Ending a company limited by guarantee

A guide to ending a CLG

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Part 1

Introduction

Introduction

Disclaimer

This guide provides general information about ending a company limited by guarantee. This information is a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to the full disclaimer that applies to this guide.

Your company limited by guarantee (**CLG**) may end voluntarily or be required to end. This guide explains the processes for ending a CLG, including the different requirements for solvent and insolvent CLGs.

It also outlines what insolvency means and what to do if your CLG is experiencing financial difficulty or may be insolvent.

This guide covers:

Part 1.	• **Introduction**
Part 2.	• **When is a CLG insolvent?**
Part 3.	• **Ending a solvent CLG**
Part 4.	• **Ending an insolvent CLG**
Part 5.	• **Choosing a liquidator or administrator**
Part 6.	• **Consequences of ending a CLG**

Ending part of a CLG?

Winding up is generally only required if you want to bring the entire CLG to an end.

If you only want to close a division, service or project, the process will depend on the CLG's constitution. While steps such as redeploying staff, making redundancies, selling assets or ending leases may involve legal issues, they do not affect the CLG's existence.

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Part 2

When is a company limited by guarantee insolvent?

When is a company limited by guarantee insolvent?

This part covers:

- the tests used to determine insolvency
- warning signs of insolvency
- directors' duties when a CLG is experiencing financial difficulty
- practical steps to reduce the risk of insolvency

Under the *Corporations Act 2001* (Cth):

- a person is solvent if, and only if, they can pay all their debts as and when they become due and payable, and
- a person who cannot do so is insolvent.

Determining whether a CLG is insolvent is not always straightforward. A temporary shortage of cash does not necessarily mean a CLG is insolvent, and having assets that exceed liabilities does not necessarily mean it is solvent. Insolvency is assessed by considering the CLG's overall financial position.

For more information about insolvency and the duty to prevent insolvent trading, see our fact sheet 'Insolvency and your organisation'.

The cash flow test

The primary test of insolvency under the Corporations Act is the cash flow test.

This test asks whether the CLG can pay its debts as and when they become due and payable. It requires a realistic assessment of the CLG's current and expected cash flow and whether that cash flow will be sufficient to meet current and future liabilities when they fall due.

The balance sheet test

The balance sheet test may also be relevant when assessing solvency.

Under this test, a CLG's liabilities exceed the value of its assets. While this may indicate insolvency, courts generally place greater weight on the cash flow test and consider the balance sheet test as part of the overall assessment of the company's financial position.

A court will first make an assessment using the cash flow test and then use the balance sheet test to determine whether the CLG is experiencing temporary illiquidity or is in fact insolvent.

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Warning signs of insolvency

The warning signs of insolvency may include:

- ongoing losses
- poor cashflow
- the absence of a business plan
- incomplete financial records or disorganised internal accounting procedures
- lack of cashflow forecasts and other budgets
- increasing debt (liabilities greater than assets)
- problems selling stock or collecting debts
- unrecoverable loans to associated parties
- creditors remaining unpaid outside normal trading terms
- solicitors' letters, demands, summonses, judgements or warrants issued against the CLG
- suppliers placing the CLG on cash-on-delivery terms
- special payment arrangements with selected creditors
- payments to creditors of rounded sums that cannot be matched to specific invoices
- an overdraft limit being reached or defaults on loan or interest payments
- difficulty obtaining finance
- changing banks or lenders, or increased monitoring by a financier
- inability to raise funds from members
- overdue tax or superannuation liabilities
- board disputes, director resignations or the loss of management personnel
- increasing complaints or concerns raised by suppliers, and
- relying on the expectation that the next major contract, grant, fundraising campaign or sale will solve the CLG's financial difficulties

This is not an exhaustive list. Insolvency is assessed by considering the CLG's overall financial position and whether it can pay its debts as they fall due.

Example

Justin is a director of a CLG and is concerned that it may be insolvent.

The CLG has experienced a significant decline in revenue and owes $40,000 to suppliers. Although the board has developed a fundraising plan and negotiated extended payment terms with creditors, the CLG is still unable to pay its debts when they fall due. It also has few assets available to meet its liabilities.

As the CLG cannot pay its debts as and when they become due and payable, it is likely insolvent under the cash flow test. The fact that its liabilities also exceed the value of its assets provides further support for that conclusion.

It is therefore likely that the CLG is insolvent.

Duties of directors of companies

If a CLG is insolvent, or there are reasonable grounds to suspect it may become insolvent, directors must pay close attention to their legal duties.

Directors of CLGs must comply with the duties set out in the Corporations Act. A breach of those duties may expose a director to significant consequences, including civil penalties, compensation proceedings and criminal liability.

For more information about directors' duties, see our duties guide, which covers the key duties of directors of companies, including companies registered as charities with the Australian Charities and Not-for-profits Commission (**ACNC**).

Note

The duties discussed below are duties particularly relevant when a CLG is experiencing financial difficulty or is insolvent. This guide does not cover all duties that apply to directors.

Duty to prevent the CLG from trading while insolvent

Directors have a duty to prevent a CLG from trading while insolvent.

A director may breach this duty if:

- the CLG incurs a debt
- the CLG is insolvent when it incurs the debt, or becomes insolvent by incurring that debt or a combination of debts
- there are reasonable grounds for suspecting that the CLG is insolvent or would become insolvent, and
- the director is aware of those grounds, or a reasonable person in the director's position would be aware of them

The duty applies to every director. It is not limited to the treasurer, directors with financial qualifications or directors who are closely involved in the CLG's finances.

Before the CLG incurs a new debt, directors must consider whether there are reasonable grounds to suspect that the CLG is insolvent or would become insolvent as a result.

Directors must maintain an up-to-date understanding of the CLG's financial position. It is not sufficient to rely on annual financial statements or leave financial oversight to another director. Each director must take reasonable steps to understand the CLG's finances and identify signs of financial difficulty before approving new transactions, contracts or liabilities.

Note

Ignorance is no excuse. A director must not turn a blind eye to the CLG's financial position or leave responsibility for understanding the CLG's finances to other directors.

A director may be protected from liability for insolvent trading if, after suspecting that the CLG may become insolvent, they start developing one or more courses of action that are reasonably likely to lead to a better outcome for the CLG.

A better outcome means an outcome that is better for the CLG than the immediate appointment of an administrator or liquidator.

Factors relevant to whether a course of action was reasonably likely to lead to a better outcome include whether the director:

- took steps to prevent misconduct by officers or employees
- took appropriate steps to make sure the CLG kept proper financial records
- obtained advice from an appropriately qualified adviser
- kept themselves informed about the CLG's financial position, and
- developed or put into effect a plan to restructure the CLG and improve its financial position

Directors should obtain advice from an appropriately qualified insolvency adviser as soon as financial difficulties arise. The availability of this protection depends on the circumstances and is subject to statutory conditions.

Consequences of insolvent trading

A director who breaches the insolvent trading provisions may face civil penalties, compensation proceedings or criminal charges.

Contravening the insolvent trading provisions of the Corporations Act can result in civil penalties against directors, including a pecuniary penalty of the greater of 5,000 penalty units (currently $1,820,000 from 1 July 2026) or three times the benefit obtained and detriment avoided.

A court may also order a director to compensate the CLG for loss or damage resulting from the breach. ASIC or a liquidator may seek a compensation order. In some circumstances, a creditor may also bring proceedings against a director personally.

Compensation liability is potentially significant and may result in a director's personal bankruptcy. A person who becomes bankrupt is disqualified from managing corporations while they remain an undischarged bankrupt.

A director may face criminal liability if the CLG incurs a debt while insolvent and the director's failure to prevent the debt being incurred was dishonest. Criminal penalties may include a fine of up to 2,000 penalty units, currently $728,000 from 1 July 2026, imprisonment for up to five years, or both. A criminal conviction may also disqualify the person from managing corporations.

A director's potential liability does not necessarily end when the CLG stops trading or is deregistered.

Example

Sue is a director of a CLG that provides support services to people affected by bushfires.

Eight months after the board approved the CLG's annual financial statements, a manager asks the directors to approve a $50,000 renovation contract immediately.

Before approving the contract, Sue and the other directors must consider whether there are reasonable grounds to suspect that the CLG is insolvent or would become insolvent by incurring the debt.

Sue cannot rely on financial information that is eight months old. The directors should obtain current information about the CLG's cash flow, debts and expected income to assess whether it can afford the renovations. If the CLG's financial position is unclear, they should seek professional advice.

This responsibility applies to every director, not just the treasurer. Each director must be satisfied that the CLG can pay its debts as and when they become due and payable.

Duty to prevent creditor-defeating dispositions

Directors and officers of a CLG must not cause the CLG to enter into a transaction that is a creditor-defeating disposition.

What is a creditor-defeating disposition?

A creditor-defeating disposition occurs when company property or assets are transferred:

- for less than the lesser of the property's market value or the best price reasonably obtainable, and
- in a way that prevents, hinders or significantly delays the property from becoming available to benefit creditors in a winding up

A director's duty to prevent a creditor-defeating disposition may arise when:

- the CLG is insolvent
- the CLG becomes insolvent because of the disposition, or
- the CLG enters external administration within the period specified by the Corporations Act after the disposition

The creditor-defeating disposition provisions may also apply to a person who procures, incites, induces or encourages the CLG to make the disposition. Depending on the circumstances, this may include a pre-insolvency adviser, lawyer or another person who assists or advises the directors in connection with the transaction.

A contravention may result in civil penalties and compensation orders. If the conduct is dishonest, it may also constitute a criminal offence.

A court may, subject to the applicable requirements and exceptions, order a person to compensate the CLG for loss or damage resulting from the disposition.

A CLG considering the sale or transfer of assets while experiencing financial difficulties should urgently obtain legal advice and advice from an accountant or registered liquidator with insolvency expertise.

Example

A CLG providing community housing services owes $200,000 to creditors and is likely insolvent. The directors arrange for office equipment and a vehicle worth $80,000 to be sold to a director's family member's company for $5,000.

The sale may be a creditor-defeating disposition because the assets were transferred for substantially less than market value and put beyond the reach of creditors. The directors and anyone involved in arranging the transaction may face civil penalties and compensation orders.

Note – director penalty notices

The Commissioner of Taxation may issue a director penalty notice for certain unpaid tax and superannuation liabilities.

If you receive a director penalty notice, seek professional advice immediately. Strict time limits apply and, if action is not taken, the Commissioner may recover the liability from the director personally.

Duty to keep books and records

A CLG must keep written financial records that correctly record and explain its transactions, financial position and performance. The records must be sufficient to support the preparation and audit of accurate financial statements.

A director may contravene the Corporations Act if they fail to take all reasonable steps to make sure the CLG complies with these requirements.

Keeping proper financial records is essential to monitoring solvency. Without reliable and up-to-date records, directors may be unable to assess whether the CLG can pay its debts when they fall due.

If a CLG fails to keep proper financial records, the CLG may be presumed to have been insolvent during the period in which the records were not properly kept. This presumption may apply in proceedings relating to insolvent trading unless evidence establishes otherwise.

Example – failure to keep proper financial records

A CLG that runs a community arts program has not maintained up-to-date financial records for 18 months after its bookkeeper resigned.

When the CLG enters liquidation, the liquidator cannot determine its financial position during that period.

Because the CLG failed to keep proper financial records, it may be presumed to have been insolvent throughout the 18 months. If the directors cannot prove otherwise, they may face liability for debts incurred during that period.

Duties of charities

CLGs registered as charities with the Australian Charities and Not-for-profits Commission (**ACNC**) must also comply with the ACNC Governance Standards. These standards set minimum requirements for the governance of registered charities. A charity must continue to meet the Governance Standards to maintain its registration.

Tip

Check whether your CLG is registered as charity by searching the ACNC charity register.

Governance Standard 5 requires a registered charity to take reasonable steps to make sure its Responsible People understand and comply with specified duties. Directors of a charitable CLG are generally Responsible People.

The duties under Governance Standard 5 are similar to the duties of officeholders in CLGs. Duties that make up Governance Standard 5 include the duty not to allow the charity to operate while it's insolvent.

The obligation to take reasonable steps to make sure Responsible People understand and comply with these duties applies to the charity. However, Responsible People may also have duties imposed directly on them under the Corporations Act, other legislation and the common law.

If a charity does not comply with the Governance Standards, the ACNC may take regulatory action. Depending on the circumstances, this may include:

- issuing a warning
- giving a direction requiring the charity to take or stop specified action
- accepting an enforceable undertaking
- suspending or removing a Responsible Person

- applying administrative penalties, or
- revoking the charity's registration

A breach of an enforceable undertaking or other regulatory requirement may also lead to court proceedings or further penalties.

For more information about the duties of Responsible People, see our duties guide.

Reducing the risk of insolvency

Directors can reduce the risk of insolvency by complying with their legal duties and actively monitoring the CLG's financial position.

Directors of CLGs, and Responsible People of registered charities, should:

- act honestly and with reasonable care and diligence
- act in the CLG's best interests and in accordance with its purposes
- comply with the CLG's constitution
- not misuse their position or information for personal advantage or to benefit another person
- disclose and appropriately manage conflicts of interest, and
- make sure the CLG's financial affairs are managed responsibly

In practice, directors should:

- keep informed about the CLG's financial position, including its cash flow, debts and expected income
- review current financial information regularly rather than relying only on annual financial statements
- make sure the CLG keeps complete and up-to-date financial records
- use cash flow forecasts and realistic budgets
- investigate warning signs of financial difficulty
- avoid allowing the CLG to incur debts if there are reasonable grounds to suspect it cannot repay them
- identify financial risks and take reasonable steps to address them
- record the information considered and reasons for significant financial decisions, and
- seek advice from a qualified accountant, lawyer or insolvency practitioner at the first sign of serious financial difficulty

Tip

Act early. Regular financial monitoring and timely professional advice can give a CLG more options for addressing financial difficulties and reduce the risk of personal liability for directors.

Part 3

Ending a solvent company limited by guarantee

Ending a solvent company limited by guarantee

This part covers:

- voluntary deregistration of a solvent company limited by guarantee (**CLG**), and
- voluntary winding up of a solvent CLG

This part of the guide explains the two ways a solvent CLG can be ended:

- voluntary deregistration, and
- members' voluntary winding up

Voluntary deregistration is only available in limited circumstances. If a CLG does not meet the requirements for deregistration, it must be wound up before it can be deregistered.

Voluntary deregistration of a solvent CLG

In limited circumstances, a CLG can apply to ASIC for voluntary deregistration instead of going through a formal winding up process.

Voluntary deregistration is generally the simplest and most cost-effective way to end a CLG. However, it is only available where the CLG has minimal assets, no liabilities and meets the eligibility requirements discussed below.

A CLG cannot be voluntarily deregistered if it is insolvent or owes money

If the CLG does not qualify for voluntary deregistration, you will need to consider a members' voluntary winding up.

Even if a CLG has stopped operating, it must continue to comply with its legal obligations while it remains registered with ASIC, including payment of annual review fees.

Once a CLG is deregistered, it is no longer a legal entity and its officeholders are generally released from their obligations as officeholders.

Eligibility for voluntary deregistration

To be eligible for voluntary deregistration, a CLG must:

- have the agreement of all members
- no longer be conducting business or carrying out activities
- have assets worth less than $1,000
- have paid all ASIC fees and penalties
- have no outstanding liabilities, including employee entitlements, and
- not be involved in any legal proceedings

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Tip

You can check whether your CLG owes ASIC money through one of ASIC's online lodgement systems. Otherwise, check with your registered agent or contact ASIC.

Any amounts owing must be paid before lodging the deregistration application.

It is also advisable to ensure all tax and superannuation obligations have been finalised before applying for deregistration.

The CLG's liabilities include unpaid employee entitlements such as wages, annual leave, long service leave, redundancy pay and payment in lieu of notice.

ASIC may ask for additional information about the CLG's current or former officers as part of the deregistration process.

Note

Deal with any remaining assets before deregistration. Assets that remain in the CLG's name after deregistration will generally vest in ASIC or the Commonwealth and can be difficult to recover.

For more information, see ASIC's webpage 'Company deregistration and winding up' and ATO's webpage 'Deregistering a company'.

Example – CLG is eligible for voluntary deregistration

A solvent CLG has stopped operating and its members have agreed to end the organisation. The CLG has assets worth less than $1,000, no outstanding liabilities, is not involved in legal proceedings, has paid all ASIC fees and penalties, and has finalised its tax and superannuation obligations.

The CLG is eligible for voluntary deregistration and chooses this option because it is simpler and less expensive than winding up.

Example – CLG is not eligible for voluntary deregistration

A solvent CLG has stopped operating and wishes to end. Although it has no liabilities, is not involved in legal proceedings and has met its ASIC, tax and superannuation obligations, its assets are worth more than $1,000.

The CLG is not eligible for voluntary deregistration and must instead proceed with a members' voluntary winding up.

The process to voluntarily deregister a solvent CLG

Before applying for deregistration, make sure the CLG has dealt with all assets, accounts, registrations and other property.

This may include:

- closing all bank accounts in the CLG's name
- cancelling or transferring registered business names
- transferring, selling or otherwise disposing of CLG property (such as vehicles, land, shares, intellectual property, leases or permits)
- appointing a replacement trustee if the CLG acts as trustee
- cancelling licences held by the CLG, and
- conducting searches to make sure all CLG property has been dealt with

Step 1 **Application**	A CLG, director or member may apply for voluntary deregistration by lodging an 'Application for voluntary deregistration of a company' (ASIC Form 6010) and paying the applicable ASIC fee ($52 as at September 2026). If the CLG is the applicant, it must nominate a person to receive ASIC correspondence about the deregistration. The application must be signed by the applicant. If the applicant is the CLG, a director or secretary may sign on its behalf. ASIC may reject the application if the CLG does not meet the eligibility requirements.
Step 2 **Notice of intended deregistration**	Once ASIC receives the application and fee, it will publish a notice of the proposed deregistration. If the notice is published before the CLG's annual review fee becomes due, the CLG will not need to pay that fee. For this reason, it is sensible to apply for deregistration shortly before the annual review date.
Step 3 **Deregistration**	ASIC will generally deregister the CLG two months after publication of the notice. ASIC will notify the applicant when deregistration occurs.

The effects of deregistration

Once deregistered:

- the CLG is no longer a legal entity
- its property vests in ASIC or the Commonwealth
- former officeholders lose authority to deal with company property
- legal proceedings involving the CLG generally cannot continue, and
- new legal proceedings generally cannot be brought against the CLG.

Because property remaining in the CLG's name usually vests in ASIC or the Commonwealth, it is important to deal with all assets before deregistration.

Members' voluntary winding up of a solvent CLG

If a CLG does not qualify for voluntary deregistration, the only way to voluntarily end the CLG is through a members' voluntary winding up (also called a members' voluntary liquidation).

A CLG may choose to wind up because:

- it no longer wishes to pursue its objects
- it no longer has sufficient members, funding or people to continue operating, or
- it has achieved its purpose

In a members' voluntary winding up, a liquidator takes control of the CLG, realises its assets, pays its liabilities and distributes any surplus in accordance with the Corporations Act and the CLG's governing documents. The CLG is then deregistered.

The process to voluntarily wind up a solvent CLG

Winding up is a process where a liquidator takes control of the CLG, sells the CLG's assets, distributes the proceeds of sale among creditors and members, and the CLG is deregistered and no longer exists.

Step 1 **Declaration of solvency**	A majority of directors must make and lodge a 'Declaration of Solvency' (ASIC Form 520). By signing the declaration, the directors state that they believe the CLG will be able to pay all of its debts in full within 12 months after the winding up begins. The declaration must be lodged with ASIC before notices are sent to members to consider the winding up resolution. It is an offence under the *Corporations Act 2001* (Cth) (**Corporations Act**) to make a false declaration of solvency. If you believe the CLG may be insolvent, see part 4 of this guide.
Step 2 **Special resolution**	After the declaration of solvency has been lodged, the members must pass a special resolution to wind up the CLG. A **special resolution** requires: • proper notice to be given to members, and • at least 75% of votes cast by members entitled to vote to be in favour of the resolution The **notice of meeting** must comply with the requirements of the Corporations Act, including requirements relating to the meeting details, any special resolution and proxy voting rights. The members must also appoint a liquidator. The winding up begins on the date the special resolution is passed. A copy of the special resolution must be lodged with ASIC within 14 days. Notice of the resolution to wind up the company must be published on ASIC's published notices website by the end of the next business day after the liquidator's appointment. For more information on how to publish a notice, see ASIC's published notices website.
Step 3 **Winding up**	Once appointed, the liquidator takes control of the CLG and manages the winding up process.

	The liquidator will: • investigate the CLG's affairs • identify and contact creditors • realise (sell) the CLG's assets • collect any money owed to the CLG, and • distribute funds to creditors and other entitled persons While the CLG is being wound up: • public documents must state that the CLG is 'in liquidation' • only the liquidator may deal with the CLG's property • court permission is generally required to commence or continue legal proceedings against the CLG, and • certain transactions entered into before the winding up may be voidable If, at any stage, the liquidator believes the CLG will be unable to pay its debts in full within 12 months, the liquidator must take further action under the Corporations Act, which may include calling a meeting of creditors or converting the process to an insolvency administration.
Step 4 **Completion of winding up**	Once the liquidator has completed their investigations, realised the CLG's assets and distributed available funds, they must lodge an End of Administration Return (ASIC Form 5603) with ASIC. The liquidator must also notify members who have requested written notice of the lodgement. ASIC will generally deregister the CLG within three months after the form is lodged. Once deregistered, the CLG is no longer a legal entity.

See part 6 of this guide for information about:
- the distribution of assets after winding up
- other steps taken after winding up, and
- the consequences of winding up

Part 4

Ending an insolvent company limited by guarantee

Ending an insolvent company limited by guarantee

This part covers:

- responding to insolvency
- small business restructuring
- voluntary administration
- creditor's voluntary winding up
- simplified winding up
- compulsory winding up by a court

This part of the guide the main options available when a company limited by guarantee (**CLG**) is insolvent.

Responding to insolvency

Financial difficulty and insolvency are serious matters. Acting early may improve the prospects of the CLG surviving and help directors comply with their legal duties.

Note

If there are reasonable grounds to suspect that your CLG is insolvent or approaching insolvency, the directors should avoid allowing the CLG to incur further debts and obtain professional advice as soon as possible.

Tip

A registered liquidator or other suitably qualified insolvency practitioner can review the CLG's financial position and advise on available options.

ASIC maintains a list of registered liquidators. The Australian Restructuring Insolvency & Turnaround Association (**ARITA**) website also contains information about registered liquidators.

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Depending on the CLG's circumstances, options may include:

- small business restructuring
- voluntary administration
- creditors' voluntary winding up
- simplified liquidation, or
- compulsory winding up by a court

The most appropriate option will depend on the CLG's financial position, assets, liabilities and prospects of continuing to operate.

Small business restructuring

Small business restructuring was introduced in 2021 as a formal insolvency process for eligible companies.

It allows an insolvent company to propose a restructuring plan to creditors while the directors remain in control of the company's business, property and affairs.

The process is overseen by a Small Business Restructuring Practitioner (**SBRP**), who must be a registered liquidator.

Small business restructuring is intended to be simpler, quicker and less expensive than voluntary administration.

For more information, see the ASIC webpage 'Restructuring and the restructuring plan'

Eligibility for small business restructuring

To be eligible:

- the company must be incorporated under the Corporations Act
- total liabilities must not exceed $1 million when the restructuring starts
- the company must be insolvent or likely to become insolvent
- employee entitlements that are due and payable must be up to date
- tax lodgements must be up to date
- neither the company nor any relevant director can have used the restructuring process or simplified liquidation process within the previous seven years.

These requirements are applied strictly. A company that does not satisfy all eligibility criteria cannot use the process.

Costs of small business restructuring

The cost will depend on the company and the complexity of its affairs.

Before the restructuring begins, the company and the practitioner must agree on a fixed fee for preparing the restructuring plan and putting it to creditors.

If creditors approve the plan, the practitioner is generally paid a percentage of distributions made under the plan.

The small business restructuring process

Step 1 **Resolution and appointment**	The directors must resolve that: • the company is insolvent, or is likely to become insolvent • an SBRP should be appointed, and • the practitioner's remuneration should be approved

	The practitioner then assesses whether the company is eligible for restructuring.
Step 2 **Restructuring plan**	The directors have 20 business days to develop a restructuring plan with assistance from the practitioner. The practitioner provides the plan to creditors, who then have 15 business days to vote on it. The company continues to operate under the directors' control during this period.
Step 3 **Implementation**	If creditors approve the plan, it is implemented and the company continues operating under the directors' control. The plan cannot run for more than three years. If creditors reject the plan, the company may need to consider other insolvency options, including voluntary administration or liquidation.

Voluntary administration

If your CLG is insolvent, one option is to appoint a voluntary administrator before an application for compulsory winding up is made.

Voluntary administration allows insolvent companies to assess their options and pursue the best outcome for both the CLG and its creditors.

An administrator should be appointed as early as possible to maximise the chances of the CLG surviving.

The major benefits of voluntary administration are that:

- it gives the CLG breathing room from its creditors
- it allows an administrator to investigate the CLG's affairs
- it may increase the prospects of the CLG continuing to operate, or providing a better return to creditors than an immediate liquidation, and
- it helps directors reduce the risk of trading while insolvent

During the administration period:

- creditors, including some secured creditors, are generally prevented from taking action to recover debts, enforce security interests or wind up the CLG
- owners and lessors of property used by the CLG are generally prevented from repossessing that property, and
- guarantees given by directors generally cannot be enforced

These protections give the CLG time to consider its options and determine the most appropriate path forward.

The voluntary administration process

Step 1 **Resolution and appointment**	To appoint a voluntary administrator, the members must pass a special resolution that: • in the opinion of the members voting for the resolution, the CLG is insolvent or is likely to become insolvent at some future time • the CLG should enter voluntary administration, and • a voluntary administrator should be appointed A special resolution requires: • proper notice to be given to members, and • at least 75% of votes cast by members entitled to vote to be in favour of the resolution

	The notice of meeting must comply with the requirements of the Corporations Act and the CLG's constitution. The CLG must lodge a copy of the special resolution with ASIC within 14 days after it is passed. The proposed administrator must consent in writing to the appointment before it takes effect. The administrator must be a registered liquidator. Once appointed, the administrator takes control of the CLG. See part 5 of this guide for information on choosing an administrator.
Step 2 **First creditors' meeting**	The first creditors' meeting must be held within eight business days after the administrator is appointed. The formal business of the meeting is limited to: • considering whether to replace the administrator, and • deciding whether to appoint a committee of inspection The main purpose of the meeting is usually to allow creditors to meet the administrator, ask questions and obtain information about the administration.
Step 3 **Second creditors' meeting**	The administrator investigates the CLG's business, property, affairs and financial circumstances and prepares a report for creditors. The report must set out: • the CLG's financial position • details of any proposed deed of company arrangement (**DOCA**), and • the administrator's opinion about which option is in the creditors' best interests At the second meeting, creditors decide whether: • control of the CLG should return to the directors • the CLG should enter into a DOCA, or • the CLG should be wound up A DOCA is a binding agreement between the CLG and its creditors that sets out how the CLG's affairs will be dealt with. A DOCA will often allow the CLG to continue operating.

Small business restructuring vs voluntary administration

Small business restructuring and voluntary administration are both designed to assist financially distressed companies.

The key difference is who controls the company. Under small business restructuring, directors remain in control of the company while the restructuring practitioner oversees the process. Under voluntary administration, control of the company passes to the administrator.

Small business restructuring is generally designed to be faster, less regulated and less expensive than voluntary administration. For an eligible CLG, it may be the preferred option.

Creditor’s voluntary winding up

If a CLG is insolvent, the members may decide to place the CLG into liquidation before a creditor applies to the court for a compulsory winding up order.

A creditors' voluntary winding up is the most common form of liquidation for insolvent companies.

It may be appropriate where:

- the CLG is insolvent or likely to become insolvent
- a voluntary administration has ended, or
- a DOCA has been terminated

The major benefit of a creditors' voluntary winding up is that the CLG can be wound up without a court order. It also helps directors reduce the risk of insolvent trading.

The creditors’ voluntary winding up process

Step 1 **Resolution and appointment**	The members must pass a special resolution to wind up the CLG and appoint a liquidator. A special resolution requires: • proper notice to be given to members, and • at least 75% of votes cast by members entitled to vote to be in favour of the resolution The notice of meeting must comply with the requirements of the Corporations Act and the CLG's constitution. The CLG must lodge a copy of the special resolution with ASIC within 14 days after it is passed. Before the appointment takes effect, the proposed liquidator must provide written consent to act. A liquidator must be a registered liquidator. See part 5 of this guide for information on choosing a liquidator.
Step 2 **Winding up**	Once appointed, the liquidator takes control of the CLG and begins the winding up process. The liquidator will: • investigate the CLG's affairs • identify and contact creditors • realise (sell) the CLG's assets • collect money owed to the CLG, and • distribute available funds in accordance with the Corporations Act Where the eligibility requirements are met, the liquidator may consider adopting the **simplified liquidation process** (see below).

Simplified liquidation

Simplified liquidation is a streamlined form of creditors' voluntary liquidation available to eligible companies.

It was introduced in 2021 to reduce the cost and time involved in winding up small insolvent companies.

A CLG can only use simplified liquidation after entering a creditors' voluntary winding up.

Eligibility for simplified liquidation

To be eligible:

- the CLG must be in a creditors' voluntary winding up that started on or after 1 January 2021
- liabilities must not exceed $1 million
- the CLG must be unable to pay its debts in full within 12 months
- the directors must provide the required reports and declarations within the required timeframe
- neither the CLG nor relevant directors can have used restructuring or simplified liquidation during the previous seven years, and
- tax reporting obligations must be up to date

The eligibility requirements are applied strictly.

Features of simplified liquidation

Compared with a standard creditors' voluntary winding up:

- creditor meetings are generally not required
- creditors cannot form a committee of inspection
- reporting obligations are reduced
- creditors may request information from the liquidator, and
- only one dividend distribution may be made

These concessions are intended to reduce administration costs and allow the liquidation to be completed more efficiently.

Compulsory winding up

Compulsory winding up occurs when a court orders that a company be wound up.

Grounds for compulsory winding up

The most common ground is insolvency.

A court may also order that a CLG be wound up on a range of other grounds set out in the Corporations Act, including where:

- the CLG resolves that it be wound up by the court
- the CLG has no members
- ASIC recommends winding up in certain circumstances, or
- the court considers it just and equitable to wind up the CLG

People who can apply for a winding up order

Applications for a winding up order may be made by:

- the CLG
- a creditor
- a member
- a liquidator
- ASIC, or
- in some circumstances, Australian Prudential Regulation Authority (**APRA**)

In practice, creditors most commonly apply for winding up orders on the grounds of insolvency.

Statutory demands

A creditor owed at least $4,000 may serve a statutory demand requiring the CLG to pay the debt within 21 days.

Note

If your CLG receives a statutory demand, obtain urgent legal advice immediately.

If the demand is not complied with or successfully challenged within 21 days, the CLG may be presumed to be insolvent and exposed to winding up proceedings.

If the debt is not a judgment debt, the statutory demand must generally be accompanied by an affidavit verifying that the debt is due and payable.

Within 21 days after receiving a statutory demand, the CLG must:

- comply with the demand, or
- apply to the court for an order setting the demand aside

A court may set aside a statutory demand if:

- there is a genuine dispute about the debt
- the CLG has an offsetting claim
- there is a defect in the demand that would cause substantial injustice, or
- there is another sufficient reason

If a CLG fails to comply with a statutory demand, the CLG is presumed to be insolvent unless evidence establishes otherwise.

Example – don't ignore a statutory demand

Kim receives a statutory demand on behalf of a CLG and puts it aside to deal with later.

Before Kim reviews the demand, the creditor has obtained a court order winding up the CLG and a liquidator has been appointed.

Example – responding to a statutory demand

Ron receives a statutory demand on behalf of a CLG.

Ron immediately obtains advice and contacts the creditor. The parties agree on a payment arrangement and the creditor decides not to pursue winding up proceedings.

The winding up application process

The creditor who served the statutory demand may rely on the CLG's failure to comply with the statutory demand and the presumption of insolvency as the basis for making an application to a state court or the Federal Court for an order winding up the CLG.

Step 1 **Court application**	A creditor may apply to a court for a winding up order if the CLG is presumed to be insolvent or another ground for winding up exists.

	The creditor starts the proceeding by filing a court application and supporting documents with the court. If the application relies on a statutory demand, copies of the statutory demand and supporting affidavits will generally be included. The court will set a hearing date. Before the hearing, the creditor must: • obtain the written consent of a registered liquidator to act if a winding up order is made • comply with any applicable ASIC requirements, and • serve the court documents on the CLG within the required timeframes
Step 2 **Court hearing**	At the hearing, the CLG may appear and ask the court to adjourn the matter or oppose the making of a winding up order. If the CLG intends to oppose the application, it will usually need to file and serve court documents setting out the grounds on which it opposes the application, supported by evidence where appropriate. If the winding up application is not opposed, the court will usually make a winding up order if it is satisfied that the legal requirements have been met. Even where the legal requirements have been met, the court may adjourn the matter, dismiss the application or make any other orders it considers appropriate. If the court decides to make a winding up order, it may: • order that the CLG be wound up, and • appoint a liquidator to the CLG The liquidator will usually be the registered liquidator who has already provided written consent to act.
Step 3 **Liquidation**	Once appointed, the liquidator takes control of the CLG. The liquidator will investigate the CLG's finances and affairs, publish notices of the liquidation and contact creditors. Creditors are informed of their rights and given an opportunity to provide information about outstanding debts and the CLG's affairs. The liquidator will collect and realise (sell) the CLG's assets and distribute available funds in accordance with the Corporations Act. While the CLG is in liquidation: • public documents must include the words 'in liquidation' after the CLG's name • only the liquidator may deal with the CLG's property • legal proceedings against the CLG generally cannot be started or continued without the court's permission, and • some transactions entered into before the liquidation may be voidable

See part 6 of this guide for information about:
- the distribution of assets after winding up
- other steps taken after winding up, and
- the consequences of winding up

Part 5

Choosing a liquidator or administrator

Choosing a liquidator or administrator

This part covers:

- factors to consider when choosing a liquidator or administrator
- the costs of liquidation or administration

When a CLG enters liquidation, voluntary administration or small business restructuring, an insolvency practitioner will usually need to be appointed.

Choosing an appropriate liquidator, administrator or restructuring practitioner is an important decision. The practitioner will take control of, or play a significant role in, the process and will be responsible for carrying out a range of duties under the *Corporations Act 2001* (Cth) (**Corporations Act**).

Factors to consider when choosing a liquidator or administrator

Experience

Insolvency appointments are highly regulated and often involve complex legal and financial issues.

When choosing a liquidator or administrator, consider whether they have experience dealing with organisations similar to your CLG and a track record of successfully managing insolvency appointments.

Reputation

As with any professional adviser, reputation is an important consideration.

You may wish to seek recommendations from trusted advisers or other organisations that have previously worked with insolvency practitioners.

See ASIC's list of registered liquidators and the Australian Restructuring Insolvency & Turnaround Association (**ARITA**) website.

Cost

The cost of an insolvency appointment will depend on the complexity of the matter, including factors such as:

- the size of the CLG
- the number of creditors
- the nature and value of the CLG's assets, and
- whether investigations or recovery actions are required

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Before agreeing to an appointment, directors should discuss proposed fees and how those fees will be calculated.

The costs of liquidation or administration

The costs of a liquidation or administration generally cover the work required to:

- investigate the CLG's affairs
- communicate with creditors and other stakeholders
- realise and distribute assets
- deal with claims and disputes
- undertake any necessary recovery action, and
- meet reporting and regulatory requirements

In most cases, the costs of the appointment are paid from the CLG's assets and are subject to approval processes under the Corporations Act.

If the CLG has insufficient assets, the liquidator may explore other sources of funding, including creditor funding arrangements or recovery actions. In some circumstances, a liquidator may seek a contribution from directors to fund the administration.

Where serious misconduct is suspected and there are insufficient assets to fund further investigations, a liquidator may be able to seek assistance from ASIC.

Part 6

Consequences of ending a company limited by guarantee

Consequences of ending a company limited by guarantee

This part covers:

- distribution of assets after winding up (liquidation)
- consequences of winding up (liquidation)
- administrative matters after winding up
- reinstating a deregistered CLG

Distribution of assets after winding up

Funding agreements

Funding agreements often contain clauses dealing with the treatment of funded assets or unspent grant money if the CLG ends.

The CLG should review any funding agreements carefully before distributing assets or finalising the winding up process.

Unspent grant funds may need to be repaid to the funding body, depending on the terms of the funding agreement.

Any surplus property supplied by a government agency must generally be returned to that agency or a body nominated by the agency. Similarly, where government grant funding remains unspent, the remaining funds may need to be returned once outstanding debts, liabilities and, where applicable, winding up costs have been paid.

Commercial contracts may also contain clauses dealing with termination and winding up, including requirements to follow particular exit processes or pay exit fees.

Note

If a funding agreement or contract contains winding up provisions and it is unclear how they operate, seek legal advice.

Priority of payments in a liquidation

During a liquidation, the liquidator takes control of the CLG, realises (sells) its assets, pays outstanding debts and distributes any available funds.

The proceeds of asset sales are distributed to creditors as dividends in the order required by the *Corporations Act 2001* (Cth) (**Corporations Act**).

Employee entitlements have priority over most unsecured creditor claims. Payments are generally made in the following order:

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1. liquidator's fees and expenses
2. employee wages and superannuation
3. employee leave entitlements
4. employee retrenchment pay
5. unsecured creditors

Each category must be paid in full before the next category can receive a distribution. If there are insufficient funds to pay a category in full, creditors in that category receive a proportional distribution.

Liquidation does not affect a secured creditor's rights against secured assets. However, secured creditors often permit assets to be sold by the liquidator, provided their interests are adequately protected.

Deductible gift recipient status

If CLG has deductible gift recipient (**DGR**) status, the process for winding up the CLG remains the same.

However, all DGR-endorsed organisations must have a winding up clause in their constitution dealing with the distribution of surplus assets.

A DGR winding up clause will usually require surplus assets to be transferred to another DGR fund, authority or institution with similar purposes. It will also generally prohibit distributions of profits or surplus assets to members.

If your CLG has DGR status, check the winding up clause in the constitution and ensure that any surplus assets are distributed in accordance with that clause.

Example – distribution to a not-for-profit with similar purposes

A CLG endorsed as a DGR is wound up. Its constitution requires any surplus assets to be transferred to another not-for-profit organisation with similar purposes.

The CLG's purpose is to prevent food waste at the farm level and ensure surplus crops reach people experiencing food insecurity.

No other organisation has exactly the same purpose. The CLG may therefore distribute surplus assets to another DGR-endorsed organisation with a similar purpose, such as preventing food waste.

Consequences of winding up

The consequences of winding up vary depending on the person's relationship with the CLG.

These consequences apply to:

- solvent CLGs wound up through a members' voluntary winding up, and
- insolvent CLGs wound up through a creditors' voluntary winding up, simplified liquidation or compulsory winding up by a court

Consequences for directors

When a CLG enters liquidation, control of the CLG passes to the liquidator.

Directors no longer have authority to manage the CLG, make business decisions or deal with the CLG's assets or finances.

Directors are generally required to assist the liquidator during the winding up process, including by providing information and access to records where required.

Because the CLG is no longer carrying on its activities, directors will usually stop receiving remuneration or benefits from the organisation.

In some circumstances, directors may be personally liable for debts incurred by the CLG, including where insolvent trading or other breaches of duty have occurred. This may result in directors being required to contribute towards debts owed to creditors.

A person can generally act as a director of another company after a liquidation. However, ASIC may disqualify a person from managing corporations in certain circumstances, including where they have been involved in multiple failed corporations or where misconduct has occurred.

ASIC maintains a banned and disqualified persons register.

Once the liquidation is complete, the directors' involvement with the CLG comes to an end.

Directors should obtain legal advice if they are concerned about potential personal liability or their obligations during the liquidation process.

Consequences for members

Members of a CLG are generally not entitled to share in surplus assets unless permitted by the CLG's constitution and applicable law.

In most cases, the principal consequence for members is that the CLG no longer exists after deregistration.

Consequences for creditors

A creditor is a person or organisation owed money by the CLG.

Creditors receive information throughout the liquidation, including reports about the CLG's affairs, the progress of the liquidation and the likelihood of receiving a distribution.

Where sufficient assets are available, creditors may receive a dividend from the liquidation. Where assets are insufficient, creditors may recover only part of the debt owed to them or receive no distribution at all.

Consequences for employees

Employees generally lose their employment when the CLG enters liquidation.

Where the CLG cannot pay employee entitlements, eligible employees may be able to obtain assistance under the Fair Entitlements Guarantee (**FEG**) scheme.

FEG is a legislative safety-net scheme that provides financial assistance to eligible employees whose employment ends because of the liquidation of their employer.

Depending on eligibility requirements and applicable limits, assistance may be available for:

- unpaid wages
- annual leave
- long service leave
- payment in lieu of notice, and
- redundancy pay

FEG does not cover unpaid employer superannuation guarantee contributions.

Employees with unpaid superannuation entitlements should:

- contact the insolvency practitioner managing the liquidation, and
- seek information from the Australian Taxation Office

For more information, see the Department of Employment and Workplace Relations' webpage Fair Entitlements Guarantee.

Administrative matters after winding up

Australian Business Number

If the CLG has an Australian Business Number (**ABN**), cancellation should also be considered through the Australian Business Register (**ABR**).

Cancelling the ABN will also cancel associated tax registrations, including GST registrations.

ACNC registration

If the CLG is registered as a charity with the Australian Charities and Not-for-profits Commission (**ACNC**), its charity registration should also be revoked.

To apply for voluntary revocation, the charity must generally:

- submit any outstanding Annual Information Statements and financial reports (where required), or explain why they are not required, and
- lodge the necessary revocation application through the ACNC Charity Portal

The ACNC will assess the application in accordance with its voluntary revocation policy.

In some circumstances, the ACNC may revoke a charity's registration without an application being made. This can occur, for example, where a liquidator or another insolvency practitioner has been appointed because the charity is insolvent.

Records

For information about the retention and management of records, including financial records, employee records, taxation documents, board minutes and fundraising records, see our record-keeping guidance.

Reinstating a deregistered CLG

A deregistered CLG may be reinstated in limited circumstances by ASIC or by court order.

Administrative reinstatement by ASIC

ASIC may reinstate a CLG if it is satisfied that the company should not have been deregistered.

ASIC may also reinstate a CLG that was deregistered for non-payment of an ASIC Supervisory Cost Recovery Levy if the outstanding levy and related penalties are paid and the relevant requirements are satisfied.

Applications can generally only be made by a person who was a director, secretary or member of the CLG immediately before deregistration.

Applicants must also satisfy the applicable eligibility requirements, including requirements relating to solvency and supporting documentation.

Reinstatement by court order

A former liquidator or a person aggrieved by the deregistration may apply to a court for an order requiring ASIC to reinstate the CLG.

The court may order reinstatement if:

- the application is made by an eligible person, and
- the court considers it just to reinstate the CLG

If a court orders reinstatement, the order must be provided to ASIC before the reinstatement takes effect.

Caution

Seek legal advice before applying for court-ordered reinstatement. The eligibility requirements and consequences of reinstatement can be complex.

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