

# ***BUSINESS ORGANISATIONS LAW GUIDEBOOK***

## ***SECOND EDITION***

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### **CHAPTER 9**

#### **PROBLEM QUESTION**

Bone Pty Ltd is experiencing some financial difficulty. It has several creditors and the directors are worried that the company is not able to pay its debt when they are due. The creditors are the following:

- Avalon Ltd is a secured creditor with a security over all the assets of Bone Pty Ltd.
  - Trade Ltd is an unsecured creditor.
  - Apollo Pty Ltd is a secured creditor. It has a security over one of the minor assets of Bone Pty Ltd.
- (a) Who can put Bone Pty Ltd under voluntary administration (VA)?
- (b) What are the rights of the creditors during and after the VA assuming that the result of the VA was a deed of arrangement?

#### **ANSWER**

(a) The people who can initiate a VA are the directors of the company (s 436A), the liquidator (s 436B) and the substantial secured creditor (s 436C). Accordingly, in this case the directors of Bone Pty Ltd can initiate a VA. Additionally, Avalon Ltd can do the same because it is a substantial secured creditor (it has a security over all of the assets of the company).

(b) During the voluntary administration a moratorium applies. Consequently, the creditors like Trade Ltd and Apollo Pty Ltd cannot take action against the company. However, a substantial secured creditor may enforce its security within 13 business days after the

appointment of the administrator. Avalon Ltd, as a substantial secured creditor, can enforce its security during the first 13 business days of the VA.

When a deed of arrangement is entered into as a result of the VA, unsecured creditors such as Trade Ltd are bound by the deed even if they voted against it.

Secured creditors such as Avalon Ltd and Apollo Pty Ltd are only bound by the deed to the extent that the court orders or the secured creditor voted in favour of the deed.