



## Compositions

### How does a composition work?

Usually, the trustee prepares a report about the proposal and advises creditors whether the proposal will benefit them. A meeting is then held whereby creditors can vote on whether or not to accept the offer.

An offer may involve assets already in the bankruptcy and/or may include other money or assets that would not normally be available to creditors, such as money provided by a relative. All creditors will receive an equal rate of dividend unless your offer provides otherwise.

Your written and signed offer must be lodged with the trustee:

- setting out the terms
- providing for the payment of the trustee's fees and expenses
- providing for payment of the [realisations charge](#).

Before finalising your offer and asking your trustee to call a creditors' meeting, you should discuss:

- the requirements for making an offer with your trustee
- what your creditors may be willing to accept. This is in your interests and will save considerable time and resources which would be wasted if an offer is not accepted at the meeting of creditors. The initial fees payable to cover the costs of calling the creditors' meeting will not be refunded regardless of the outcome of the meeting.

Your trustee may require a deposit to cover the expenses and fees of the meeting and can refuse to call a meeting if the offer does not make adequate provision for the payment of trustee's fees that have been approved by creditors and cannot be taken out of the estate. The trustee prepares a report about the proposal and advises creditors whether the proposal will benefit them, then conducts a meeting where creditors vote on whether or not to accept the offer.

### Trustee's report

The report to creditors must state whether they will benefit if the offer is accepted and tell them:

- who is providing the funds
- details of assets, realisations and dividends that will be available under the composition and also if it does not go ahead, so that creditors can make a comparison
- the trustee's fees and expenses, including the realisations charge
- details of your conduct and financial dealings.

### Creditors' meeting and voting

Your trustee will call a meeting of creditors to consider and vote on your offer. There is no set time for holding the meeting and how soon it occurs will depend on when the trustee is able to complete his or her investigations and finalise the report. The [notice of this meeting](#) will be published on our website. Each creditor will be sent:

- a notice and meeting agenda
- a copy of your offer
- your trustee's report.

You must attend the meeting if requested to do so by your trustee. You may amend the terms of your offer at the meeting but not in any way that would reduce the trustee's fees.

Acceptance requires a "yes" vote from a majority of creditors who represent at least 75% of the dollar value of the voting creditor's debts (referred to as a "special resolution").

If your offer is accepted your bankruptcy will be annulled immediately and:

- your trustee's fees and charges will be paid
- your creditors will be paid.

All creditors with provable debts that would have been extinguished upon discharge are bound by the terms of the offer. Some debts will still need to be repaid though (such as child support, HECS/HELP/SFSS debts, debts incurred by fraud and debts incurred after your date of

bankruptcy) – these are the same debts that would still need to be repaid if you didn't offer a composition or if your composition offer is rejected.

If your offer is rejected your bankruptcy will continue. Your trustee will:

- keep funds covering the expenses and fees of calling the meeting from any deposit
- refund any money provided for the offer.

## **Variation, setting aside or termination of a composition or arrangement**

Your creditors or the trustee can, with your consent, propose a variation of your composition or arrangement. The variation proposal is put to creditors for consideration and your trustee will notify you of the outcome.

### **Setting aside of a composition or arrangement**

The Inspector-General, your creditors or trustee can apply to the Federal Court or Federal Circuit Court of Australia to set aside your composition or arrangement if:

- it is unreasonable
- it does not comply with the Bankruptcy Act
- you have supplied misleading or false information
- you are in default of any of the terms.

### **Terminating a composition or arrangement**

Your creditors can terminate the composition or arrangement by resolution at a meeting convened by the trustee for this purpose.

Your trustee can terminate a composition or arrangement if satisfied you are in default and a notice is sent to all creditors specifying when the termination is to occur and giving them an opportunity to object. If no objection is lodged with the trustee, termination occurs on the proposed date.

The court may also terminate a composition or arrangement on application by the trustee, a creditor or you in circumstances where you have not complied with a term of the composition or arrangement, and if the court considers there is a sufficient element of injustice or undue delay if the composition or arrangement was to proceed. In addition the court has broad discretion to terminate if it determines that there is sufficient reason to do so.

Your creditors or trustee can petition to make you bankrupt again at the same time as applying to have your composition or arrangement set aside or terminated.

### **Resources**

- [Section 73 of the Bankruptcy Act 1966](#)