

## STATUTORY REPORT TO CREDITORS

PURSUANT TO SECTION 70-40 OF THE INSOLVENCY  
PRACTICE RULES (CORPORATIONS) 2016

Braiform Australia Pty Ltd  
(In Liquidation)  
ACN 151 954 513

### Creditors' Meeting:

Creditors' meeting to be held at  
11:00am (AEST) on Wednesday, 29 July  
2020 via Webinar.

Dated: 14 July 2020

Liquidators:	Andrew Sallway and Duncan Clubb
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## ABBREVIATIONS USED

Abbreviation	Description
3PL	3 <sup>rd</sup> Party Logistics Providers
AEST	Australian Eastern Standard Time
ASIC	Australian Securities & Investments Commission
ATO	Australian Taxation Office
AUD	Australian Dollars
BAS	Business Activity Statement
BDO	BDO East Coast Partnership
c.	Circa
CAANZ	Chartered Accountants Australia and New Zealand
FEG	Fair Entitlement Guarantee
GST	Goods and Services Tax
Hellmann	Hellmann Worldwide Logistics Limited
InterCentral	InterCentral Global Pty Ltd
IPS	Schedule 2 of the Corporations Act 2001 - Insolvency Practice Schedule (Corporations)
IPR	Insolvency Practice Rules (Corporations) 2016
K	Thousand
Liquidators	Andrew Sallway and Duncan Clubb
NZD	New Zealand Dollars
PAYG	Pay as You Go
ROCAP	Report on Company Activities and Property
the Act	Corporations Act 2001
the Company	Braiform Australia Pty Ltd (In Liquidation)
SGC	Superannuation Guarantee Charge
Tam Hangars	Tam Hangars AU Trading Pty Ltd
USD	US Dollars

## ATTACHMENTS

Annexure	Description
A	Estimated Outcome Statement
B	Notice of Meeting
C	Proof of Debt Form
D	Proxy Form
E	Remuneration Report
F	Information Sheets

## 1. EXECUTIVE SUMMARY

Outlined below is a summary of the key points raised in this report:

- On 15 April 2020, Andrew Sallway and Duncan Clubb were appointed Liquidators of the Company. This report is compiled in accordance with section 70-40 of the IPR.
- The Company was a wholesaler of plastic coat hangers and toilet seats and operated in Australia and New Zealand.
- To date, we have received 10 proofs of debt totalling AUD 290,488 from unsecured creditors of the Company. We have not adjudicated on any of the claims received or verified any of the information contained in the books and records to date.
- The Company's assets primarily comprised stock, which was recently sold to a business known as Tam Hangars for c. AUD 403K, and pre-appointment debtors with a book value of c. AUD 355K.
- Our preliminary investigations have identified potential unfair preference payments totalling c. AUD 1.6m and c. NZD 367K. Our investigations into the reasons for the Company's failure and the rights of action available to the Company and the Liquidators are ongoing subject to obtaining further information. Creditors will be advised as to the outcome of our investigations and any recoverable claims in a subsequent update.
- There is likely to be sufficient recoveries in the liquidation to enable a return of approximated 15 cents in the dollar to unsecured creditors of the Company.
- A meeting of creditors has been convened for Wednesday, 29 July 2020 at 11:00am, to be held via Webinar. At the meeting, we will be seeking approval of:
  - Our current remuneration for the period 15 April 2020 to 30 June 2020 for AUD 71,946.50, excluding GST;
  - Our future remuneration for the period 1 July 2020 to 30 September 2020 for AUD 20,000, excluding GST; and
  - Our disbursements for the period 15 April 2020 to the conclusion of the winding up in the capped sum of AUD 1,380, exclusive of GST.

We would appreciate if creditors voting by proxy would complete and return this form by 4:00pm on Tuesday, 28 July 2020 to Emily Guan of this office at [emily.guan@bdo.com.au](mailto:emily.guan@bdo.com.au).

- We anticipate the winding up of the Company will continue for between 12 months and two years, the timing of which is subject to the completion of our investigations and whether legal proceedings are required to pursue any rights of action. We will seek a resolution for our future remuneration in due course from creditors.

### COVID-19: MEETING TO BE HELD VIA WEBINAR

Please note due to the current COVID-19 pandemic, it is not viable or appropriate to hold a physical meeting of creditors, as such the meeting will be held via an online webinar. Any creditor wishing to attend the webinar will need to ensure their documentation (including a proof of debt form, proxy and alternate contact details) has been submitted to the Liquidators' office by 4:00pm on Tuesday, 28 July 2020. A link to the webinar meeting will be provided by email upon receipt of the relevant documents.



## 2. INTRODUCTION

We refer to our Initial Notification to Creditors dated 28 April 2020 in which we advised you of our appointment and your rights as a creditor in the liquidation.

The purpose of this report is to:

- Provide you with an update on the progress of the liquidation; and
- Advise you of the likelihood of a dividend being paid in the liquidation.

We will also be requesting that you consider our detailed remuneration report and approve our remuneration and internal disbursements at an upcoming meeting of creditors to be held on Wednesday, 29 July 2020 at 11:00am, to be held via Webinar.



### 3. HISTORY OF COMPANY

The Braiform group is a global plastic manufacturing business, which supplies coat hangers, packaging and hanger re-use programs to retailers in 32 countries. The Braiform group had its origins in Spotless Group Holdings, a facility services business listed on the ASX.

In 2001 Spotless Group Holdings acquired Braitrim (United Kingdom based), which was merged with an existing Spotless Group Holdings business called Plastiform to create a new business known as Braiform. The acquisition expanded their garment hanger manufacturing and supply capability.

In Australia, the Company was registered in July 2011 and operated a wholesale business selling plastic coat hangers and toilet seats in Australia and New Zealand.

During 2012 Spotless Group was sold to private equity firm Pacific Equity Partners when the Company's shareholder became Braiform Holdings Pty Limited.

In 2013 the Braiform group was sold by Pacific Equity Partners, including the Company, this time as a management buy-out. After 2013 the shareholder of the Company changed on several occasions, in terms of both the legal entity and the name of the legal entity. The changes in shareholders as recorded by ASIC are not easily understood and the changes are complicated by the fact that the ASIC records do not disclose any dates for these changes. Our investigations have identified that the ultimate controlling party of the Braiform group is Braiform Holdings Limited, a company incorporated in the Cayman Islands and headquartered in Hong Kong. Our investigations into the history of the group and the Company are ongoing. Any additional information relevant to creditors will be provided in due course.

In 2019, the Braiform group appointed an insolvency advisory firm known as Duff and Phelps to assist in a sale of the group including the Company however they were unsuccessful in identifying a purchaser for the business as a going concern. At the end of March 2020, the Company ceased to trade.

The Company's registered principal place of business was 43-63 Princes Highway, Dandenong South VIC 3175. The Company also traded from leased premises at Unit 10, 83-87 Dover Street, Cremorne VIC 3121.

The Company's inventory was held at various warehouse locations in Melbourne, Perth and Brisbane with 3<sup>rd</sup> party logistic provider, InterCentral. Inventory was also held with Hellmann, another 3<sup>rd</sup> party logistic provider, in Auckland, New Zealand.

#### 3.1 Company details and security interests:

A schedule of the Company's directors is provided below according to the ASIC company search:

Director	Appointment Date	Date Ceased
Graeme Andrew Scott Rutherford	19/11/2013	N/A
Ben James Hunt	07/11/2013	N/A
Craig Geoffrey Stevens	18/12/2019	N/A
Pierre Fourie	18/12/2017	19/12/2019



Details of the Company's shareholders according to the ASIC company search is provided below. We note that ASIC's database does not disclose the timing of the change in shareholders.

Shareholders	Class	Number Held	Capital
Phoenix Two Investments Limited	ORD	1	AUD1.00
Former Shareholders	Class	Number held	Capital
Braiform Group Pty Ltd	ORD	1	AUD1.00

The PPSR maintained by the Australian Financial Security Authority discloses the following security interests as at the date of our appointment:

Secured Party	Type of security interest	Date Registered	Debt Owning (AUD)
BOC Limited	Purchase money security interest	06/09/2013	Nil
Custom Service Leasing Pty Ltd	2x Purchase money security interest	09/09/2013	TBA
Loscam Australia Pty Ltd	Purchase money security interest	22/01/2014	TBA
Crown Equipment Pty. Limited	Purchase money security interest	13/05/2014	Nil
Oji Fibre Solutions (AUS) Pty Ltd	Purchase money security interest	03/02/2017	TBA
Australian Factoring Company Pty Ltd	General Security Agreement and Purchase money security interest	23/09/2019	Nil

The PPSR maintained by the New Zealand authority, Ministry of Business, Innovation & Employment, discloses the following security interests as at the date of our appointment:

Secured Party	Type of security interest	Date Registered	Debt Owning (NZD)
CSG Finance (Nz Facility 2) Limited CSG Finance (Nz) Limited CSG Finance New Zealand Trust	Purchase money security interest	22/05/2015 27/06/2019	2,292
Custom Fleet NZ	Purchase money security interest	8/06/2016	Nil
Hellmann Worldwide Logistics Limited	Security interest	16/01/2020	NIL



### 3.2 Reasons for failure

The Director, Ben Hunt, advised that the failure of the business became apparent on 31 March 2020 for the following reasons:

- “Cash flow issues exasperated by legal issues in US and COVID-19”

Upon further enquiry Mr Hunt advised that the legal issue referred to was as follows:

- “[the group] had lost a USD55m a year contract” and “the loss of the account was very damaging given the scale to our business (circa 25% of revenue)”.

Whilst we have no reason to dispute the reasons provided by the Directors, we do not have sufficient books and records to form our own opinion as to the cause of failure.



## 4. HISTORICAL FINANCIAL ACCOUNTS

We have been unable to obtain any recent financial statements. We have requested all financial information of the Company from the Directors, however we have only been provided with the financial statements for the year ended 30 June 2018 (which are now two years' old) and an internally prepared standalone balance sheet as at February 2020.

The Liquidators, BDO and its staff have not audited the figures. Whilst we have no reason to suspect the figures are not accurate, we do not warrant the accuracy or completeness of the statements.

The financial accounts are summarised below. Due to the limited records provided, we are unable to provide any meaningful commentary on the financial performance and financial position of the Company.

### 4.1 Balance Sheet

Description	30 June 2018 (AUD'000s)	29 February 2020 - (AUD'000s)
<u>Current Assets</u>		
Cash and cash equivalents	83	80
Trade and other receivables	858	408
Related party receivables	-	37,490
Inventories	1,352	2,055
<b>Total current assets</b>	<b>2,293</b>	<b>40,033</b>
<u>Non-current assets</u>		
Plant and equipment	4	7
Other Long Term Assets	-	10,354
<b>Total non-current assets</b>	<b>4</b>	<b>10,361</b>
<b>Total assets</b>	<b>2,297</b>	<b>50,394</b>
<u>Current liabilities</u>		
Trade and other payables	1,237	1,192
Employee entitlements	85	18
Related party payables	1,313	35,553
<b>Total current liabilities</b>	<b>2,635</b>	<b>36,764</b>
<b>Total liabilities</b>	<b>2,635</b>	<b>36,764</b>
<b>Net Assets</b>	<b>338</b>	<b>13,630</b>
<b>Current Ratio</b>	<b>0.87</b>	<b>1.09</b>

### 4.2 Profit and Loss

Description	Year ended 30 June 2018 (AUD'000s)
Revenue	4,771
Cost of Sales	(3,525)
<b>Gross Profit</b>	<b>1,246</b>
<u>Expenses</u>	
Distribution Expenses	(1,607)
Selling And Administrative Expenses	(736)
Other Income And Expenses	(164)
<b>Net Profit/ (Loss)</b>	<b>(1,261)</b>



## 5. ESTIMATED ASSETS AND LIABILITIES

The Directors have completed a Report as to Company Activities and Property (ROCAP) detailing the financial position of the Company as at the date of our appointment as Liquidators.

Below is a summary of the estimated assets and liabilities of the Company, along with the Liquidators' estimated values based on investigations to date:

Description	Note	Director's Estimate of Recoverable Value (AUD)	Liquidators' Estimate (AUD)
<b>Assets</b>			
Cash at bank	1	58,000	48,974
Debtors	2	310,652	177,313
Inventory	3	1,885,727	70,606
Plant and Equipment	4	7,382	-
<b>Total Assets</b>		<b>2,261,761</b>	<b>296,893</b>
<b>Liabilities</b>			
Employee Entitlements		-	-
Secured Creditors	5	-	4,109*
Unsecured Creditors	6	507,462	1,050,034*
<b>Total Liabilities</b>		<b>1,754,214</b>	<b>1,054,143</b>
<b>Estimated Net surplus /(Deficiency)</b>		<b>507,547</b>	<b>(757,250)</b>

\*NZD conversion rate (date of appointment): 1 AUD = 1.0543 NZD

\*USD conversion rate (date of appointment): 1AUD = 0.6310 USD

### Note 1: Cash at Bank

On appointment, we contacted the major financial institutions requesting any accounts in the Company's name be frozen and the balance transferred to the Liquidators. The following HSBC accounts have been identified, and the balance of these accounts transferred to the Liquidators:

Account held with	Balance as at Appointment	Balance Transferred (AUD)
HSBC Australia	AUD 40,403	38,766
HSBC New Zealand	NZD 10,582	10,208
<b>Total</b>		<b>48,974</b>

\*Two transfers were received from HSBC New Zealand with a NZD conversion rate (date of transfer) of 1 AUD = 1.1005 NZD and 1 AUD = 1.1059 NZD

### Note 2: Debtors

The Directors reported an estimated debtor value of AUD 310,652 after an allowance for doubtful debts. We reviewed the debtor ledger on our appointment and have identified debtors totalling a book value of AUD 354,652. We have written to all debtors demanding payment. The debtor balances and collections to date are summarised below:

Debtors	ROCAP Value (AUD)	Book Value (AUD)	Collected (AUD)	Outstanding (AUD)
Australia	200,328	250,491	28,491	222,000
New Zealand	110,324	104,161	62,879	41,282
<b>Total</b>	<b>310,652</b>	<b>354,652</b>	<b>91,370</b>	<b>263,282</b>

A number of the debtors appear as both debtors and creditors, as such they may be entitled a right of set-off pursuant to section 553C of the Corporations Act 2001, which will decrease the realisable balance.

We note that the lack of records may limit the collectability of the accounts receivable.

### Note 3: Inventory

The Company held inventory across four (4) locations, being Melbourne, Perth, Brisbane and Auckland, New Zealand. The inventory comprised of plastic coat hangers supplied to clothing retailers and plastic toilet seats for wholesale to Bunnings. Prior to our appointment the inventory held in Brisbane was transferred to Melbourne.

Location	Actual stock on hand (units)	Book value (AUD)	Cost (AUD)
Auckland, NZ	10,600,985	1,209,008	1,173,940
Melbourne, AUS	4,436,430	536,937	563,039
Perth, AUS	13,473	36,482	38,869
Brisbane, AUS	Tsfr to Melbourne	49,828	Tsfr to Melbourne
<b>TOTAL</b>	<b>15,050,888</b>	<b>1,832,255</b>	<b>1,775,848</b>

The inventory was stored with 3<sup>rd</sup> party logistics providers InterCentral in Australia and Hellmann in New Zealand. Both 3PL providers had outstanding debts continuing to accrue for storage of the inventory before and during the appointment of the Liquidators. These debts gave rise to a warehousemen's lien, which entitled the 3PL providers to hold the inventory until payment for accrued storage costs had been paid.

Several parties contacted the Liquidator expressing an interest in purchasing some or all of the inventory held. Generally these expressions of interest were only for specific items and would not be sufficient to discharge the liens over the inventory.

We consulted a chattel agent to prepare an indicative valuation and cost estimate to undertake a formal expression of interest sale campaign. The agent advised that the inventory would likely yield a return of between 3 and 5 cents in the dollar of the cost value with the costs amounting to c. AUD 2,500 plus an agents commission of 12%. The campaign would require a period of 4-6 weeks to complete.

Prior to commencing a formal campaign an offer for all inventory held in all locations was received from Tam Hangers, a company based in Turkey. The offer was AUD 353,850, being AUD 293,850 for the NZ inventory and AUD 60,000 for the Australian inventory.

In assessing the offer and whether to press ahead with a public sale campaign we:

- contacted each of the parties whom had previously expressed an interest in the inventory, to determine if there were any other offers of comparable value. No other party was willing to submit an offer equivalent to Tam Hangers' offer
- sought advice from our chattel agent as to their opinion of the value of the inventory in an EOI campaign
- reviewed the cost of the warehousemen's lien accrued to date and the expected cost to hold until settlement.

Our assessment of the offer from Tam Hangers was as follows:

Options	Tam Hangers offer	EOI campaign estimate by valuers	
		Low (3 cents/ AUD)	High (5 cents/ AUD)
Sale price (NZ stock)	293,485	35,000	60,000
Sale price (Aus stock)	60,000	18,000	30,000
Less: EOI sale commission (12%)	-	(6,360)	(10,800)
Less: New Zealand Lien (In AUD)	(212,133)	(212,133)	(212,133)
Less: Australian Lien	(55,007)	(55,007)	(55,007)
Less: Legal costs (estimate)	(15,000)	(10,000)	(10,000)
Less: EOI agent costs	-	(2,500)	(2,500)
Surplus from sale (AUD)	71,345	Nil	Nil

If the offer was not accepted any other sale arrangement would have been uncommercial to pursue as the costs would have outweighed the return, in particular the accruing costs payable to the 3PL service providers.

As the offer by Tam Hangers was the only proposal which would result in any surplus proceeds after the costs of realisation, it was accepted. The sale occurred on 25 May 2020 with the purchase price received into the bank account on 2 June 2020. All warehouse liens have been paid out.

#### Note 4: Plant and Equipment

The Director has reported in his ROCAP a number of computer equipment with the following value:

Plant and Equipment	ROCAP Value (AUD)	Description
Australia	5,737	Various HP Laptops used by staff, projector, printer and Telstra equipment
New Zealand	1,645	2 x computers used by staff, printer and server software
Total	7,382	

Following discussions with a valuer, we do not believe it is commercial to attempt to recover the equipment as the cost of recovering and selling the equipment will exceed their realisable value.

#### Note 7: Secured Creditors

The following security interests were registered over the Company's assets as at our appointment:

Secured Party (Australia)	Description of Asset	Status	Debt Owning (AUD)
BOC Limited	Gas, bulk gas facilities, gas systems, and cylinders	Discharged	Nil
Custom Service Leasing Pty Ltd	Motor vehicle leased	Discharged	Nil
Loscam Australia Pty Ltd	Equipment leased	No response received	TBA

Crown Equipment Pty. Limited	Forklift trucks and sweepers supplied	Discharged	Nil
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Oji Fibre Solutions (AUS) Pty Ltd	Card board boxes	No response received	TBA
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Australian Factoring Company Pty Ltd	Factored Debtors	Advised no debt	Nil
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Secured Party (New Zealand)	Description of Asset	Status	Debt Owning (NZD)
CSG Finance (NZ Facility 2) Limited CSG Finance (NZ) Limited CSG Finance New Zealand Trust	Konica Minolta Printer	Proof of debt received	2,292
Custom Fleet NZ	Vehicle Rental Contract	Proof of debt received	2,041
Hellmann Worldwide Logistics Limited	Lien over Stock	Lien paid out	Nil
Total (NZD)			4,333
Total (AUD)			4,109*

\*NZD conversion rate (date of appointment): 1 AUD = 1.0543 NZD

Secured creditors are entitled to claim as an unsecured creditor in the liquidation for any shortfall owing after their security is realised.

#### Note 8: Unsecured Creditors

The Director's ROCAP discloses 30 unsecured creditors from Australia and New Zealand totalling AUD 507,462, including debts owed to the ATO for c. AUD 46K.

To date, we have received 10 proofs of debt totalling AUD 290,488\* from unsecured creditors of the Company in Australia and New Zealand.

We have not adjudicated on any of the claims received or verified any of the information contained in the books and records to date.

\*NZD conversion rate (date of appointment): 1 AUD = 1.0543 NZD

## 6. INVESTIGATIONS AND RECOVERY ACTIONS

A Liquidator has the ability to take recovery action against various parties that may have received preferential treatment ahead of other creditors. The objective is to recover funds and redistribute the money to creditors in accordance with the Act's priority provisions. The status of our investigations are detailed below.

Any creditor that considers a specific matter warrants investigation or has any information which would assist our inquiries should contact our office. The findings of our investigations as to whether it appears past or present officers may have been guilty of an offence in relation to the Company will be lodged with ASIC.

### 6.1 Voidable Transactions

In addition to the funds realised from assets of the Company, a Liquidator (only) has available certain actions pursuant to the Act, to recover funds that have been paid prior to their appointment.

We have conducted initial investigations into the Company's affairs to identify any potential recovery actions recoverable by a Liquidator. The findings of these investigations are summarised below.

#### 6.1.1 Unfair Preferences

An unfair preference is a payment made to an unsecured creditor of the company in the six months preceding the date of the winding up (four years if the payment was made to a related entity) at a time when the company is insolvent, resulting in the creditor receiving more than it would have by proving in the liquidation. Such transactions are void as against a liquidator.

At this stage we have only investigated transactions in the prior 12 months by reference to the Company's bank statements. Our preliminary investigations have identified rounded sum and large sums payments totalling c. AUD 1.6m and c. NZD 367K in the 12 month period prior to our appointment. It is uncertain at this stage, based on information available, whether there are any unfair preferences. Our investigations are ongoing subject to obtaining further information. Creditors will be advised as to the outcome of our investigations and any recoverable claim in a subsequent update.

#### 6.1.2 Uncommercial Transactions

An uncommercial transaction is a transaction which a reasonable person in the Company's circumstances would not have entered into having regard to the benefits and the detriment to the Company and any other parties to the transaction.

An uncommercial transaction is voidable by a Liquidator if:

- the Company was insolvent at the time it entered into the transaction, or
- the Company became insolvent in consequence of the transaction, and the transaction was entered into within two years of the appointment of the Liquidator (or four years if it involves a related party).

At the time of writing this report, we have not identified any uncommercial transactions.

#### 6.1.3 Unreasonable Director Related Transactions

Under section 588FDA of the Act, unreasonable director related transactions are payments made by the Company to a director of the Company or a close associate of the director, and it may be expected that a reasonable person in the Company's circumstances would not have entered into the transaction, having regard to:

- The benefits (if any) to the Company of entering into the transactions; and

- The detriment to the Company of entering into the transactions; and
- The respective benefits to other parties to the transactions entering into it; and
- Any other relevant matter.

At the time of writing this report, we have not identified any unreasonable director related transactions.

### 6.1.3 Unfair Loans

An unfair loan is a loan that provides for interest which is extortionate or the charges relating to the loan are extortionate. Whether interest or charges are extortionate will depend on various factors including the term of the loan, value of security in respect of the loan and repayments of the principle.

At the time of writing this report, we have not identified any loans which appear to be unfair.

## 6.2 Insolvent Trading

Section 588G of the Act provides that it is an offence for directors to allow a Company to trade whilst it is insolvent. Should a director contravene this section, the Liquidator has the right to claim against them to recover the loss suffered by the Company as a result.

Section 95A (1) of the Act provides that a company is solvent, if and only if, the company is able to pay all its' debts as and when they become due and payable. Section 95A (2) of the Act provides that a company that is not solvent, is insolvent.

The precedent case for determining the solvency of a company is set out in ASIC v Plymin & Ors (2003) 46 ASCR 126 (commonly referred to as the "Water Wheel case"), where Justice Mandy of the Supreme Court of Victoria referred to a checklist of indicators of insolvency. These indicators and their relevance to this matter are set out below:

	Q4 FY19	Q1 FY20	Q2 FY20	Q3 FY20	Q4 FY20
				Relation back period	
1. Continuing losses	✓				
2. Liquidity ratios below 1	✓				
3a. Overdue Commonwealth and State taxes			✓	✓	✓
3b. Unpaid Superannuation	N/A	N/A	N/A	N/A	N/A
4. Poor relationship with present Bank, including inability to borrow further funds	N/A	N/A	N/A	N/A	N/A
5. No access to alternative finance	N/A	N/A	N/A	N/A	N/A
6. Inability to raise further equity capital				✓	✓
7. Suppliers placing company on COD, or otherwise demanding special payments before resuming supply	N/A	N/A	N/A	N/A	N/A
8. Creditors unpaid outside trading terms			✓	✓	✓
9. Issuing of post-dated cheques	N/A	N/A	N/A	N/A	N/A
10. Dishonoured cheques	N/A	N/A	N/A	N/A	N/A
11. Special arrangements with selected creditors	N/A	N/A	N/A	N/A	N/A

	Q4 FY19	Q1 FY20	Q2 FY20	Q3 FY20	Q4 FY20
12. Solicitors' letters, summons[es], judgments or warrants issued	N/A	N/A	N/A	N/A	N/A
13. Payments to creditors of rounded sums which are not reconcilable to specific invoices		✓	✓	✓	✓
14. Inability to produce timely and accurate financial information	✓	✓	✓	✓	✓

We provide the following comments in regards to the Company's insolvency:

Area	Analysis	Commentary
Balance Sheet	Current ratio Total assets less total liabilities	The Company's current ratio was below 1 at June 2018 indicating the Company was unlikely to be able to pay its short-term liabilities with its current assets.  The current ratio was more than one at 28 February 2020, however we have not been provided with the full set of financial statements as at that date and so it is unclear if the balance sheet is complete.
Profitability	Gross profit Net profit/(loss)	The Company's gross profit was insufficient to cover operating expenses in FY18 resulting in a net loss.
Creditors	Aged trade creditors ledger Creditors' claims	Aged creditors were not provided. Creditor proofs of debts submitted to date show debts totalling c. AUD 290K.  Supporting invoices to the proofs of debt show unpaid invoices dating as far back as June 2019 from an overseas supplier. Hellman's outstanding invoices were unpaid from January 2020. InterCentral's outstanding invoices were unpaid from February 2020.
Overdue Taxes	ATO Superannuation	The ATO submitted a proof of debt for c. AUD 46k in relation to overdue tax liabilities as at our appointment date.  The running balance shows the balance has been in debit from November 2019. ATO issued warning letters from as early as February 2020. There is also a number of outstanding ATO lodgements from June 2019 to June 2020.
Special arrangements with creditors	Company records Public examination	We are not aware of any special arrangements with creditors.
Supplier placing the Company on COD	Company emails Discussions with Director	No instances of cash on delivery arrangements were identified.
Solicitors letters, summonses, judgements	Company records Discussions with Director ATO freedom of information request	We are aware of legal demands being issued by the NZ 3PL provider for defaults under the storage agreement and enforcement of a warehouseman's lien the stock stored.



Area	Analysis	Commentary
Round figure creditor payments	Bank Statements	Round payments and large sums over AUD 100,000 totalling c. AUD 1.6m and c. NZD 367K have been identified in the one year period prior to our appointment.
Inability to produce financial information	Company records	The Company has not provided adequate books and records to the Liquidator.

Pursuant to Section 95A of the Act, a company is insolvent if it is unable to pay all of its debts as and when they become due and payable.

From our preliminary review of the Company's books and records it appears the Company may have traded while insolvent since at least 2019. We comment as follows:

- The Company did not provide sufficient books and records. Section 588E of the Act raises a presumption of insolvency where a company has failed to keep financial records in relation to a period as required by subsection 286(1);
- The Company suffered a trading loss in financial year ending 2018;
- The Director has advised that the Company was having cash flow problems prior to March 2020 when the Company ceased trading; and
- The Company did not make any payments for taxation liabilities post May 2018.

However, directors have several defences available as follows:

- When the debt was incurred the director had reasonable grounds to expect that the company was solvent and would remain so even if they debt was incurred (Section 588H(2))
- When the debt was incurred the director had reasonable grounds to believe, and did believe, that a competent and reliable person was providing adequate information about the company's solvency to the director and based on that information the director expected the company to be solvent and remain so (Section 588H(3))
- The director did not take part in the management of the company at the time due to illness or other good reason (Section 588H(4))
- The director took reasonable steps to prevent a company from incurring the debt (Section 588H(5)).
- The director was under safe harbour protection (s588GA)

Our preliminary review indicates potential insolvent trading claims against the Directors of the Company.

In determining whether to initiate an insolvent trading claim, the costs to prosecute and the Director's ability to satisfy each claim must be also assessed. We have requested a statement of the Directors' assets and liabilities, however to date none of the Directors have provided such a statement.

Further investigations including public examination of the Directors to determine any defences they may have and the preparation of an expert witness solvency report would be required. Funding may be required.

Pursuant to section 588R of the Act, a creditor may, with the consent of the Liquidators, commence proceedings under section 588M to pursue a Director for an insolvent trading claim. If any creditor wishes to commence proceedings under section 588M, please contact our office in 14 days of the date of this report.

## 7. RECEIPTS AND PAYMENTS

A summary of receipts and payments in the liquidation to date is set out below:

Description	Amount (AUD)
Receipts	
Pre-appointment cash at bank	48,300
Proceeds from sale of stock	403,507
Pre-appointment debtors	91,369
Interest income	66
<b>Total Receipts</b>	<b>543,917</b>
Payments	
Bank Charges	167
Warehouseman's lien	304,460
<b>Total Payments</b>	<b>304,627</b>
Cash at Bank	239,289

The receipts and payments shown above include GST. Throughout our report we have discussed assets and liabilities exclusive of GST. Variations between the proceeds from the sale of stock and payments for the warehouseman's lien relate to GST.



## 8. LIKELIHOOD OF DIVIDEND

An estimated outcome statement (attached as Annexure A) details that we expect to be able to pay a dividend to unsecured creditors in the range of approximately 15 cents in the dollar.

When we are ready to declare a dividend, any creditor whose claim has not yet been admitted will be contacted and asked to submit a proof of debt. This formalises your claim in the liquidation and is used to determine all claims against the Company.

## 9. COSTS OF THE LIQUIDATION

We are seeking approval of our remuneration of AUD 71,946.50, exclusive of GST, for the period 15 April 2020 to 30 June 2020 and AUD 20,000, exclusive of GST, for the period 1 July 2020 to 30 September 2020.

Attached at Annexure E is a detailed report on our remuneration, called a Remuneration Approval Report. We are unable to pay our remuneration without the approval of creditors or the court.

A meeting of creditors to consider our remuneration will be held as follows:

Meeting Details	
Date	Wednesday, 29 July 2020
Time	11:00am (AEST)
Address	Held via online Webinar

Further meeting information, including notice of meeting and details of the information you are required to provide if you plan to attend the meeting are attached as Annexure B. To participate in this meeting, you may need to:

- Submit a proof of debt and information to substantiate your claim.
- Appoint a person - a "proxy" or person authorised under a power of attorney - to vote on your behalf at the meeting. This may be necessary if you are unable to attend the meeting, or if the creditor is a company.
- You can appoint the chairperson of the meeting as your proxy and direct the chairperson how you wish your vote to be cast. If you choose to do this, the chairperson must cast your vote as directed.

Proof of debt and proxy forms are included with the notice of meeting. To facilitate the conduct of the meeting, completed proof of debt and, if applicable, proxy forms must be returned to our office by post, fax or email by 4:00pm on Tuesday, 28 July 2020.



## 10. MATTERS OUTSTANDING

We will proceed with the liquidation, including:

- Hold the forthcoming meeting of creditors;
- Collection of remaining debtors, which may include referring to a collection agent or pursuing via solicitors;
- Reporting to the corporate insolvency regulator, the Australian Securities and Investments Commission (ASIC);
- Completing our investigations with respect to potential voidable transactions and insolvent trading, and issuing demand letters to the relevant parties. If applicable, commence legal proceedings to pursue recovery;
- Prepare a brief for, and liaise with, our solicitors regarding public examinations (if applicable);
- Adjudicate on creditors' proofs of debt;
- Subject to the availability of funds, prepare and distribute a dividend to creditors;
- Finalisation of the Liquidation.

We anticipate the liquidation will be finalised by June 2021.

We will write to you again with information on the progress of the liquidation before October 2020.



## 11. FURTHER INFORMATION

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides information to assist creditors with understanding liquidations and insolvency. This information, including details of your rights as a creditor, is available from ARITA's website at [arita.com.au](http://arita.com.au).

ASIC provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at [www.asic.gov.au](http://www.asic.gov.au)

## 12. DISCLAIMER

BDO, (its affiliates - present or future), Andrew Sallway and Duncan Clubb and servants, employees and agents ('the Liquidator') hereby advise that:

- a) When preparing this report and the accompanying documents, the Liquidators have relied on the available books and records, financial accounts and other documentation pertaining to the Company's affairs.
- b) When preparing this report and the accompanying documents, the Liquidators have relied on the advice of the Company's officers and/or senior management.
- c) The Liquidators have not conducted an audit of the books and records, financial accounts and other documentation pertaining to the Company's affairs.
- d) Whilst the Liquidators have endeavoured to verify the accuracy or otherwise of the records, the financial accounts and other documentation pertaining to the Company's affairs and the advice of the Company's officers, the Liquidators give no warranty as to the accuracy, completeness or reliability of same.
- e) The Liquidators undertake no responsibility arising in any way whatsoever to any person for errors or omissions however caused by way of this report, or accompanying documents.

## 13. ELECTRONIC COMMUNICATION

BDO is committed to reducing its impact of our administrations on the environment. One way you can help contribute to our efforts is to agree to accept all communications from us electronically, by email.

If you would like to receive all communications electronically, please send an email to [emily.guan@bdo.com.au](mailto:emily.guan@bdo.com.au). The request will remain active until you provide us with further instructions to the contrary. Please alert us, if you change your email or postal address.



## 14. COMMITMENT TO CLIENT SERVICE

BDO's policy is to conduct files to the highest ethical and professional standards.

BDO adheres to the codes of conduct prescribed by CAANZ, AFSA, ARITA and INSOL the International Federation of Insolvency Professionals.

If creditors have any questions, queries or complaints concerning the conduct of this administration please direct them to this office.

If you are dissatisfied with a decision made by the appointee, you may ask the appointee to review their decision or explain their reasons. If you are still not satisfied it may be necessary for an application to court to have the decision reviewed. In this instance it is recommended that you seek your own independent legal advice.

In the event that you are not satisfied with our handling of your query you may refer your complaint to the Company Auditors and Liquidators Disciplinary Board.

In an effort to improve our standards and the quality of information that you receive, we welcome your feedback. You can submit feedback anonymously in writing to this office.

If you would like further information on the range of services offered by BDO, please visit our website at [www.bdo.com.au](http://www.bdo.com.au). Alternatively, you can contact this office on 02 9251 4100.

We would welcome any information which creditors feel may be of assistance in the conduct of the administration.

If you have any queries with respect to this liquidation and the enclosed documents, please do not hesitate to contact Emily Guan of our office on (02) 9240 9851.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Andrew Sallway', written in a cursive style.

Andrew Sallway  
Joint & Several Liquidator

**‘ANNEXURE A’**



## Estimated Outcome Statement

Estimated Outcome Statement	Low	Likely	High
<u>Circulating assets</u>			
Pre-Appointment Cash at Bank	48,974	48,974	48,974
Proceeds from the Sale of Stock	353,485	353,485	353,485
Pre-Appointment Debtors	354,625	354,625	354,625
Less: Provision for Uncollectible Debtors	(281,026)	(177,313)	(44,263)
Net: Circulating Assets	476,058	579,772	712,821
Less: Warehouseman's Lien	(267,140)	(267,140)	(267,140)
Less: Net GST Payable on Sale of Stock	(15,739)	(15,739)	(15,739)
Less: Legal Costs	(18,000)	(15,000)	(12,000)
Less: Liquidators Remuneration	(71,947)	(71,947)	(71,947)
Less: Liquidators Future Remuneration	(20,000)	(20,000)	(20,000)
Less: Liquidators Future Remuneration	(28,053)	(28,053)	(28,053)
Less: Liquidators Disbursements	(1,380)	(1,380)	(1,380)
Net Circulating Assets Available to Creditors	53,800	160,513	296,563
Unsecured Creditors	1,054,143	1,054,143	1,054,143
Total Unsecured creditors	1,054,143	1,054,143	1,054,143
Estimated return to Unsecured Creditors (c./\$)	5	15	28

**‘ANNEXURE B’**

Insolvency Practice Rules (Corporation) 2016

Corporations Act 2001

NOTICE OF MEETING OF CREDITORS

BRAIFORM AUSTRALIA PTY LTD (IN LIQUIDATION)

ACN 151 954 513 ("THE COMPANY")

NOTICE IS GIVEN that a meeting of the creditors will be held via Online Webinar on Wednesday, 29 July 2020 at 11:00am (AEDT).

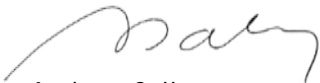
The purpose of this meeting is:

1. To approve the remuneration of the Liquidator, their partners and staff for the period 15 April 2020 to 30 June 2020 on a time basis up to a maximum amount of \$71,946.50 exclusive of GST and disbursements;
2. To approve the remuneration of the Liquidator, their partners and staff for the period 1 July 2020 to 30 September 2020 on a time basis up to a maximum amount of \$20,000 exclusive of GST and disbursements;
3. To approve the necessarily incurred internal disbursements of the Liquidators and any of the Liquidators' partners or employees for the period 15 April 2020 to the conclusion of the winding up in the capped sum of \$1,380 (excluding GST);
4. To consider the appointment of a Committee of Inspection (if appropriate); and
5. To authorise the Liquidator to destroy the books and records of the Company within a period of six (6) months after dissolution of the Company, subject to obtaining prior approval from the Australian Securities and Investments Commission.

Please note due to the current COVID-19 pandemic, it is not viable or appropriate to hold a physical meeting of creditors, as such the meeting will be held via an online webinar. Any creditor wishing to attend the webinar will need to ensure their documentation (including a proof of debt form, proxy and alternate contact details) has been submitted to the Liquidators' office by 4:00pm on Tuesday, 28 July 2020. A link to the webinar meeting will be provided by email upon receipt of the relevant documents.

Creditors will not be entitled to vote at the meeting unless they have lodge particulars of their claim against the Company with us prior to the commencement of the meeting.

DATED this the 14<sup>th</sup> day of July 2020



Andrew Sallway  
Joint and Several Liquidator

**‘ANNEXURE C’**

## FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

**BRAIFORM AUSTRALIA PTY LTD (IN LIQUIDATION)  
ACN 151 954 513 (THE COMPANY)**

To the Liquidators of

BRAIFORM AUSTRALIA PTY LTD (IN LIQUIDATION) ACN 151 954 513

1. This is to state that the company was on Wednesday, 15 April 2020, and still is, justly and truly indebted to (insert full name and address of the creditor<sup>1</sup>)

for (insert amount of claim in words)

	dollars and	
		cents

Particulars of the debt are (give details of claim<sup>2</sup>):

Date	Consideration (state how the debt arose)	Amount \$            ¢	Remarks (include details of voucher substantiating payment)

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following<sup>3</sup>:

3. <sup>4</sup>I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied. I am the creditor, employed by the creditor, and/or the creditor's agent duly authorised in writing to make this statement.

Signed

Dated

Confirmation of postal/contact details of Creditor

Address		
City	State	Postcode
Phone	Email	

Correspondence by email

Do you consent to this office electing to send correspondence regarding the company to the above email address?      Yes

Notes:

1. Insert the full name and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor.
2. Insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form:

Date	Drawer	Acceptor	Amount	Due Date
			\$ ¢	

3. Under "Consideration" state how the debt arose, for example "goods sold and delivered to the company between the date of .....", "moneys advanced in respect of the Bill of Exchange." Include details of vouchers substantiating payment.
4. Do not complete section three if this proof is made by the creditor personally.

FOR OFFICE USE ONLY

Received	Admitted to Vote for	Admitted to rank for dividend
	\$ ¢	\$ ¢

**‘ANNEXURE D’**

## APPOINTMENT OF PROXY

BRAIFORM AUSTRALIA PTY LTD (IN LIQUIDATION)  
ACN 151 954 513 ("THE COMPANY")

I/We (name of signatory).....of (creditor name).....  
of (creditor address) \_\_\_\_\_

a creditor of Braiform Australia Pty Ltd

appoint (name of person to hold proxy) \_\_\_\_\_

of (address of proxy) \_\_\_\_\_

or in his or her absence (name alternative proxy) \_\_\_\_\_

of (address of alternative proxy) \_\_\_\_\_

as my/our proxy to vote at the creditors meeting to be held on Wednesday, 29 July 2020 at 11:00am via webinar, or at any adjournment of that meeting as follows:

I/We authorise my/our proxy to vote as special proxy as specified below.

RESOLUTIONS	For	Against	Abstain
<p>1. Liquidator's Remuneration</p> <p>That the remuneration of the Liquidators from 15 April 2020 to 30 June 2020 is determined at a sum equal to the costs of time spent by the Liquidators and their partners and staff, calculated at the hourly rates as detailed in the report to creditors dated 14 July 2020, being \$71,946.50, exclusive of GST, and that the Liquidators can draw the remuneration on a monthly basis or as required.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>2. Liquidators' Future Remuneration</p> <p>That the future remuneration of the Liquidators from 1 July 2020 to 30 September 2020 is determined at a sum equal to the costs of time spent by the Liquidators and their partners and staff, calculated at the hourly rates as detailed in the report to creditors dated 14 July 2020 that may be increased at a rate of 3.5% (rounded to the nearest five dollars) at 1 July each year, up to a capped amount of \$20,000, exclusive of GST, and that the Liquidators can draw the remuneration on a monthly basis or as required.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>3. Internal Disbursements</p> <p>That the necessarily incurred internal disbursements of the Liquidators and any of the Liquidators' partners or employees for the period 15 April 2020 to the conclusion of the winding-up is approved and paid in the capped sum of \$1,380 (excluding GST), charged at the rates as detailed in the Remuneration Approval Report attached to this Report to Creditors, and that approval be given for such amounts</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



approved to be drawn on a monthly basis or as required subject to the right to seek further approval as required.			
4. Committee of Inspection To appoint a Committee of Inspection.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Destruction of Books and Records To approve the destruction of books and records at the conclusion of the winding up, subject to the approval of the Australia Securities & Investment Commission.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

I/We authorise my/our proxy to vote as a general proxy on resolutions other than those specified above.

Signed

Dated

**‘ANNEXURE E’**



## REMUNERATION APPROVAL REPORT

BRAIFORM AUSTRALIA PTY LTD (IN LIQUIDATION)  
ACN 151 954 513

This remuneration approval report provides you with the information you need to be able to make an informed decision regarding the approval of our remuneration for undertaking the Creditors Voluntary Liquidation of Braiform Australia Pty Ltd.

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## 1. APPROVAL OF REMUNERATION AND INTERNAL DISBURSEMENTS

You should read this report and the other documentation that we have sent you and then attend the meeting of creditors in order to voice your opinion by casting your vote on the resolutions put to the meeting. The meeting will also give you an opportunity to ask any questions that you may have.

Alternatively, you are also able to appoint a representative to attend on your behalf by lodging a proxy form. Lodging a specific proxy form allows you to specify how your proxy must vote. Lodging a general proxy form allows your representative to choose how your vote is exercised.

Information about the meeting of creditors is provided in the covering report to creditors.

If you have any questions or need any assistance, please contact Emily Guan of this office on (02) 9240 9851 or via email on [emily.guan@bdo.com.au](mailto:emily.guan@bdo.com.au).

## 2. DECLARATION

We, Andrew Sallway and Duncan Clubb of BDO, have undertaken a proper assessment of this remuneration claim for our appointment as Liquidators of Braiform Australia Pty Ltd in accordance with the law and applicable professional standards. We are satisfied that the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of the Creditors Voluntary Liquidation.

## 3. EXECUTIVE SUMMARY

The total remuneration for this appointment is estimated to be \$120,000, exclusive of GST, subject to outcome of my investigations.

This has increased compared to my initial estimate because of:

- Time incurred in facilitating a sale of the Company's stock in Australia and New Zealand including dealing with 3PL service providers;
- Time incurred in collecting Company debtors; and
- Time incurred in liaising with the Director, staff, and external parties to acquire information due to difficulties in obtaining records and deficiencies in information.

Remuneration currently claimed and previously approved is summarised below.

Period	Report Reference	Amount (\$ ex GST)
Current remuneration approval sought:		
Resolution [1]: 15 April 2020 to 30 June 2020	4	71,946.50
Resolution [2]: 1 July 2020 to 30 September 2020*	4	20,000.00

\* Approval for the future remuneration sought is based on an estimate of the work necessary to 30 September 2020. Additional work will be necessary beyond what is contemplated and further



approval may be sought from creditors.

Internal disbursements currently claimed and previously approved are summarised below.

Period	Report Reference	Amount (\$ ex GST)
--------	------------------	--------------------

Current internal disbursements claim:

Resolution [3]: 15 April 2020 to completion	5	1,380
---	---	-------

\* Approval for the future internal disbursements sought is based on an estimate of the internal disbursements necessary to the completion of the administration. Should additional disbursements be necessary beyond what is contemplated, further approval may be sought from creditors.

Please refer to report section references detailed above for full details of the calculation and composition of the remuneration and disbursement approval sought.

## 4. REMUNERATION

### 4.1 Remuneration claim resolutions

We will be seeking approval of the following resolutions to approve our remuneration. Details to support these resolutions are included in section 3.2 and in the attached Schedules.

Resolution One from 15 April 2020 to 30 June 2020 (Current remuneration)

"That the remuneration of the Liquidators from 15 April 2020 to 30 June 2020 is determined at a sum equal to the costs of time spent by the Liquidators and their partners and staff, calculated at the hourly rates as detailed in the report to creditors dated 14 July 2020, being \$71,946.50, exclusive of GST, and that the Liquidators can draw the remuneration on a monthly basis or as required."

Resolution Two from 1 July 2020 to 30 September 2020 (Future remuneration)

"That the future remuneration of the Liquidators from 1 July 2020 to 30 September 2020 is determined at a sum equal to the costs of time spent by the Liquidators and their partners and staff, calculated at the hourly rates as detailed in the report to creditors dated 14 July 2020 that may be increased at a rate of 3.5% (rounded to the nearest five dollars) at 1 July each year, up to a capped amount of \$20,000, exclusive of GST, and that the Liquidators can draw the remuneration on a monthly basis or as required."

## 4.2 Details of remuneration

The basis of calculating the remuneration claims are summarised in the following annexures:

Resolution	Summary <sup>1</sup>	Detailed <sup>2</sup>
One - From 15 April 2020 to 30 June 2020	Annexure A	Annexure B
Two - From 1 July 2020 to 30 September 2020	N/A	Annexure C

Notes:

1. Summary annexures provide detail of the time charged to each major task area by staff members working on the Creditors Voluntary Liquidation for the relevant period, which is the basis of each claim.
2. Detailed annexures provide descriptions of the tasks performed within each task area, matching the amounts shown in the summary annexures.

## 4.3 Total remuneration reconciliation

At this point in time we estimate that the total remuneration for this Creditors Voluntary Liquidation will be approximately \$120,000, excluding GST which includes the current approval amount being sought. This is subject to the variables which may have a significant effect on this estimate and that we are as yet unable to determine.

This estimate differs to the estimate of costs provided in the Initial Remuneration Notice dated 28 April 2020, which estimated a cost of the administration of \$50,000 (excluding GST), for the following reasons:

- Time incurred in facilitating a sale of the Company's stock;
- Time incurred in collecting Company debtors; and
- Time incurred in liaising with the Director, staff, and external parties to acquire information due to difficulties in obtaining records and deficiencies in information.

In preparing this remuneration approval report, we have made our best estimate at what we believe the Creditors Voluntary Liquidation will cost to complete and we do not anticipate that we will have to ask creditors to approve any further remuneration. However, should the Creditors Voluntary Liquidation not proceed as expected, we will advise creditors and we may seek approval of further remuneration and provide details on why the remuneration has changed. Matters that may affect the progress and the cost of the Creditors Voluntary Liquidation, include:

- Debtor collection process becoming protracted; and
- Identifying and pursuing preference payments or an insolvent trading claim against the Directors.

#### 4.4 Likely impact on dividends

The Corporations Act sets the order for payment of claims against the Company and it provides for remuneration of the liquidator to be paid in priority to other claims. This ensures that when there are sufficient funds, the liquidator receives payment for the work done to recover assets, investigate the Company's affairs, report to creditors and ASIC and distribute any available funds.

Based on:

- realisations to date,
- estimated future realisations,
- my estimated remuneration to complete the liquidation and
- the estimated total of creditor claims based on the Company's records and claims lodged now,

I estimate that a dividend of approximately 11 cents in the dollar will be paid in the Liquidation. However, this is subject to a range of variables, particularly the future realisations and creditor claims.

## 5. DISBURSEMENTS

Disbursements are divided into three types:

- Externally provided professional services - these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- Externally provided non-professional costs - these are recovered at cost. Examples of externally provided non-professional costs are travel, accommodation and search fees.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis. Details of the basis of recovery of each of these costs is discussed below.

We have undertaken a proper assessment of disbursements claimed for the Company, in accordance with the law and applicable professional standards. We are satisfied that the disbursements claimed are necessary and proper.

We will be seeking creditor approval to pay our internal disbursements from creditors.

## 5.1 Internal disbursement claim

Current disbursements incurred by our firm is set out below:

Disbursements claimed	Amount (\$ ex GST)
ASIC Advertising	58.18
Searches	13.02
Total	71.20

Approval of the payment of these disbursements to a capped amount of \$1,380, excluding GST, is being sought from creditors at the meeting of creditors

## 5.2 Future basis of internal disbursements

Future disbursements provided by our firm will be charged to the administration on the following basis:

Disbursements claimed	Basis
ASIC Administration fee (for CVL)	6 metric events @ \$125
Storage Costs	At Cost
Postage	At Cost
Staff vehicle use	\$0.68 / km
Total	

Rates applicable for financial year starting 1 July 2020

Approval of the payment of these disbursements at the above rates to a capped amount of \$1,380, excluding GST is being sought from creditors at the meeting of creditors

### ASIC Administration Fee

We are now required to pay an industry funding levy (levy) to the Australian Securities and Investment Commission (ASIC) to perform our statutory duties as external administrator.

The levy allows ASIC to recoup its regulatory costs from industries through a combination of levies and fees-for-service.

ASIC do not issue invoices relating to this levy until at least January following the end of each financial year, therefore at this time we can only estimate the costs involve per external administration.

To ensure there are no delays in finalising this administration, we propose creditors approve an internal disbursement of \$750 for the estimated cost of this levy. This fee has been calculated based on the information provided by ASIC and the average costs (metric events) associated with each administration.





Some administrations may attract a higher levy due to the complexity and length of time we are appointed. We will report to you if we require further approval for internal disbursements.

Any actual costs incurred in respect of the levy paid directly to ASIC (above the amount we have had approved) can be paid directly from the administration without creditor approval.

If ASIC withdraws the levy and the administration has not been finalised, these funds will be repaid.

If creditors would like more information on the ASIC levy and how it is calculated, please contact our office.

## 6. QUERIES

If you have any queries regarding the information in this report, please contact Emily Guan on (02) 9240 9851 or via email on [emily.guan@bdo.com.au](mailto:emily.guan@bdo.com.au).

You can also access information which may assist you on the following websites:

- ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors).
- ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for "insolvency information sheets").

The above websites include information on external administrations, approval of remuneration and meetings.



Schedule A: Calculation of Remuneration

Resolution: Liquidator's Remuneration for the Period from 15 April 2020 to 30 June 2020

Client & Matter	Staff	Staff Position	Hourly Rate	Total		Administration		Assets		Creditors		Investigations	
				Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Client: BRAIFORM AUSTRALIA PTY LTD Matter: BR - Creditors Voluntary Liquidation WIP Between: 15/04/2020 - 30/06/2020	Andrew Sallway	Partner	665.00	16.1	10,706.50	4.0	2,660.00	11.5	7,647.50	0.6	399.00	-	-
	Fady Abi Abdallah	Partner	665.00	4.0	2,635.00	-	-	4.0	2,635.00	-	-	-	-
	Matthew Mutton	Associate Director	615.00	0.4	225.00	-	-	0.4	225.00	-	-	-	-
	Ben Carney	Manager	465.00	2.0	930.00	2.0	930.00	-	-	-	-	-	-
	Daniel Rigg	Manager	465.00	63.5	29,527.50	9.6	4,464.00	43.2	20,088.00	6.9	3,208.50	3.8	1,767.00
	Emily Guan	Senior Accountant	385.00	69.8	26,873.00	10.1	3,888.50	27.1	10,433.50	24.5	9,432.50	8.1	3,118.50
	Ben Gan	Accountant	345.00	0.3	103.50	0.3	103.50	-	-	-	-	-	-
	Bill Todd	Graduate Accountant	220.00	4.3	946.00	2.6	572.00	1.7	374.00	-	-	-	-
		<b>Total</b>		<b>160.3</b>	<b>71,946.50</b>	<b>28.6</b>	<b>12,618.00</b>	<b>87.83</b>	<b>41,403.00</b>	<b>32.0</b>	<b>13,040.00</b>	<b>11.9</b>	<b>4,885.50</b>
		Less: Fees Approved											
		Write Off											
		Unbilled Amount			71,946.50								
		Billed Amount											
		GST											
		Total (Incl. GST)											
		Average hourly rate			448.7								



Schedule B: Description of Work that has been completed

Resolution: 15 April 2020 to 30 June 2020

	General Description	Includes
<b>Administration</b> 28.6 Hrs \$12,618.00	Planning / Review	Attend to all statutory requirements Discuss the status of liquidation
	Correspondence	Letters advising third parties and utilities of appointment General correspondence with third parties Issuing Director Packs to Company Directors
	Document Maintenance / File Review / Checklist	File of documents File reviews Update checklists
	Insurance	Correspondence with our broker Arthur J. Gallagher ('AJG') Identify potential issues that required attention of insurance specialists Correspond with AJG regarding initial insurance requirements Review insurance policy
	Bank account administration	Prepare correspondence with CBA to open a new bank account for the Company Bank account reconciliations Correspond with CBA regarding specific transactions and account details
	ASIC Forms	Lodge statutory notices and forms
	ATO & other statutory reporting	Request information from the ATO under the Freedom of Information Act
<b>Assets</b> 87.83 Hrs \$41,403.00	Cash at Bank	Prepare and dispatch correspondence with the major banks to freeze any existing accounts held by the Company on appointment Correspond with HSBC to transfer pre-appointment funds into the Liquidator's bank account

<p>Creditors</p> <p>32.0 Hrs</p> <p>\$13,040.00</p>	General	<p>Identify and secure assets that belong to the Company</p> <p>Discussions with Directors, former director and staff regarding potential assets</p>
	Leases	<p>Correspondence with relevant parties and landlords regarding leases and bank guarantees held over premises</p> <p>Disclaim leases</p>
	Sale of Stock	<p>Correspondences with logistics providers regarding a stocktake</p> <p>Undertook independent valuation of stock</p> <p>Correspondence with lawyers regarding the sale</p> <p>Attend to the receipt of settlement from pre-appointment sale of business</p>
	Debtors	<p>Correspondences with the Company's accountant regarding debtor ledger and invoices</p> <p>Send letter to all debtors requesting payment</p> <p>Correspondences with debtors regarding payment</p> <p>Reconciliation of debtor payments</p>
	Creditor Enquiries	<p>Telephone conversations with creditors and suppliers</p> <p>Receive and follow up creditor enquiries via telephone, email and post</p> <p>Maintain creditor enquiry register</p> <p>Review and prepare correspondence to creditors and their representatives via email and post</p>
	Creditor report	<p>Prepare initial notices to creditors</p> <p>Prepare Liquidator's remuneration report</p> <p>Prepare 70-30 statutory creditors report</p>
	Secured Creditors	<p>Prepared notices and disclaimers for PPSR registrations</p>
	Processing proofs of debt	<p>Receive and file Proofs of debts</p> <p>Update creditor claims in register</p>



Investigations

11.9 Hrs

\$4,885.50

Conducting investigation

- Collect books and records
- Review of books and records
- Prepare investigation file
- Correspond with the Directors of the Company regarding Form 507 and creditors listing
- Review and prepare Company nature and history
- Conduct statutory searches
- Review the Company's pre-appointment bank statements for preferences and voidable transactions
- Investigate conduct of Directors prior to appointment
- Investigate the circumstances which led to the winding up of the Company
- Investigate potential preference payments

Schedule C: Description of Work to be completed

Resolution: 1 July 2020 to 30 September 2020

	General Description	Includes	
Administration \$2,500	Planning / Review	Attend to all statutory requirements Discuss the status of liquidation	
	Correspondence	General correspondence with third parties	
	Document Maintenance / File Review / Checklist	Three-month administration review File of documents File reviews Update checklists	
	Insurance	Identify potential issues that required attention of insurance specialists	
	Bank account administration	Bank account reconciliations Correspond with CBA regarding specific transactions and account details	
	ASIC Forms	Correspond with ASIC regarding statutory forms Lodgement of ASIC forms	
	General	Discussions regarding assets File review and file note preparation	
	Assets \$2,500	Debtors	Correspondence with Company's accountant regarding debtor ledger and invoices Correspondences with debtors Reconciliation of debtor payments
		Creditor Enquiries	Telephone conversations with creditors and suppliers Receive and follow up creditor enquiries via telephone, email and post Maintain creditor enquiry register
	Creditors \$5,000		Review and prepare correspondence to creditors and their representatives via email and post
Creditor report		Prepare further notices to creditors and convene creditors meeting Prepare second creditors report pursuant to section 70-40 of IPR Prepare Liquidator's remuneration report	

Investigations \$10,000	Processing proofs of debt	<ul style="list-style-type: none"><li>Prepare statutory creditors report and lodge with ASIC</li><li>Prepare correspondence to potential creditors inviting lodgement of Proof of Debt</li><li>Receive and file Proofs of Debts</li><li>Correspond with the ATO regarding outstanding taxation liabilities</li><li>Update creditor claims in register</li></ul>
	Conducting investigation	<ul style="list-style-type: none"><li>Review the Company's pre-appointment bank statements for preferences and voidable transactions</li><li>Letters of demand to be sent to creditors who have received unfair preference payments</li><li>Review Company nature and history</li><li>Review of books and records</li><li>Progress investigation file</li><li>Progress insolvent trading file note</li><li>Investigate the circumstances which led to the winding up of the Company</li></ul>
	ASIC reporting	<ul style="list-style-type: none"><li>Prepare statutory investigation reports</li><li>Liaise with ASIC</li></ul>

## Business Restructuring - Corporate Rates as at 1 July 2019

Title	Description	Hourly Rate (excl GST)
Partner	Registered Liquidator- Partner bringing specialist skills to administration or insolvency task.	665
Associate Director	Minimum of twelve years insolvency experience, at least five years at manager level, qualified accountant and capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in own right.	615
Senior Manager	More than 7 years' insolvency experience, more than 3 years as a manager, qualified accountant. Answerable to the appointee but otherwise responsible for all aspects of administration. Experienced at all levels and considered very competent. Control staff and their training.	510
Manager	6-7 years, qualified accountant, with well-developed technical and commercial skills. Should be constantly alert to opportunities to meet clients' needs and to improve the clients' future operation either by revenue enhancement or by reducing costs and improving efficiency. Controls 2-4 staff.	465
Assistant Manager	4-6 years, CA program (CA) complete. Will have had conduct of minor administrations and experience in control of 1-3 staff. Assists planning and control of medium to larger jobs.	425
Senior Accountant	2-4 years, CA (or equivalent) would normally be commenced during this period. Required to control of small to medium sized jobs as well as performing some of the more difficult work on larger jobs.	385
Accountant	1-2 years, CA (or equivalent) would normally be commenced during his period. Required to control the fieldwork on small jobs and responsible for assisting complete fieldwork on medium to large jobs.	345
Graduate Accountant	0-1 years, Trainee undertaking a degree with an accounting major. Required to assist in day-to-day fieldwork under supervision of more senior staff.	220
Undergraduate Accountant	HSC or equivalent, plans to undertake at least part-time degree/diploma. Required to assist in administration and day-to-day fieldwork under supervision of more senior staff.	220
Executive Assistant/ Personal Assistant	Appropriate computer skills including machine usage	220

Note: Office rates charged by BDO are subject to change.



**‘ANNEXURE F’**

# Creditor Information Sheet

## Offences, Recoverable Transactions and Insolvent Trading



### Offences

A summary of offences under the Corporations Act that may be identified by the administrator:

180	Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.
181	Failure to act in good faith.
182	Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of the officer's position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.
198G	Performing or exercising a function or power as an officer while a company is under administration.
206A	Contravening a court order against taking part in the management of a corporation.
206A, B	Taking part in the management of corporation while being an insolvent, for example, while bankrupt.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of an auditor.
314-7	Failure to comply with requirements for the preparation of financial statements.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to the administrator.
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.

### Recoverable Transactions

#### Preferences

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under the Corporations Act.

#### Uncommercial Transaction

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to:

- the benefit or detriment to the company;
- the respective benefits to other parties; and,
- any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years.

The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

### **Unfair Loan**

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only must be entered into before the winding up began.

### **Arrangements to avoid employee entitlements**

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person. It will only be necessary to satisfy the court that there was a breach on the balance of probabilities. There is no time limit on when the transaction occurred.

### **Unreasonable payments to directors**

Liquidators have the power to reclaim '*unreasonable payments*' made to directors by companies prior to liquidation. The provision relates to payments made to or on behalf of a director or close associate of a director. The transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

### **Voidable charges**

Certain charges over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six months of its creation.

## **Insolvent trading**

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they did so expect;
- they did not take part in management for illness or some other good reason; or
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

**Important note:** This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.



**ASIC**  
Australian Securities &  
Investments Commission

## Liquidation: A guide for creditors

If a company is in financial difficulty, its shareholders, creditors or the court can put the company into liquidation.

This information sheet (INFO 45) provides general information for unsecured creditors of companies in liquidation. It covers:

- [who creditors are](#)
- [the purpose of liquidation](#)
- [the liquidator's role](#)
- [reporting to creditors](#)
- [recoveries from creditors](#)
- [creditors' meetings](#)
- [voting at creditors' meetings](#)
- [proposals to creditors without a meeting](#)
- [committee of inspection](#)
- [approval of liquidator's fees](#)
- [payment of dividends](#)
- [other creditor rights](#)
- [secured creditor rights](#)
- [directors and liquidation](#)
- [conclusion of liquidation](#)
- [queries and complaints](#)

### 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.

A retail customer of a company in liquidation may also be a creditor if they have partly or fully paid for goods and services that they have not received.

An employee owed money for unpaid wages and other entitlements is a creditor.

A person who may be owed money by the company if a certain event occurs (e.g. if they succeed in a legal claim against the company) is also a creditor, and is sometimes referred to as a 'contingent' creditor.

There are generally two categories of creditor – secured and unsecured:

- A secured creditor is someone who holds a security interest, such as a mortgage, in some or all of the company's assets, to secure a debt owed by the company. Lenders usually require a security interest in company assets when they provide a loan. Security interests over personal property other than land are registered on the Personal Property Securities Register (PPSR) if the creditor wants to ensure their security interest is enforceable and accorded priority in an insolvency. You can search the PPSR to find out if anyone holds a security interest (other than a mortgage over land) in the company's assets.
- An unsecured creditor is a creditor who does not hold a security interest in the company's assets.

Employees are a special class of unsecured creditors. In a liquidation, their outstanding entitlements are paid in priority to the claims of other unsecured creditors. If you are an employee, see [Information Sheet 46 \*Liquidation: A guide for employees\*](#) (INFO 46).

All references in this information sheet to 'creditors' relate to unsecured creditors unless otherwise stated.

## The purpose of liquidation

The purpose of liquidation of an insolvent company is to have an independent and suitably qualified person (the liquidator) take control of the company so that its affairs can be wound up in an orderly and fair way for the benefit of all creditors.

There are two types of insolvent liquidation:

- creditors' voluntary liquidation
- court liquidation.

The most common type is a creditors' voluntary liquidation, which usually begins in one of two ways:

- creditors vote for liquidation following a voluntary administration or a terminated deed of company arrangement
- an insolvent company's shareholders resolve to liquidate the company and appoint a liquidator.

In a court liquidation, a liquidator is appointed by the court to wind up a company following an application (usually by a creditor). Others, including a director, a shareholder and ASIC, can also make a winding-up application to the court .

After a company goes into liquidation, unsecured creditors cannot commence or continue legal action against the company, unless the court permits.

It is possible for a company in liquidation to also be in receivership: see [Information Sheet 54 \*Receivership: A guide for creditors\*](#) (INFO 54).

## The liquidator's role

When a company is being liquidated because it is insolvent, the liquidator has a duty to all the company's creditors. The liquidator's role is to:

- collect, protect and realise the company's assets
- investigate and report to creditors about the company's affairs, including any unfair preferences that may be recoverable, any uncommercial transactions that may be set aside, and any possible claims against the company's officers
- inquire into the failure of the company and possible offences by people involved with the company and report to ASIC
- after payment of the costs of the liquidation, and subject to the rights of any secured creditor, distribute the proceeds of realisation – first to priority creditors, including employees, and then to unsecured creditors.

Except for lodging documents and reports required under the *Corporations Act 2001* (Corporations Act), a liquidator is not required to incur an expense in relation to the winding up unless there are enough assets to pay their costs.

If the company is without sufficient assets, one or more creditors may agree to reimburse a liquidator's costs and expenses of undertaking investigations and taking action to recover further assets for the benefit of creditors.

In this case, if additional assets are recovered, the liquidator or particular creditor can apply to the court for the creditor to be compensated for the risk involved in funding the liquidator's recovery action.

If a liquidator suspects that people involved with the company may have committed offences and the liquidator reports this to ASIC, the liquidator may also be able to apply to ASIC for funding to carry out a further investigation into the allegations.

## Reporting to creditors

The liquidator will send the following to creditors:

- initial information about creditors' rights in the liquidation
- a statutory report within three months after their appointment
- such other reports as the liquidator decides or that are reasonably requested by creditors.

### Initial information

Within 10 business days after their appointment as liquidator in a creditors' voluntary liquidation (or 20 business days for a court liquidator), the liquidator must give creditors notice of their appointment and information advising creditors of the following:

- their right to request information, reports and documents
- their right to direct that a meeting of creditors be held
- their right to give directions to the liquidator
- their right to appoint a reviewing liquidator
- their right to remove and replace the liquidator
- in a creditors' voluntary liquidation, a summary of the company's affairs and a listing of the names, addresses and estimated amounts owed to the company's creditors (and identifying if any of the creditors are related entities of the company).

The liquidator must also send with this information an initial remuneration notice if they propose to seek fee approval during the liquidation: see [Information Sheet 85](#) *Approving fees: A guide for creditors* (INFO 85).

### Statutory report

The liquidator must provide a report to creditors within three months after their appointment containing information about:

- the estimated amount of assets and liabilities of the company
- inquiries undertaken and further inquiries that may need to be undertaken relating to the winding up of the company
- what happened to the business of the company
- the likelihood of creditors receiving a dividend before the affairs of the company are fully wound up
- possible recovery actions.

The report may provide additional information relevant to the liquidation or notify creditors about whether the liquidator proposes to convene a meeting of creditors. The liquidator might also attach details of a proposal to creditors to consider and vote on without the need to hold a meeting. Information about meetings of creditors and voting on proposals without a meeting is included below.

A copy of the report must be lodged with ASIC. A copy of this report may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

### Other reports

There is no statutory requirement for the liquidator to provide further reports to creditors. However, a liquidator will often provide further reports to creditors updating them on the conduct of the liquidation.

Creditors can request that the liquidator provide a report. The liquidator must comply with a reasonable request. See the information at 'Other creditor rights' below.

## Recoveries from creditors

A liquidator has the ability to recover, for the benefit of all creditors, certain payments (known as unfair preferences) made by the company to individual creditors in the six months before the start of the liquidation.

Broadly, a creditor receives an unfair preference if, during the six months prior to liquidation, the company is insolvent, and the creditor suspects the company is insolvent and receives payment of their debt (or part of it) ahead of other creditors. To be an unfair preference, the payment must put the creditor receiving it in a more favourable position than other unsecured creditors.

Not all payments from the company to a creditor in the six months before liquidation are unfair preferences. The Corporations Act provides various defences to an unfair preference claim.

If a liquidator seeks to recover a payment that has been made to you, you may wish to obtain independent legal advice on the merits of the liquidator's claim before repaying any money.

## Creditors' meetings

A liquidator may call a creditors' meeting from time to time to inform creditors of the progress of the liquidation, to find out their wishes on a particular matter or seek approval of the liquidator's fees.

You may also use a creditors' meeting to ask questions about the liquidation and inform the liquidator about your knowledge of the company's affairs.

### Meetings during a court liquidation

In a court liquidation, the liquidator is not required to call a creditors' meeting unless a matter requires creditor approval.

The liquidator can call a creditors' meeting at any time and must also call a meeting if:

- a committee of inspection directs it (where there is a committee of inspection)
- creditors pass a resolution requiring the liquidator call a meeting
- at least 25% in value of creditors direct the liquidator to do so in writing
- less than 25% but more than 10% in value of creditors direct the liquidator to do so in writing and they provide security for the costs of calling and holding the meeting.

The liquidator is not required to comply with a direction to call a meeting given by a committee of inspection or creditors if that direction is not reasonable. There are rules governing when a direction is not reasonable, including if the liquidator, acting in good faith, thinks that:

- complying with the direction would cause substantial prejudice to the interests of creditors or a third party and the prejudice outweighs the benefits of complying with the direction
- there is insufficient available property to comply with the direction.

If the direction is not reasonable, the liquidator must notify the person or body that gave the direction and set out reasons why it is not reasonable. Even if the liquidator decides not to comply with a direction and convene a meeting because it is not reasonable, if the person or body who gave the direction agrees to pay the costs of calling and holding the meeting, and security for those costs is provided if the liquidator requires it, the liquidator must convene the meeting.

**Note:** See the Insolvency Practice Rules (Corporations) 2016 – s75-250.

### Meetings during a creditors' voluntary liquidation

In a creditors' voluntary liquidation, the liquidator is not required to call a creditors' meeting unless a matter requires creditor approval.

The liquidator can call a creditors' meeting at any time and if directed to do so by one of the ways outlined above for court liquidation.

In addition, the liquidator in a creditors' voluntary liquidation must call a meeting if:

- less than 25% but more than 5% in value of creditors direct the liquidator to do so in writing
- none of the creditors who give the direction is a related entity in relation to the company
- the direction is given no more than 20 business days after the resolution for the voluntary winding up of the company is passed.

Creditors might direct a meeting be held to ask questions about the liquidation, inform the liquidator about their knowledge of the company's affairs or to consider replacing the liquidator if they have a concern about the independence of the liquidator appointed by the company's shareholders.

As with a court liquidation, the liquidator is not required to comply with a direction by the committee of inspection or creditors to call a meeting if that direction is not reasonable, but they must notify the person or body that gave the direction and set out reasons why it is not reasonable.

## Minutes of meetings

The chairperson of a creditors' meeting (usually the liquidator or one of their senior staff) must prepare minutes of the meeting and a record of those who were present at the meeting and lodge them with ASIC within one month. A copy of the minutes of meeting may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

## Voting at a creditors' meeting

To vote at a creditors' meeting you must lodge details of your debt or claim with the liquidator. Often, the liquidator will provide you with a form called a 'proof of debt' to be completed and returned before the meeting.

The chairperson of the meeting decides whether or not to accept the debt or claim for voting purposes. The chairperson may decide that a creditor does not have a valid claim. In this case, they may not allow the creditor to vote at all. If the chairperson is in doubt whether to accept the debt or claim, they must mark the vote as objected to and allow the creditor to vote subject to the vote being declared invalid if the objection is sustained. This decision is only for voting purposes. It is not relevant to whether a creditor will receive a dividend.

An appeal against a decision by the chairperson to accept or reject a proof of debt or claim for voting purposes may be made to the court within 10 business days after the decision.

## Voting by proxy

You may appoint an individual as proxy to attend and vote at a meeting on your behalf. Creditors who are companies will have to nominate a person as proxy so that they can participate in the meeting. This is done using a form sent out with the notice of meeting. The completed proxy form must be provided to the liquidator before the meeting.

An electronic form of proxy may be used if the liquidator allows electronic lodgement, provided there is a way to authenticate the appointment of the proxy (e.g. by scanning and emailing a signature or using a digital signature).

You can specify on the proxy form how the proxy is to vote on a particular resolution and the proxy must vote in accordance with that instruction. This is called a 'special proxy'. Alternatively, you can leave it to the proxy to decide how to vote on each of the resolutions put before the meeting. This is called a 'general proxy'.

You can appoint the chairperson to represent you either through a special or general proxy. The liquidator or one of their partners or employees must not use a general proxy to vote in favour of a resolution approving payment of the liquidator's fees.

## Manner of voting

A vote on any resolution put to a creditors' meeting may be taken by creditors stating aloud their agreement or disagreement, or by a more formal voting procedure called a 'poll'.

If voting is by verbally signalling agreement, the resolution is passed if a majority of those present indicate agreement. It is up to the chairperson to decide if this majority has been reached.

After the vote, the chairperson must tell those present whether the resolution has been passed or lost. If the chairperson is unable to determine the outcome of a resolution on verbal agreement, they may decide to conduct a poll.

Alternatively, a poll can be demanded by a person participating and entitled to vote at the meeting. If a poll is demanded, it must be taken immediately.

The chairperson will determine how this poll is taken.



If you intend to demand that a poll be taken, you must do so before, or as soon as, the chairperson has declared the result of a vote taken by voices.

When a poll is conducted, a resolution is passed if both:

- more than half the number of creditors who are voting (in person or by proxy) vote in favour of the resolution
- those creditors who are owed more than half of the total debt owed to creditors at the meeting vote in favour of the resolution.

This is referred to as a 'majority in number and value'. If a majority in both number and value is not reached under a poll (often referred to as a deadlock), the chairperson has a casting vote.

### Chairperson's casting vote

When a poll is taken and there is a deadlock, the chairperson may use their casting vote (except for resolutions to approve their remuneration) either in favour of or against the resolution. Where the resolution relates to their removal as liquidator, the chairperson may only exercise the casting vote in favour of their removal. The chairperson may also decide not to use their casting vote, in which case the deadlocked resolution is not passed.

The chairperson must inform the meeting, and include in the written minutes of meeting that are lodged with ASIC, of the reasons why they exercised their casting vote in a particular way or why they chose not to use their casting vote.

If you are dissatisfied with how the chairperson exercised their casting vote or failed to use their casting vote, you may, in specified circumstances, apply to court for a review of the chairperson's decision. The court may vary or set aside the resolution or order that the resolution is taken to have been passed.

### Votes of related creditors

If directors and shareholders, their spouses and relatives and other entities controlled by them are creditors of the company, they are entitled to attend and vote at creditors' meetings.

If a resolution is passed or defeated based on the votes of these related creditors and you are dissatisfied with the outcome, you may, in specified circumstances, apply to court for the resolution to be set aside and/or for a fresh resolution to be voted on without related creditors being entitled to vote. Certain criteria must be met before the court will make such an order (e.g. the original result of the vote being against the interests of all or a class of creditors).

## Proposals to creditors without a meeting

Instead of convening a creditors' meeting, the liquidator can put proposals to creditors by giving notice in writing.

This notice must be given to each creditor who would be entitled to receive notice of a meeting and:

- include a statement of the reasons for the proposal and the likely impact the proposal will have on creditors
- invite the creditor to either:
  - vote 'yes' or 'no' for the proposal
  - object to the proposal being resolved without a meeting
- specify a reasonable time for creditors' replies to be received by the liquidator.

To vote on the proposal, a creditor must lodge details of their debt or claim with the liquidator and complete the voting documents provided by the liquidator.

Creditors can vote 'yes' or 'no' on the proposal or object to the proposal being resolved without a creditors' meeting. You should return your response to the liquidator within the time specified in the notice, which must be at least 15 business days after the notice is given to creditors.

A resolution is passed if the majority of creditors in number and value who responded to the notice voted 'yes' and if not more than 25% in value of the creditors who responded objected to the proposal being resolved without a creditors' meeting.

The liquidator should provide creditors enough information to allow them to make an informed decision about the proposal. A creditor should contact the liquidator to obtain further information if they think it necessary for them to make a decision.

The liquidator must lodge with ASIC a statement about the outcome of the proposal. A copy of the outcome of the proposal may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

## Committee of inspection

A committee of inspection may be formed to assist and advise the liquidator in both a court liquidation and creditors' voluntary liquidation. The committee of inspection also monitors the conduct of the liquidator, may approve certain steps in the liquidation and may give directions to the liquidator. The liquidator must have regard to, but is not always required to comply with, such directions.

The committee may be formed by resolution passed at any meeting of creditors called for that purpose. Creditors also decide who are to be appointed members of the committee of inspection.

All creditors are entitled to stand for committee membership. Members appointed to the committee of inspection represent the interests of all creditors.

If a creditor is a company, the creditor can nominate, in writing, an individual to represent it on the committee.

A person can be appointed as a member of the committee of inspection:

- by resolution of creditors
- by a creditor, or group of creditors, owed at least 10% of the value of creditors' claims
- by an employee, or group of employees, owed at least 50% in value of outstanding employee entitlements.

A member of the committee of inspection must not directly or indirectly derive any profit or advantage from the external administration of the company.

A committee of inspection has various powers and functions; including to:

- approve the remuneration of the liquidator
- direct the liquidator to convene a meeting of creditors
- request the liquidator to give information, provide a report or produce a document
- obtain specialist advice or assistance (with the prior approval of the liquidator or the court) that the committee considers desirable relating to the conduct of the liquidation.

The liquidator is not required to comply with a direction to convene a meeting or give information if that request is not reasonable. The rules mentioned under the heading 'Meetings during a court liquidation' about when a direction is not reasonable apply to directions given to a liquidator by a committee of inspection.

A committee of inspection can determine its own procedures and exercises its powers through resolutions passed at meetings of the committee. A resolution is passed by a majority in number of its members present at a meeting. The committee of inspection can only act if a majority of its members attend.

Minutes of meetings of the committee of inspection must be prepared and lodged with ASIC within one month. A copy of the minutes of committee of inspection meetings may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

ASIC is entitled to attend a meeting of the committee of inspection.

## Approval of liquidator's fees

A liquidator is entitled to be paid for the work they perform. Generally, their fees will be paid from available assets, before any payments are made to creditors. They may have also arranged for a third party to pay any shortfall in their fees if there aren't any assets.

The fees cannot be paid until the amount has been approved by creditors, a committee of inspection or the court. Alternatively, the liquidator may put a proposal to creditors to approve their fees without holding a meeting.

**Note:** If fees are not approved by the relevant decision-making body, and the liquidation commenced on or after 1 September 2017, the liquidator is entitled to be paid reasonable fees up to a maximum of \$5,272 excluding GST (indexed annually from 1 July 2017).

If you are asked to approve fees, either at a general meeting of creditors or at a meeting of a committee of inspection or by a proposal put to creditors without a meeting, the liquidator must give you, at the same time as the notice of the meeting or with the proposal, a report that contains sufficient information for you to assess whether the fees claimed are reasonable. This report should be in simple language and set out:

- a summary description of the major tasks performed or likely to be performed
- the costs of completing those tasks and how those costs were calculated
- the periods when funds will be drawn to pay the fees
- the estimated total amount, or range of amounts, of total fees
- an explanation of the likely impact the fees will have on any dividends to creditors
- such other information that will assist in assessing the reasonableness of the fees claimed.

If you are in any doubt about how the fees were calculated, ask for more information.

If you do not think the fees are reasonable, you should raise your concerns with the liquidator.

Generally, if fees are approved and you wish to challenge the decision, you may apply to court and ask the court to review the fees. You may wish to seek your own legal advice if you are considering applying for a court review of fees.

Apart from fees, the liquidator is entitled to reimbursement for out-of-pocket expenses that have arisen in carrying out their administration. This reimbursement may require creditor, committee of inspection or court approval.

For further information, see [Information Sheet 85 Approving fees: A guide for creditors](#) (INFO 8 ).

## Payment of dividends

If there are funds left over after payment of the costs of the liquidation and payments to other priority creditors, including employees, the liquidator will pay these to unsecured creditors as a dividend. Generally, the order in which funds are distributed is:

- costs and expenses of the liquidation, including liquidators' fees
- outstanding employee wages and superannuation
- outstanding employee leave of absence (including annual leave and long service leave)
- employee retrenchment pay
- 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).

## Proving your debt

Before any dividend is paid to you for your debt or claim, you will need to give the liquidator sufficient information to prove your debt.

The liquidator will notify you if there are likely to be funds available for distribution and must call for formal proof of debt forms to be lodged. At least 14 days notice of the deadline for lodging the proof must be given.

This notice must be given to each person claiming to be a creditor whose debt or claim has not already been admitted by the liquidator. It must also be published on ASIC's [Published notices](#) website. A copy of the formal proof of debt form will be sent to you with the notice.

You should attach copies of any relevant invoices or other supporting documents to the proof of debt form, as your debt or claim may be rejected if there is insufficient evidence to support it.

If a creditor is a company, the proof of debt form must be signed by a person authorised by the company to do so.

The completed proof of debt form must be delivered or posted to the liquidator. When submitting your claim, ask the liquidator to acknowledge receipt of your claim and advise if any further information is needed.

The liquidator must notify you within seven days if they reject your claim. If you are dissatisfied with the decision, your first step should be to promptly contact the liquidator to see if you can resolve the matter.

If you can't resolve the matter with the liquidator, you may wish to seek your own legal advice, as you have a limited time to appeal to the court. The liquidator will notify you of this time in the notice of rejection. It must be at least 14 days after you receive the notice. The court has the power to extend the time to appeal. If you don't appeal within this time, the liquidator's decision on your claim is final.

If you have a query regarding the calculation of your claim, or the timing of the payment, discuss this with the liquidator.

## Other creditor rights

As well as the various rights involving meetings and participation in dividends discussed above, the other rights of creditors include the right to:

- request the liquidator give information, provide a report or produce a document
- inspect certain books of the liquidator
- inform the liquidator about your knowledge of matters relevant to the affairs of the company in liquidation
- appoint a reviewing liquidator
- remove and replace the liquidator by resolution passed at a meeting of creditors
- complain to ASIC or the court about the liquidator's conduct in connection with their duties.

## Request for information

Creditors can, by resolution passed at a meeting of creditors or individually, request the liquidator to give information, provide a report or produce a document.

The liquidator must comply with this request unless:

- the information, report or document is not relevant to the liquidation
- the liquidator would breach their duties if they complied with the request
- it is not reasonable to comply with the request.

There are rules governing when a direction is not reasonable, including if the liquidator, acting in good faith, thinks that:

- complying with the request would substantially prejudice the interests of one or more creditors or a third party and that the prejudice outweighs the benefits of complying with the request
- the information would be privileged from production in legal proceedings
- there is not sufficient available property to comply with the request
- the law requires the information to be provided by the liquidator within 20 business days of the request being made.

If the direction is not reasonable, the liquidator must notify the requesting party and set out reasons why the request is not reasonable.

If the requesting party agrees to pay the costs of providing the information and security for those costs is provided if the liquidator requires it, the liquidator must comply with the request.

## Liquidator's books

Liquidators must keep sufficient books to give a complete and correct record of their administration of the company's affairs. These include minutes of meetings and details of all the receipts and payments for the liquidation.

These books must be available at the liquidator's office for inspection by creditors and shareholders.

Copies of minutes of meetings and detailed lists of receipts and payments, as well as a number of other documents, must also be lodged with ASIC. Copies of these documents may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

## Informing the liquidator

The liquidator must report to ASIC if they suspect that anyone connected to the company may have committed an offence. If you have any information that might assist in preparing such a report, you should let the liquidator know.

These reports are not available for inspection. ASIC reviews these reports and decides whether to take further action, such as banning a person from acting as a company director for a period of time or charging the person with a criminal offence. ASIC considers a range of factors when deciding what action, if any, to take. For further information, see [Information Sheet 151](#) *ASIC's approach to enforcement* (INFO 151).

## Appoint a reviewing liquidator

Creditors can resolve to appoint a reviewing liquidator to carry out a review into fees and/or costs incurred by the liquidator. In addition, one or more creditors with the agreement of the liquidator may appoint a reviewing liquidator.

This review is limited to:

- remuneration approved within the six months before the reviewing liquidator is appointed
- costs or expenses incurred during the 12-month period before the reviewing liquidator is appointed (unless the liquidator agrees to a longer period).

The reviewing liquidator must be a registered liquidator. A creditor who wishes to appoint a reviewing liquidator must approach a registered liquidator to get a written consent from that person that they would be prepared to act as reviewing liquidator. The person must also make a written declaration about any relationships they or their firm may have that might affect their independence to act as reviewing liquidator.

The liquidator, and their staff, must cooperate with the reviewing liquidator.

If creditors pass a resolution to appoint a reviewing liquidator, the reviewing liquidator's costs form part of the expenses of the liquidation of the company. If one or more creditors appoint the reviewing liquidator with the consent of the liquidator without passing a resolution, the reviewing liquidator's costs are borne by the creditor(s) appointing the reviewing liquidator.

## Remove and replace the liquidator

Creditors may remove and replace the liquidator at any time by resolution of creditors passed at a creditors' meeting for which at least five business days notice is given.

A creditor who wishes to appoint a replacement liquidator must request that the current liquidator convene a meeting. The liquidator is not required to comply if the request is not reasonable (there are rules about when a request to convene a meeting is reasonable – see the information under the heading 'Meetings during a court liquidation' above). The liquidator must comply with the request if the creditor agrees to pay the cost of calling the meeting, and security for those costs is provided if the liquidator requires it.

The notice of meeting must include details of the proposed resolution and attach a consent to act and declaration of relevant relationships of the proposed replacement liquidator.

Accordingly, a creditor who wishes to remove the current liquidator and appoint a replacement liquidator must approach a registered liquidator to get a written consent from that person that they would be prepared to act as liquidator of the company. The person must also make a written declaration about any relationships they or their firm may have that might affect their independence to act as liquidator.

If the resolution to remove the current liquidator is passed at the meeting, the removal takes effect from when a resolution to appoint the replacement liquidator is passed.

## Applications to the court

The court has the power to make such orders as it thinks fit in relation to an external administration. Creditors and other persons with a financial interest in the external administration can apply to the court for these orders which include:

- an order determining any question arising in the external administration
- an order that a person cease to be appointed as the liquidator and that another registered liquidator be appointed
- orders in relation to remuneration.

Making an application to the court can be costly. You should attempt to resolve any problems with the liquidator and only go to court if this fails.

Liquidators, ASIC and other people can also make applications to the court. For example, a liquidator might apply to have questions decided about powers exercised in a liquidation.

## Secured creditors' rights

If a company fails to meet its obligations under a security interest (e.g. a charge or a mortgage), a secured creditor can appoint an independent and suitably qualified person (a receiver) to take control of and realise some or all of the secured assets (collateral), in order to repay the secured creditor's debt. This right continues after the company goes into liquidation. For more on receivership, see [INFO 54](#).

Another option available to a secured creditor is to ask the liquidator to deal with the collateral for them and account to them for the proceeds and costs of collecting and selling those assets.

A secured creditor is entitled to vote at creditors' meetings for the amount the company owes them that exceeds the amount they are likely to receive from realisation of the collateral. The secured creditor can participate in any dividend to unsecured creditors on a similar basis.

## Directors and liquidation

Directors cannot use their powers after a liquidator has been appointed. They have an obligation to assist the liquidator by:

- advising the liquidator of the location of company property and delivering any such property in their possession to the liquidator
- providing the company's books and records to the liquidator
- advising the liquidator of the whereabouts of other company records
- providing a written report about the company's business, property and financial circumstances within 10 business days of the appointment of the liquidator by the court or within five business days of the appointment of a liquidator in a creditors' voluntary liquidation
- meeting with, or reporting to, the liquidator to help them with their inquiries, as reasonably required
- if required by the liquidator, attending a creditors' meeting to provide information about the company and its business, property, affairs and financial circumstances.

A liquidator has the power to apply to the court to conduct a public examination, under oath, of a director (or other person with information about the company).

Compensation proceedings for amounts lost by creditors as a result of the company trading while insolvent can be initiated against a director personally by ASIC, a liquidator or, in certain circumstances, a creditor.

## Conclusion of liquidation

A liquidation effectively comes to an end when the liquidator has realised and distributed all the company's available property and made their report to ASIC.

The liquidator must lodge a final account of their receipts and payments, called an 'end of administration return' and lodge it with ASIC.

**Note:** For a creditors' voluntary liquidation ending before 1 July 2018, the liquidator must also convene a final meeting of the members and creditors of the company and lodge a return for the final meeting with ASIC.

Alternatively, in a court liquidation, after the liquidator decides that the company's affairs are fully wound up, they may:

- seek an order for release from the court
- seek an order for release and that ASIC deregister the company
- if the liquidation is finalised before 1 July 2018 and there are insufficient assets to obtain a court order for the company's deregistration, request that ASIC deregister the company.

ASIC will deregister the company three months after the end of administration return is lodged (or return for the final meeting of members and creditors in a creditors' voluntary winding up if the administration ends before 1 July 2018).

## Queries and complaints

You should first raise any queries or complaints with the liquidator. If this fails to resolve your concerns, including any concerns about the liquidator's conduct, you can lodge a report of misconduct with ASIC – see [How to complain](#).

Lodging your report of misconduct online ensures the quickest response from ASIC to your concerns.

ASIC usually does not become involved in matters of commercial judgement by a liquidator.

Reports of misconduct against companies and their officers can also be made to ASIC.

If you are unable to report misconduct to ASIC online, you can contact us on 1300 300 630.

## Where can I get more information?

For an explanation of terms used in this information sheet, see [Information Sheet 41 \*Insolvency: A glossary of terms\*](#) (INFO 41). For more on external administration, see the related information sheets listed in [Information Sheet 39 \*Insolvency information for directors, employees, creditors and shareholders\*](#) (INFO 39).

Further information is available from the [Australian Restructuring Insolvency & Turnaround Association \(ARITA\) website](#). The ARITA website also contains the [ARITA Code of Professional Practice for Insolvency Practitioners](#).

## 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.

This is **Information Sheet 45 (INFO 45)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

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