

ASIC and disputes about providing goods and services on credit

ASIC does not get involved in disputes about the provision of goods and services, as these are contractual disputes. Contractual disputes are generally about the private rights or interests of individuals and do not affect investors or consumers in the broader economy.

As such, we do not have the legal right to intervene. For this reason, our role in helping you resolve a dispute is limited to suggesting other ways you can best address your concerns. We do not give legal advice.

Where can I get more information?

- For information about ASIC's role, see www.asic.gov.au/our-role.
- For information about the laws we manage, see www.asic.gov.au/legislation.
- Download a copy of Information Sheet 47 *Members of a company* (INFO 47) at www.asic.gov.au/infosheets.

- Download a copy of INFO 160 at <http://www.asic.gov.au/infosheets>.
- Download copies of other insolvency information sheets, such as INFO 45 and INFO 46 at www.asic.gov.au/asic/asic.nsf/byheadline/Resources+-+Insolvency+information+sheets.
- Search ASIC's Insolvency Notices website at <https://insolvencynotices.asic.gov.au/>

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.