



**D&G Hoists & Cranes (Aus) Pty Ltd**  
**ACN 136 357 054**  
**(Administrators Appointed)**  
**Formerly trading as “D&G Verticon”**

**Report by Administrators Pursuant to**  
**Section 439A(4)(a) of**  
**the Corporations Act 2001**

**Martin Jones**  
**Andrew Saker**

6 September 2012

**Ferrier**  
**Hodgson**

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## Glossary of Terms

Abbreviation	Description
ABN	Australian Business Number
ACN	Australian Company Number
Act	The Corporations Act 2001
APAAP	All present and after acquired property
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CI	Crane Investments (WA) Pty Ltd (Administrators Appointed) ACN 103 911 226 trading as Northern Suburbs Crane Hires
DGWA	D&G Hoists & Cranes Pty Ltd (Administrators Appointed) ACN 084 148 096
DGV / the Company	D&G Hoists & Cranes Pty Ltd (Administrators Appointed) ACN 136 357 054 formerly trading as D&G Verticon
DLL	De Lage Landen Pty Ltd
DOCA	Deed of Company Arrangement
ERV	Estimated Realisable Value
GEERS	General Employee Entitlements Redundancy Scheme
HP	Hire Purchase
JP Nelson	JP Nelson Equipment Pte Ltd
PPSA	Personal Property Securities Act 2009
PPSR	PPS Register
SGC	Superannuation Guarantee Charge
SPBF	Scottish Pacific Business Finance Pty Ltd
Statement	Directors' Statement about the Company's Business, Property, Affairs and Financial Circumstances

## Listing of Annexures

**Annexure 1** Administrators' Remuneration Report

**Annexure 2** IPA Creditor Information Sheets

## 1. Executive Summary

Andrew Saker and Martin Jones, partners of Ferrier Hodgson were appointed Administrators of D&G Hoists & Crane (Aus) Pty Ltd D&G Verticon (“the Company”) on 10 August 2012, pursuant to Section 436A of the Act.

Creditors ratified our appointment as Administrators at the first meeting of creditors held on 22 August 2012. A Committee of Creditors was formed at that meeting.

Immediately following our appointment, we took control of the Company’s assets and continued to carry on the Company’s business in a limited capacity whilst a potential restructure of the Company (together with the related entity, DGWA) was assessed by the Company’s major shareholder, JP Nelson.

The second meeting of creditors is convened for Friday, 14 September 2012 and will be held at the Hotel Ibis, 334 Murray Street, Perth at 10.30am.

We advise that on 31 August 2012, a proposal for a DOCA was received from JP Nelson, however that proposal was not in a form suitable for us to table for creditors to consider, nor did it provide creditors with any better return than a winding up scenario, and accordingly we wrote to JP Nelson on 3 September 2012 advising them of the same. As at the date of writing this report, we have not received any DOCA proposals capable of being put to creditors but we continue to have an open dialogue with JP Nelson on the merits of a DOCA. Should we receive a proposal that we consider may provide a greater return to creditors than would be available under a winding up prior to the date of the Second Meeting of Creditors then creditors may vote to adjourn the meeting for a period not to exceed forty-five (45) days. This will allow us further time to refine the terms of the DOCA proposal and make a recommendation to creditors. We will keep all creditors apprised in this regard.

As there is no suitable proposal for a DOCA to put to creditors, it is our opinion that, for the reasons set out in this report, the Company should be wound up.

We estimate that no dividend will be payable to unsecured creditors from the realisation of the Company’s assets in the event the Company is wound up, but a return to creditors may eventuate from the recovery of any preference payments and other voidable transactions.

We also advise that once the Company transitions in to liquidation, all employees may submit a claim for certain unpaid entitlements with the Federal Government’s GEERS. This process will provide creditors a more timely return than waiting for the yet to be appointed liquidator to determine whether there will be surplus assets for the benefit of priority creditors.

## 2. Introduction

### 2.1. Appointment of Administrators and First Meeting of Creditors

Creditors attended a first meeting of creditors held at the Mercure Hotel 22 August 2012. At that meeting, creditors ratified our appointment as Administrators of the Company. Creditors elected the following creditors to a committee of creditors:

Committee of Creditors	Representative
1. JP Nelson Equipment Pty Ltd	Teo Yew Boon or Dermott McVeigh
2. Manitowoc Cranes	Kelvin Kent
3. De Lage Landen	Peter Brotherson
4. Employee's Representative	Chris Whitney
5. Cbus	Clara Lai
6. Alimak Hek Pty Ltd	Keith Carrol or Kapila Madanayake
7. Autumn Finance	Andrew Cossen
8. Westpac Banking Corporation	James McCusker

### 2.2. Second Meeting of Creditors

Pursuant to Section 439A of the Act, the second meeting of creditors of the Company is convened for 14 September 2012 at the Hotel Ibis, 334 Murray Street, Perth at 10.30am.

At the second meeting, creditors will decide the Company's future in voting on one of the following options:

- That the administration should end and control of the Company revert to its directors; **or**,
- That the Company should be wound up.

We advise that on 31 August 2012, a proposal for a DOCA was received from JP Nelson, however that proposal was not in a form suitable for us to table for creditors to consider, nor did it provide creditors with any better return than a winding up scenario, and accordingly we wrote to JP Nelson on 3 September 2012 advising them of the same. As at the date of writing this report, we have not received any DOCA proposals capable of being put to creditors. Should we receive a proposal that we consider may provide a greater return to creditors than would be available under a winding up prior to the date of the Second Meeting of Creditors then creditors may vote to adjourn the meeting for a period not to exceed forty-five (45) days that will allow us time to refine the terms of the DOCA proposal and make a recommendation to creditors.

The option to enter into a deed of company arrangement is not available to creditors in this case, as no proposal has been put forward that is capable of being put to creditors. It is also open to creditors to adjourn the meeting for a period not to exceed 45 business days however given:

- The cessation of trading operations,
- The withdrawal of funding support by the shareholder, and
- The requirement for employee creditors to lodge claims with GEERS to access employee entitlements.

We do not consider that this would be in the best interests of creditors collectively.

### **2.3. Purpose of Report**

Section 439A(4) of the Act explains the purpose of an Administrator's report in providing that the notice (of second meeting) must be accompanied by a copy of:

- (a) *A report by the Administrator about the company's business, property, affairs and financial circumstances; and*
- (b) *A statement setting out the Administrator's opinion about each of the following matters:*
  - *Whether it would be in the creditors' interests for the company to execute a Deed of Company Arrangement; and*
  - *Whether it would be in the creditors' interest for the administration to end;*
  - *Whether it would be in the creditors' interest for the company to be wound up;*
  - *His or her reasons for those opinions and provide such other information known to the Administrators as will enable the creditors to make an informed decision about each of the above matters; and*
- (c) *If a Deed of Company Arrangement is proposed – a statement setting out details of the proposed deed.*

### **2.4. Non-Disclosure of Certain Information**

Whilst we recognise the need to provide creditors with complete disclosure of all necessary information relating to the Company there may be sections in this report wherein we consider it would be inappropriate to disclose certain information to creditors. Such information may include, for example, valuations of specific assets, where such information is commercially sensitive and it would not be in creditors' interests for me to disclose the information publicly at this stage.

The committee members have been requested to sign confidentiality agreements with the Administrators, and will be privy to all such information.

### **2.5. Declaration of Independence, Relevant Relationships and Indemnities**

The Administrators provided a Declaration of Independence, Relevant Relationships and Indemnities to creditors with their first circular to creditors and also tabled the declaration at the first meeting of creditors.

There has been no change in the declaration since that time.

Andrew Saker and Martin Jones are partners of Ferrier Hodgson. Ferrier Hodgson is Australia's and the Asia-Pacific's largest independent corporate restructuring practice with 47 partners and over 440 staff throughout Australia and Asia. Ferrier Hodgson does not provide accounting, audit, legal or taxation services.

Andrew Saker is a Chartered Accountant, Registered Liquidator and member of the Insolvency Practitioners Association with over 24 years experience in corporate insolvency.

I am also a Chartered Accountant, Registered Liquidator and member of the Insolvency Practitioners Association with over 32 years experience in corporate insolvency.

Further information regarding Ferrier Hodgson and the Administrators can be obtained from the firm's website at [www.ferrierhodgson.com](http://www.ferrierhodgson.com).

## 2.6. Summary of Receipts and Payments

A summary of the Administrators' receipts and payments for the period 10 August 2012 to 31 August 2012 is included within Part B of the Administrators' Remuneration Report attached as Annexure 1

## 3. Company Information

### 3.1. Statutory Information

A search of the ASIC database revealed the following information.

#### 3.1.1. Incorporation Date and Registered Office

The ASIC search discloses the Company's incorporation date as 30 March 2009. The Company's registered office is listed as c/- Charles Foti & Co, first floor, 159 Main Street, Osborne Park, Western Australia.

#### 3.1.2. Company Officers

The ASIC database discloses the Company's officers over the past 12 months to be:

Name	Role	Appointment Date	Cessation Date
DECESARE, Luigi (Gino) Vincenzo	Director	30 March 2009	Current
KEATING, David Patrick Majella	Director	30 March 2009	Current
LIM, Eng Koo	Director	9 Sept 2010	6 August 2012

The Company does not have a registered secretary.

A search of the National Personal Insolvency Index maintained by the Insolvency Trustee Service, Australia, shows that the Company's directors are not bankrupt or subject to a Personal Insolvency Agreement under Part X of the Bankruptcy Act 1966.

We note that Mr Eng Koo Lim of JP Nelson stepped down as a director due to his commitments in other JP Nelson group companies on 6 August 2012, however it was JP Nelson's stated intention to re-appoint another director shortly thereafter. We note that Mr Lim may be liable as a director of DGV for an insolvent trading claim in the event one is pursued by a liquidator. We refer to Section 6 for more information.

### 3.1.3. Shareholders

The ASIC database discloses the Company's shareholders to be:

Shareholders	Class	No. Shares Held	Control (%)	Value of Shares Held
Tower Cranes (WA) Pty Ltd	Ordinary	1,200,000	63.0%	889,437
JP Nelson Equipment Pte Ltd	Ordinary	704,762	37.0%	522,368
<b>Total</b>		<b>1,904,762</b>	<b>100.0%</b>	<b>\$1,411,805</b>

The investment by Tower Cranes (WA) Pty Ltd in DGV is recorded as two separate tranches of 600,000 shares however we have shown the interest combined in the above table. All issued capital is fully paid up. Tower Cranes (WA) Pty Ltd is a related entity, controlled by the directors of DGV.

### 3.1.4. Registered Chargeholder

The following parties have registered circulating charges on the PPSR over all commercial property of DGV with the following details:

- De Lage Landen Pty Ltd (charge no. 61136357054).
- Scottish Pacific Business Finance Pty Ltd (charge no. 16119155).
- Westpac Banking Corporation Ltd (charge no. 15763836).

Those chargeholders with security over all, or substantially all, of the Company's property have not elected to exercise their security rights to appoint a receiver although the Administrators have, at the request of SPBF, provided an irrevocable consent under S440B of the Act which allows it to appoint a Receiver or Receiver and Manager at any time outside the 'Decision Period'; the Decision Period being a period of 10 business days following the Administrators' appointment.

We have not sought advice as to the validity of the charges held by the major security holders, however they appear to be prima facie valid.

Under the new PPSA legislation effective 30 January 2012, security over property, except land, must be registered as a security interest on the PPSR.

Briefly, the concept of fixed and floating charges was replaced under the PPSA by "security interests over non-circulating assets" and "security interests over circulating assets" respectively. In the case of inventory, the title to any inventory will require registration as a PMSI on the PPSR. Where security interests are not registered on the PPSR, the goods under ROT may become property of DGV in a liquidation to the benefit of its creditors.

Whilst there is a two year transitional period for all pre 30 January 2012 security interests to be registered on the PPSR, any new transaction after 30 January 2012 needs to be considered thoroughly to ensure they perfected and may be enforceable under the new PPSA legislation.

The following parties hold security interests in DGV's assets, summarised in the table below:

Registered Security Interests	Registered Security Interests
▪ ANZ Group Ltd.	▪ KSAM Rental Pte Ltd.
▪ Citi-Steel Pty Ltd.	▪ Laser Central Pty Ltd
▪ Coates Hire Operations Pty Ltd.	▪ Plastral Pty Ltd.
▪ Dexalaw Pty Ltd.	▪ Royal Wolf Trading Australia Pty Ltd.
▪ Energy Power Systems Australia Pty Ltd.	▪ Siemens Ltd.
▪ Go Electrical Pty Ltd.	▪ SKF Bearing Suppliers Pty Ltd.
▪ Hilti (Aust) Pty Ltd.	▪ St George Motor Finance Ltd.
▪ Horan Steel Holdings Pty Ltd.	▪ TOP Developments (NT) Pty Ltd.
▪ JP Nelson Equipment Pte Ltd.	▪ Toyota Finance Australia Ltd.
▪ Kennards Hire Pty Ltd.	

### 3.1.5. Outstanding Winding up Applications

There were no winding up applications outstanding as at the date of our appointment.

## 3.2. Company History

The Company was incorporated on 30 March 2009 in Western Australia specifically for the purpose of acquiring the business of D&G Verticon from Verticon Group Ltd, an independent third party on 1 June 2009. The business of D&G Verticon was acquired to operate a crane and hoist hire business in Sydney, Melbourne and Brisbane which complemented the similar existing business conducted by the related entity, DGWA in Western Australia. DGV maintained site yards in each site operating from leased premises at:

- 12 Forge Close, Sumner Park, Queensland
- 349 Bridge Street, Port Melbourne, Victoria
- 60 O'Connell Street, Smithfield, NSW

The Company's administration and back office was controlled by and operated from the same leased premises as that of the related entity, DGWA, located at 6a Mulgul Street in Malaga, Western Australia.

## 3.3. Decision to Appoint Administrators

The directors identified a number of factors contributing to the decline of the business, including:

- Poor trading results from delays in project commencements and abnormally high work in progress amounts.
- Poor financial performance of Melbourne and Queensland operations.
- Increasing creditor pressure.
- In late July 2012, an error in company forecasting was identified requiring additional debt payments to be factored in which highlighted an imminent cash shortage.

Upon becoming aware of the cash shortage position, the debtors advised their major shareholder, and sought advice from its professional advisers. This led to a critical analysis of the Company's solvency and short term options, which led to our appointment.

Whilst we have not had the opportunity in the limited time available to me to conduct detailed investigations into the causes of failure, it would be reasonable to expect the effect of the global financial crisis to have impacted on demand for services in the construction industry in DGV's sphere of operations (Melbourne, Sydney and Queensland) which reduced revenue from plant hire against the fixed leasing costs payable to financiers.

The directors resolved to appoint Administrators with effect from 10 August 2012.

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## 4. Historical Financial Information

### 4.1. Preparation of Financial Statements

The Company's financial statements were prepared up to 30 June 2012, with the internal monthly management accounts for July 2012 being incomplete at the date of our appointment. The financial statements were audited by Messrs Somes Cooke. The Company's financial year end was 31 December 2012 so the December 2012 accounts were the final set to be audited.

The Company also prepared monthly management accounts and reports on a monthly basis.

At section 6.2.3 of this report, we comment on the adequacy of the Company's books and records.

### 4.2. Profit and Loss Statement

We have not adequate time to fully interrogate the Company's financials, however we set out below a high level summary of the annual financial statements up until the final set produced for the six months ending 30 June 2012 for the information of creditors.

Months in accounting period	6		12		12		1	
Profit and Loss Summary	30-Jun-12		30-Jun-11		30-Jun-10		30-Jun-09	
For the period ending	\$'000	%	\$'000	%	\$'000	%	\$'000	%
<b>Sales</b>	<b>13,987</b>		<b>30,779</b>		<b>24,484</b>		<b>2,565</b>	
Less: Consumables & Costs of Sales	(3,856)		(7,744)		(6,268)		(499)	
<b>Gross Profit</b>	<b>10,131</b>	<b>72%</b>	<b>23,035</b>	<b>75%</b>	<b>18,216</b>	<b>74%</b>	<b>2,066</b>	<b>81%</b>
Other Revenue	1,067		1,804		1,184		445	
Employee Costs	(7,849)	(56%)	(18,045)	(59%)	(15,655)	(64%)	(1,655)	(65%)
Depreciation	(604)	(4%)	(1,256)	(4%)	(1,484)	(6%)	(209)	(8%)
Other Expenses	(1,653)	(12%)	(3,462)	(11%)	(3,225)	(13%)	(285)	(11%)
Finance Costs	(542)	(4%)	(1,257)	(4%)	(1,182)	(5%)	(54)	(2%)
<b>Profit Before Income Tax</b>	<b>550</b>	<b>4%</b>	<b>819</b>	<b>3%</b>	<b>(2,145)</b>	<b>(9%)</b>	<b>309</b>	<b>12%</b>
Income Tax							(82)	
Decrease in Asset Revaluation Reserve	(633)		(1,944)		6,437		-	
<b>Net Profit/(Loss)</b>	<b>(82)</b>	<b>(1%)</b>	<b>(1,125)</b>	<b>(4%)</b>	<b>4,291</b>	<b>18%</b>	<b>226</b>	<b>9%</b>

DGV changed its end of financial year date to 31 December on 1 January 2011, to align with the reporting periods of JP Nelson, who had the major shareholder, however in the interests of simplicity and providing a comparative analysis we have presented the 2011 accounts using a 30 June balance date. As DGV acquired the business of "D&G Verticon" as at 1 June 2009, there is only months trade represented in that period.

### 4.3. Balance Sheet

A summary of the Company's balance sheet for the past three (3) financial years is set out below together with our preliminary analysis:

Balance Sheet as at	30-Jun-12		30-Jun-11		30-Jun-10		30-Jun-09	
	\$'000	%	\$'000	%	\$'000	%	\$'000	%
<b>Current Assets</b>								
Cash	122		428		1,345		926	
Receivables	5,733	23%	6,674	23%	6,402	22%	3,538	18%
Inventories	83		92		-		-	
Other current assets	648		541		195		-	
<b>Total Current Assets</b>	<b>6,586</b>	<b>26%</b>	<b>7,736</b>	<b>26%</b>	<b>7,942</b>	<b>27%</b>	<b>4,464</b>	<b>23%</b>
Non Current Assets								
Plant & Equipment	18,337		21,495	74%	21,684	73%	14,836	77%
<b>TOTAL ASSETS</b>	<b>24,923</b>	<b>100%</b>	<b>29,231</b>	<b>100%</b>	<b>29,626</b>	<b>100%</b>	<b>19,300</b>	<b>100%</b>
Current Liabilities								
Trade Payables	(5,306)	26%	(5,873)	24%	(4,892)	19%	(2,618)	14%
Borrowings	(6,229)	30%	(6,080)	25%	(5,039)	20%	(499)	3%
Provisions	(759)		(889)		(807)		(1,068)	
Current tax liabilities	-		-		(82)		(82)	
<b>Total Current Liabilities</b>	<b>(12,294)</b>	<b>59%</b>	<b>(12,842)</b>	<b>52%</b>	<b>(10,821)</b>	<b>43%</b>	<b>(4,269)</b>	<b>22%</b>
Non Current Liabilities								
Borrowings	(8,342)	40%	(11,907)	48%	(14,208)	57%	(14,758)	77%
Provisions	(58)		(64)		(81)		(47)	
<b>Total Non Current Liabilities</b>	<b>(8,400)</b>	<b>41%</b>	<b>(11,971)</b>	<b>48%</b>	<b>(14,289)</b>	<b>57%</b>	<b>(14,805)</b>	<b>78%</b>
<b>TOTAL LIABILITIES</b>	<b>(20,694)</b>	<b>100%</b>	<b>(24,812)</b>	<b>100%</b>	<b>(25,110)</b>	<b>100%</b>	<b>(19,074)</b>	<b>100%</b>
<b>NET ASSETS</b>	<b>4,229</b>	<b>17%</b>	<b>4,418</b>	<b>15%</b>	<b>4,516</b>	<b>15%</b>	<b>226</b>	<b>1%</b>
Equity								
Issued Capital *	1,332	31%	1,026	23%	-	0%	-	0%
Reserves	2,541		4,493		6,437		-	
Retained Earnings / (Accumulated Losses)	355		(1,102)		(1,921)		226	
<b>TOTAL EQUITY</b>	<b>4,229</b>		<b>4,418</b>		<b>4,516</b>		<b>226</b>	

\* Note: Issued capital in 2010 and 2009 was \$120, which is not substantial enough to display when rounded to the nearest thousand.

As noted above, our investigations are only at a preliminary stage, however the financials above do not show significant changes or sudden deterioration. The account balances are reasonably consistent from period to period.

## 4.4. Cashflow Statement

A summary of the Company's Cashflow Statement for the past three (3) six (6) month periods (used for comparability) set out below:

Statement of Cashflows For the period ending	6 months to 30-Jun-12 \$ '000	% Change	6 months to 31-Dec-11 \$ '000	% Change	6 months to 30-Jun-11 \$ '000
<b>CASH FLOW FROM OPERATING ACTIVITIES</b>					
Receipts from customers	14,368	(12%)	16,297	10%	14,855
Payments to suppliers and employees	(13,771)	(9%)	(15,122)	(9%)	(16,647)
Interest received	5	(3%)	5	3%	5
Borrowing costs	(541)	(14%)	(626)	7%	(584)
Insurance recoveries	0	0%	0	0%	2,406
<b>Net cash generated by operating activities</b>	<b>61</b>	<b>(89%)</b>	<b>554</b>	<b>1484%</b>	<b>35</b>
<b>CASH FLOW FROM INVESTING ACTIVITIES</b>					
Proceeds from sale of property, plant and equipment	1,218	139%	509	(35%)	788
Payment for property, plant and equipment	(234)	56%	(150)	39%	(108)
<b>Net cash generated by investing activities</b>	<b>984</b>	<b>174%</b>	<b>359</b>	<b>(47%)</b>	<b>680</b>
<b>CASH FLOW FROM FINANCING ACTIVITIES</b>					
Proceeds from issue of shares, net of issue costs	0	(100%)	306	(31%)	446
Repayments of hire purchase arrangements	(968)	192%	(332)	(56%)	(756)
Repayment of other borrowings	(520)	(31%)	(750)	5%	(715)
Proceeds from borrowings	0	0%	0	0%	
<b>Net cash used in financing activities</b>	<b>(1,488)</b>	<b>92%</b>	<b>(776)</b>	<b>(24%)</b>	<b>(1,025)</b>
Net increase / (decrease) in cash and cash investments	(443)	(422%)	138	(144%)	(310)
Cash and cash equivalents at beginning of financial period	565	32%	428	(42%)	738
<b>Cash and cash equivalents at end of financial period</b>	<b>122</b>	<b>(78%)</b>	<b>566</b>	<b>32%</b>	<b>428</b>

We make the following high level comments in relation to the above:

- Operating cashflows for the six months ending 30 June 2011 are affected by a one off insurance recovery of \$2.4 million.
- The cash receipts from customers appears reasonably consistent, however we note that DGV is an aggregate of its separate state based operations in Queensland, New South Wales and Victoria.
- There was a substantial increase in the amount required to meet hire purchase liabilities and other borrowings in the period considered.
- Substantial revenue continued to be generated through the sale of plant and equipment, without which, it would have been difficult for the Company to continue making a positive cashflow in the six (6) months to 30 June 2012.
- We note the injection of additional equity in June 2011 (with a further amount in the preceding six months not shown) which was also used to fund continued operations.

## 5. Statement by Directors

### 5.1. Summary

Section 438B of the Act requires the directors to give an Administrator a statement about the Company's business, property, affairs and financial circumstances. We received a request from the directors' for an extension of time to complete the Statement which we granted, and we received a draft Report as to Affairs on 30 August 2012. At the date that this Report was finalised, We were still awaiting a signed version of this Statement from the Directors.

In the Statement, the directors detailed the Company's assets and liabilities at book value (as at 31 July 2012, being the most recent management accounts available) and estimated ERV.

The following table summarises the assets and liabilities described in the directors' Statement.

Statement as at 10 August 2012	Report Reference	Cost or Net Book Value \$'000	Directors' ERV \$'000	Administrators' ERV High \$'000	Low \$'000
<b>Assets:</b>					
Interest in Land	5.1.1	-		-	-
Sundry Debtors	5.1.2	5,114		TBD	-
Cash on Hand	5.1.3	-		-	-
Cash at Bank	5.1.3	78		-	-
Stock on Hand	5.1.4	88	nva	60	30
Work in Progress	5.1.5	175		175	120
Plant & Equipment	5.1.6	1,085		Commercially sensitive	
Other Assets	5.1.7	304		-	-
<b>Sub Total</b>		<b>6,844</b>	-	<b>TBD</b>	<b>TBD</b>
Assets Subject to Specific Charges	5.1.8	17,221	nva	Commercially sensitive	
Less Amounts owing under Charges		(12,611)	nva	(12,611)	(12,611)
<b>Total Available Assets</b>		<b>11,454</b>	-	<b>(12,376)</b>	<b>(12,461)</b>
<b>Liabilities:</b>					
Less: Priority Creditors					
- Employee Entitlements Payable in Advance of Secured Creditors	5.1.9	(1,006)	nva	(1,122)	(1,122)
- Secured Creditors	5.1.10	-		(6,754)	(6,754)
- Partly Secured Creditors	5.1.11	(1,511)		-	-
<b>Total Priority Creditors</b>		<b>(2,517)</b>	-	<b>(7,876)</b>	<b>(7,876)</b>
Contingent Assets	5.1.12	-	nva	uncertain	
Contingent Liabilities	5.1.13	-	nva	uncertain	
<b>Available to Unsecured Creditors</b>		<b>8,937</b>	-	<b>(20,252)</b>	<b>(20,337)</b>
Ordinary Unsecured Creditor Claims	5.1.14	(4,592)	nva	(4,592)	(4,592)
<b>Estimated Surplus/(Deficiency) *</b>		<b>4,345</b>	-	<b>(24,844)</b>	<b>(24,929)</b>

\* Subject to the costs of the administration, and the value realised for plant and equipment. Potential recoveries from voidable transactions are not included in the above.

We comment on the Statement as follows:

#### **5.1.1. Interest in Land**

A property search indicates that the Company does not currently own any real property.

#### **5.1.2. Sundry Debtors**

Although the Company records a balance of \$5.1 million owing to it at the date of our appointment, the Company factored its debts through Scottish Pacific Business Finance to improve the cash collection cycle, and had effectively sold its debt book. Accordingly, we are unable to access any receivables owed to the Company until SPBF has collected debtors sufficient to discharge the debt owed to it in full. SPBF is attending to the collection of debts at present and will account to be for the total collected and the balance remaining at the conclusion of that exercise. It follows that many of the debtors that remain to me (if any) will either be bad debts or doubtful debtors, or dispute their obligation to pay. We are not presently in a position to estimate what, if any, receivables may be collectible once SBPF has discharged the debt owing to it. We also note that of the above, \$650K is owed by the related entity, DGWA which is also subject to administration and does not have capacity to pay.

#### **5.1.3. Cash on Hand and Cash at Bank**

The Company operated bank accounts with St George Bank Ltd with a balance of \$78K at the date of our appointment. We wrote to the Bank instructing it to freeze all balances on our appointment and transfer the balance to a new account to be opened in the Administrators name. The Bank also has a debt owed to it by the Company through asset finance facilities and has elected to set off the cash at bank against the debt owed to it, and no cash at bank has been received by me.

#### **5.1.4. Stock**

The Company's stock records revealed stock with a book value of \$88K. Due to the limited funds available to me, we have not had the stock formally valued as yet however we have conservatively estimated the realisable value of this through auction (less potential retention of title claims valid registered on the PPSR) as between \$60K and \$30K.

#### **5.1.5. Work in Progress**

Work in Progress for equipment on hire as at the date of our appointment was calculated to be \$175K. We have invoiced this since the cessation of trading activities and will attend to its collection.

#### **5.1.6. Plant and Equipment**

Almost all of the plant and equipment owned by DGV was still subject to asset finance arrangements with third party equipment financiers, with no equity in the financed equipment (that is, the amount to the financier exceeded the auction value of the equipment). We engaged independent auctioneers and valuers to prepare a strategy to realise that equipment. As the majority of that equipment is subject to the security of third party financiers, we have, since the date of our appointment, been liaising with the financiers to determine an appropriate and acceptable realisation strategy, given the lack of available funds.

### 5.1.7. Other Assets

The Statement disclosed other assets, being mostly rental deposits, pre-payments of insurance and inventory / work in progress (already included separately above). As the insurance was premium funded and paid up to date, we elected to continue with the insurance policies already in place and do not anticipate receiving a refund on those policies. Similarly, we do not anticipate reclaiming the rental deposit as we will be forced to break the lease contract on the property.

### 5.1.8. Assets Subject to Specific Charges

The director's statement discloses a number of financed cranes and other items of plant and equipment which are subject to a specific charge, held by the equipment financiers. As we do not have any funds to meet lease payments we were forced to disclaim the Company's interest in these assets shortly after our appointment, although I do not believe that there was any equity in the leased items (particularly after demobilisation, transport and realisation costs are taken into account). We are liaising with the equipment financiers as to collection or realisation of these assets.

The equipment financiers will be entitled to prove as an unsecured creditor for any shortfall following a sale of these secured assets.

### 5.1.9. Employee Claims

The breakdown of the Company's priority debts owed to employees as recorded in the statement is estimated, with reference to Company records, is set out below. We note that this differs to our reconciliation (with redundancy and notice liabilities still being finalised) as set out later in this report:

Employee Entitlements	Total Employee Entitlements \$'000	Non Priority Excluded Amount \$'000	Net Priority Entitlements \$'000
Wages and Expenses	249	-	249
Superannuation	-	-	-
Annual Leave	703	-	703
Long Service Leave	54	-	54
Redundancy	-	-	-
Pay in Lieu of Notice	-	-	-
<b>Total</b>	<b>1,006</b>	<b>Nil</b>	<b>1,006</b>

Employee claims are afforded priority of repayment pursuant to Section 556 of the Act.

The Act provides that 'Excluded Employees', which includes company directors and their spouses, are each restricted to a total maximum priority claim of \$2,000 for unpaid wages and \$1,500 for annual leave entitlements.

Amounts owed to Excluded Employees that exceed the statutory cap for wages and superannuation and annual leave/long service leave, and all payments owing in respect of retrenchment, being redundancy and payment in lieu of notice, rank for dividend with all other unsecured creditors.

#### 5.1.10. Secured Creditors

A search of the PPSR register maintained by the ASIC identifies the following secured creditors holding security registered as fixed and floating over the assets of the Company:

- Westpac Banking Corporation – first ranking secured creditor, holding charge number 15763836 registered on 28 May 2009.
- Scottish Pacific Business finance – second ranking secured creditor, holding charge number 16119155 registered on 28 May 2009
- De Lage Landon - third ranking secured creditor, charge yet to be migrated to the PPSR register.

A Deed of Priority was entered into by the above secured creditors to confirm the order of priority that each would be able to claim against.

In accordance with the provisions of Section 450A(3) of the Act, we notified the above secured creditors of the appointment and advised of their right to enforce their security within 10 business days.

#### 5.1.11. Partly Secured Creditors

The \$1.5m is to a number of equipment financiers who financed cranes and hoists to DGV. The exact amount of this debt claimed by the partly secured creditors will crystallise as the financiers take possession of their equipment, sell it, and lodge a claim for the balance owed on the lease facility.

#### 5.1.12. Ordinary Unsecured Creditors

Accounting for formal proofs of debt received to date and the Company's records, we estimate the Company's liability to unsecured creditors at approximately \$4.5 million, according to the records of the Company. There is significant uncertainty attaching to this amount due to the unknown quantum of the shortfall owed to the partly secured creditors (as discussed above), as any shortfall on the financed equipment will be claimable as an unsecured creditor. Of the above \$4.5 million, \$2.1 million is owed to the Australian Taxation Office representing the outstanding balance of a payment plan that the Company had agreed with the ATO.

This figure is subject to the receipt and adjudication of proofs of debt from creditors.

#### 5.1.13. Contingent Assets and Contingent Liabilities

The statement provided by the directors does not disclose any contingent assets or liabilities.

#### 5.1.14. Related Entities

The amounts represent monies owed by the Company to the following related entities:

Related Entity	\$'000
DGWA	281
JP Nelson	83
<b>Total</b>	<b>364</b>

Our preliminary view is that the Company owes the amounts claimed.

Creditors should be aware the Act allows a creditor to apply to the Court to set aside or modify a resolution authorising the execution of a DOCA (if one is proposed and accepted by creditors) if the resolution carries as a consequence of a related entity vote. Similarly, a defeated resolution for the Company to be wound up may be declared carried, if defeated by the vote of a related entity.

#### **5.1.15. Omissions from Statement**

Save for our previous comments regarding specific disclosures in the Statement, we have not identified any material omissions from the directors' Statement.

### **5.2. Explanation for Current Financial Position**

The directors' explanation for the Company's current financial position is as follows:

- Poor trading results from delays in project commencements and abnormally high work in progress amounts.
- Poor financial performance of Melbourne and Queensland operations.
- Increasing creditor pressure.
- In late July 2012, an error in company forecasting was identified requiring additional debt payments to be factored in which highlighted an imminent cash shortage.

Upon becoming aware of the cash shortage position, the debtors advised their major shareholder, and sought advice from its professional advisers. This led to a critical analysis of the Company's solvency and short term options, which led to our appointment.

In addition to the above, and whilst our investigations have been limited by the time available to me, it would be reasonable to expect the effect of the global financial crisis to have impacted on demand for services in the construction industry in DGV's sphere of operations (Melbourne, Sydney and Queensland) which reduced revenue from plant hire against the fixed leasing costs payable to financiers.

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## 6. Statutory Investigations

### 6.1. Nature and Scope of Review

The Act requires an administrator to carry out preliminary investigations into a Company's business, property, affairs and financial circumstances.

Investigations centre on transactions entered into by a Company that a liquidator might seek to void or otherwise challenge where the Company is wound up. Investigations allow an administrator to advise creditors what funds might become available to a liquidator such that creditors can properly assess whether to accept a DOCA proposal or resolve to wind up the Company.

Funds recovered would be available to the general body of unsecured creditors including secured creditors but only to the extent of any shortfall incurred after realising their security.

A liquidator may recover funds from each type of voidable transaction detailed in this report. A Deed Administrator does not have recourse to these voidable transactions. A liquidator may also recover funds through other avenues, for example, through action seeking compensation for insolvent trading.

An administrator is not obliged to carry out investigations to the same extent as a liquidator. A liquidator may require many months of investigation and conduct public examinations before forming a concluded view on recovery action.

We investigated matters to the extent possible in the time available. The dividend estimate in a liquidation scenario set out in Section 7.2 of this report reflects the outcome of our investigations.

The Administrators' knowledge of the Company's affairs comes principally from the following sources:

- Communications with the Company's major creditors (the equipment financiers) regarding the nature and amount of the debts owed. Those creditors confirmed that the details disclosed by the Company are substantially correct, and have provided updated details on equipment locations where known.
- Communications with the secured creditors regarding the nature and amount of the debt owed. The secured creditor confirmed the information supplied by the Company.
- The directors' Statement and a detailed questionnaire concerning the Company's affairs prepared by the directors.
- Discussions with the directors and their advisors.
- Discussions with independent auctioneers and valuers as to the Company's plant and equipment on hand.
- A search of the ASIC records relating to the Company and any related entities.
- An examination of the Income Tax Returns filed with the Deputy Commissioner of Taxation by the Company.
- An examination of the Company's books and records including its financial statements and management accounts.

## 6.2. The Company's Solvency

### 6.2.1. Overview

Proving company's insolvency is an important element in the recovery of funds by a liquidator through the voiding of certain transactions or through other legal action, such as seeking compensation from directors for insolvent trading.

Establishing insolvency is a complex matter due in part to the complexity of corporate financial transactions and the lack of clear prescriptive legal authority on proof of insolvency. Notwithstanding, there are two primary tests used in determining a company's solvency, at a particular date; namely:

- Balance sheet test;
- Cash flow or commercial test.

The Courts have widely used the cash flow or commercial test in determining a company's solvency at a particular date.

Section 95A of the Act also contains a definition of solvency. That definition reflects the commercial test in stating that a person is solvent if, "*the person is able to pay all the person's debts as and when they become due and payable*".

However, the commercial test is not the sole determinant of solvency. Determining solvency derives from a proper consideration of a company's financial position in its entirety and in the context of commercial reality. Relevant issues include, but are not limited to, the following:

- The degree of illiquidity. A temporary lack of liquidity is not conclusive;
- Regard should be had to:
  - cash resources;
  - monies available through asset realisations, borrowings against the security of assets or equity/capital raising.
- All a company's assets might not be relevant when considering solvency. For example, where a company proposes selling assets which are essential to its business operations, the proceeds of those assets should not be taken into account.
- The voluntary and temporary forbearance by creditors not to enforce payment terms; and
- It is not appropriate to base an assessment of whether a company can meet its liabilities as and when they fall due on the prospect that a company might trade profitably in the future.

In summary, it is a company's inability using such resources as are available to it through the use of its assets, or otherwise, to meet its debts as they fall due, which indicates insolvency.

## 6.2.2. Preliminary Determination

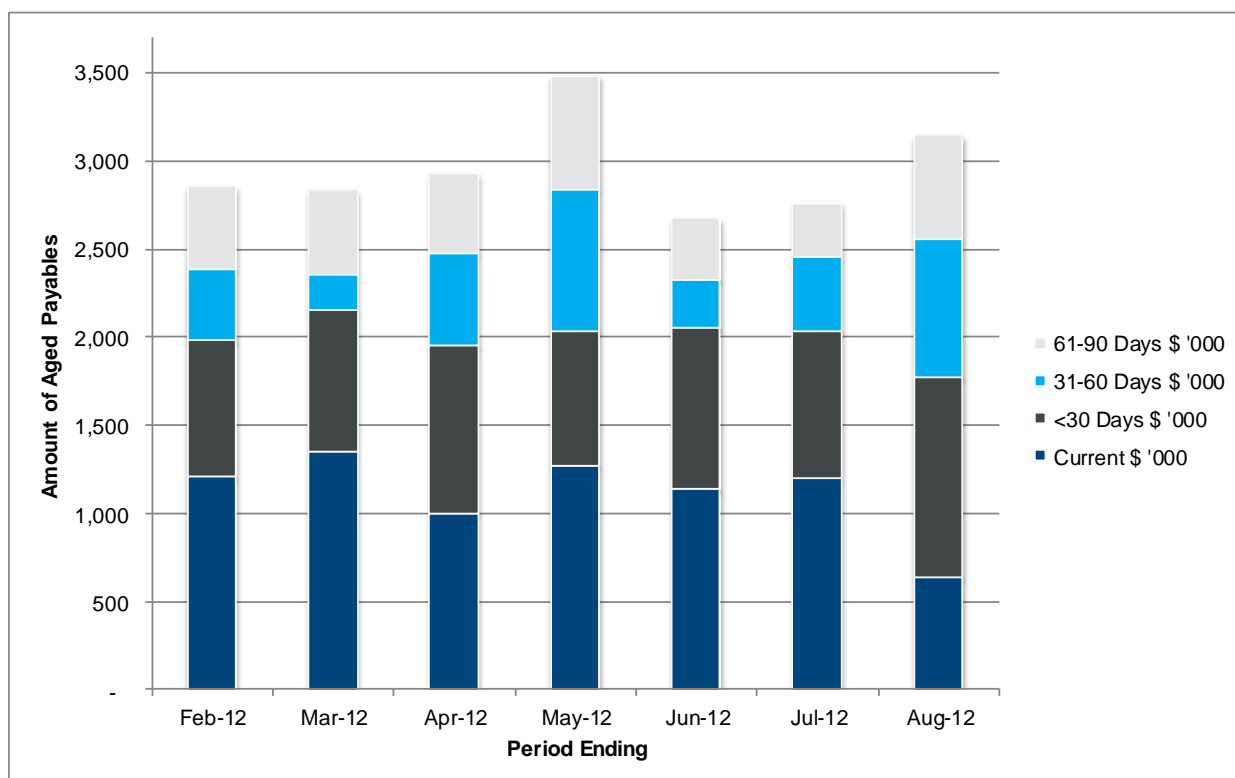
Set out below is a summary of our preliminary investigations and our preliminary determination as to the Company's solvency.

### Aged Payables Review

The table below sets out an analysis of the aged payables over the last 6 months ending at month end and our appointment as administrators:

	Current \$ '000	<30 Days \$ '000	31-60 Days \$ '000	+61 Days \$ '000	Total \$ '000
<b>29 Feb-12</b>	1,209	776	403	471	<b>2,859</b>
<b>% of Total</b>	<b>42.3%</b>	<b>27.1%</b>	<b>14.1%</b>	<b>16.5%</b>	<b>100.0%</b>
<b>31 Mar-12</b>	1,353	800	207	479	<b>2,838</b>
<b>% of Total</b>	<b>47.7%</b>	<b>28.2%</b>	<b>7.3%</b>	<b>16.9%</b>	<b>100.0%</b>
<b>30 Apr-12</b>	1,005	954	523	452	<b>2,934</b>
<b>% of Total</b>	<b>34.3%</b>	<b>32.5%</b>	<b>17.8%</b>	<b>15.4%</b>	<b>100.0%</b>
<b>31 May-12</b>	1,277	761	799	652	<b>3,489</b>
<b>% of Total</b>	<b>36.6%</b>	<b>21.8%</b>	<b>22.9%</b>	<b>18.7%</b>	<b>100.0%</b>
<b>30 Jun-12</b>	1,140	914	275	347	<b>2,676</b>
<b>% of Total</b>	<b>42.6%</b>	<b>34.2%</b>	<b>10.3%</b>	<b>13.0%</b>	<b>100.0%</b>
<b>31 Jul-12</b>	1,201	839	415	310	<b>2,765</b>
<b>% of Total</b>	<b>43.4%</b>	<b>30.3%</b>	<b>15.0%</b>	<b>11.2%</b>	<b>100.0%</b>
<b>10-Aug-12</b>	644	1,136	781	590	<b>3,150</b>
<b>% of Total</b>	<b>20.4%</b>	<b>36.1%</b>	<b>24.8%</b>	<b>18.7%</b>	<b>100.0%</b>

The above may also be depicted in the following graph:



We comment on the above analysis as follows:

- The ageing of creditors is reasonably consistent other than an increase in August 2012, where a significantly lesser balance sat within the “current” period and the percentage in the 31-60 and 60 days + range increased.
- Total creditor figures also remained reasonably consistent in terms of quantum of debt, other than an increase of about 10% in August 2012.
- During the above period, substantial amounts were paid to the ATO under payment arrangements that the Company had entered into to reduce outstanding historical taxation debts, plus remitting current taxation debts.

Our review has identified the following payment plans in place due to actual or threatened action by creditors against the Company:

Creditor	Date of Action	Type of Action (formal/informal/email/verbal)	Amount Outstanding (\$)
ATO	7 August 2010	Formal payment arrangement	676,312
ATO	13 December 2011	Formal payment arrangement	2,040,489
QLD State Revenue	20 December 2011	Formal payment arrangement	88,432
VIC State Revenue	28 June 2012	Formal payment arrangement	59,869

### Finance Commitments Review

From our preliminary investigations in to the affairs of the Company, all financial obligations (i.e. HP arrangements) of DGV were generally maintained in accordance with their respective facilities. We are unaware of DGV defaulting on any secured liability. A liquidator would be required to investigate this indicator in further detail.

### Profitability, Cashflow and Working Capital

The historical profitability of the Company has been detailed in Section 4 above, and tabled at a high level below:

Profit/(Loss) For the Year Ending	30 Jun 2012 \$ '000	30 June 2011 \$ '000	30 June 2010 \$ '000	Month ending 30 June 2009 \$ '000
Income	15,054	32,583	25,668	3,010
Expenses	(10,648)	(31,764)	(27,814)	(2,702)
<b>Profit/Loss before income tax</b>	<b>550</b>	<b>819</b>	<b>(2,146)</b>	<b>308</b>

Other than the substantial loss incurred in the year ending June 2010, the Company appeared to trade profitably. We have considered the profitability at a more granular level by considering each month leading up to our appointment.

Profit/(Loss) Month Ending	Jan 2012 \$ '000	Feb 2012 \$ '000	Mar 2012 \$ '000	Apr 2012 \$ '000	May 2012 \$ '000	Jun2012 \$ '000
Income	2,005	2,660	2,625	2,035	2,616	1,979
Expenses	(1,822)	(2,393)	(2,570)	(1,962)	(2,586)	(2,035)
<b>Profit/Loss before income tax</b>	<b>183</b>	<b>267</b>	<b>55</b>	<b>72</b>	<b>30</b>	<b>(56)</b>

The working capital position of the Company has been summarised in the table below:

<b>Working Capital As At</b>	<b>30 Jun 2012</b>	<b>30 June 2011</b>	<b>June 2010</b>	<b>30 June 2009</b>
	<b>\$ '000</b>	<b>\$ '000</b>	<b>\$ '000</b>	<b>\$ '000</b>
Current Assets	6,586	7,736	7,942	4,464
Current Liabilities	(12,294)	(12,842)	(10,821)	(4,269)
<b>Working Capital</b>	<b>(5,708)</b>	<b>(5,106)</b>	<b>(2,879)</b>	<b>195</b>

The above working capital analysis shows that the Company consistently had a short fall of cash and cash-equivalent assets with which to meet short term liabilities falling due. This was primarily due to the inclusion of short term borrowings, relating to lease liabilities, in the current liability figures, which we have assumed to be correctly classified. A liquidator would conduct further investigations into this.

### Net Assets

The Net Asset position of the Company is somewhat different to the working capital position as this analysis recognises the net book value of the plant the current liability is financing. A summary of the Net Asset position of the Company since 30 June 2010 is set out below:

<b>Net Assets As At</b>	<b>Year Ended 30 Jun 2012</b>	<b>Year Ended 30 June 2011</b>	<b>Year Ended 30 June 2010</b>	<b>Month ending 30 June 2009</b>
	<b>\$ '000</b>	<b>\$ '000</b>	<b>\$ '000</b>	<b>\$ '000</b>
Total Assets	24,923	29,231	29,626	19,300
Total Liabilities	(20,694)	(24,812)	(25,110)	(19,074)
<b>Net Assets</b>	<b>4,229</b>	<b>4,419</b>	<b>4,516</b>	<b>226</b>

The Company maintain a positive Net Asset position over the analysed period, meaning that its assets were sufficient to meet its total liabilities. A liquidator would be required to conduct further investigations to determine whether the assets identified in the table above are actually realisable in a winding up scenario. This may change the net asset position of the Company of the periods above.

### Payment of statutory commitments including Superannuation Guarantee Charge

As noted above, the Company had payment plans on foot with the ATO and both the Victorian and Queensland Offices of State Revenue Office. These amounts may be recoverable as preferences, however a liquidator would be required to conduct further investigations before lodging such a claim with the statutory authorities.

In addition to the payment plan in place with the ATO entered into on 13 December 2011, earlier payment plans had also been entered into with the ATO on 15 April 2011 and 7 August 2010. These earlier payment plans were subsequently renegotiated, indicating that the Company had been struggling to meet statutory liabilities for an extended period of time.

We also note that the delay in remitting current PAYG tax (i.e., not the historical tax debt covered by the payment plan) began to increase in February 2012. As a large organisation, DGV should have been remitting PAYG weekly in arrears, however this was initially being remitted around 30 days in arrears however in the period February 2012 to May 2012 this fluctuated between 40 and 100 days in arrears.

## Summary of Solvency

Solvency Indicator	Likely date Insolvent
Aged Payables Review	Inconclusive
Creditor Actions	April 2011
Profitability	Inconclusive
Working Capital	Prior to 30 June 2010
Net Asset Position	n/a
Payment of Statutory Liabilities	
Payment Plan with the ATO	15 April 2011
PAYG Outstanding after payment plan	February 2012
GST Liabilities	July 2012
Superannuation	July 2012

A liquidator would need to conduct further investigations, and possibly conduct public examinations of relevant parties, to ultimately determine whether or not the Company became insolvent at that time or earlier, however based on the above analysis, it is our preliminary view that the Company may be insolvent from as early as **February 2012** when the Company began to fall behind on its remittance of current statutory obligations. Earlier statutory obligations which were in arrears were restructured through payment plans with the ATO, and while these payment plans were renegotiated twice, the Company was paying its historical tax arrears in accordance with the most recent payment plan of December 2011.

### 6.2.3. Presumption of Insolvency – Inadequate Books and Records

Failure to keep or retain adequate books and records in accordance with Section 286 of the Act provides a rebuttable presumption of insolvency under Section 588E of the Act. A liquidator can rely on the presumption of insolvency in litigation including:

- Compensation claims arising from insolvent trading; and,
- Recovery of voidable transactions from related entities.

The presumption cannot be relied upon in the recovery of unfair preference from an unrelated entity.

Our preliminary view is that the Company maintained adequate books and records in accordance with Section 286. Accordingly, the presumption of insolvency under Section 588E would not be available.

## 6.3. Voidable Transactions

### 6.3.1. Unfair Preferences

A payment to a creditor is preferential if it is made at a time when the Company is insolvent and it results in the recipient receiving a greater return than they would receive if the payment were set aside and the creditor lodged a claim in the liquidation.

Should a liquidator establish any such unfair preference payments, these amounts may be recouped thereby increasing the funds available to ordinary unsecured creditors. If a creditor disgorges an unfair preference payment to a liquidator, the creditor is entitled to prove for dividend. Therefore, whilst recovering an unfair preference increases the pool of funds available to creditors, it also increases total creditor claims.

Our preliminary investigations into the Company's affairs reveal the following payments may be voidable as unfair preferences:

- Payments made to the Australian Taxation Office under formal payment plans totalling \$3,428,616.
- Payments made to the Queensland Office of State Revenue under a formal payment plan totalling \$41,722.
- Payments made to the Victorian Office of State Revenue under a formal payment plan – amount to be determined.

There are also a number of payments made to certain trade creditors which may or may not be classified as preference payments, or which may be payments made in the ordinary course of business, or subject to the "running balance" defence. A liquidator would need to conduct further examinations of these payment arrangements to make this determination.

Factors which indicate these payments might be unfair preferences are:

- Payments in response to winding up applications, statutory demands and other pressure from the creditor;
- Repayment plans with the creditor;
- Significant 'round' payments made to the creditor.

The payments would be protected if the creditor from whom the liquidator seeks to recover;

- Became a party to the transaction in good faith; and
- At the time when they became a party:
  - They had no reasonable grounds for suspecting that the Company was insolvent at that time, or would become insolvent; and
  - A reasonable person in that person's circumstances would have had no such grounds for so suspecting; and,
- Provided valuable consideration under the transaction or has changed their position in reliance on the transaction.

A creditor seeking protection must prove all three elements.

Further, where a creditor received a series of payments as part of a so called 'running account' and their overall indebtedness increases over the same period, the creditor is taken not to have received an unfair preference. This is called 'the running account defence'.

A liquidator would likely seek legal advice on the strength of a claim including the applicability of these defences.

It is likely any recovery action commenced by a liquidator would be defended. Therefore, costs are a major consideration.

For the purposes of this report, we estimate potential recoveries from unfair preferences at between \$3.47 million and Nil. Please note this is an estimate only. There is no guarantee that a liquidator will recover funds or that costs ultimately dissipate the benefit to creditors.

### **6.3.2. Uncommercial Transactions**

A transaction is an uncommercial transaction if it is made at a time when the Company is insolvent 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 or detriment to the company of entering into the transaction;
- The prospective benefits to other parties to the transaction upon entering into it.

Should a liquidator establish any such uncommercial transactions, those transactions may be set aside thereby increasing the funds available to ordinary unsecured creditors.

Our preliminary investigations do not disclose any transactions of an uncommercial nature which may lead to recoveries by a liquidator in the event that the Company is wound up.

### **6.3.3. Unfair Loans**

Section 588FD provides that a loan to a company is unfair if the interest and charges are extortionate. In considering whether interest and charges are extortionate, regard must be had to:

- Risk the lender is exposed to;
- Value of security;
- Term;
- Repayment schedule; and,
- Amount of loan.

Based on our investigations to date, the Company was not a party to any unfair loans.

### **6.3.4. Unreasonable Director-related Transactions**

Pursuant to Section 588FDA of the Act, a transaction is an unreasonable director-related transaction of the company if:

- The transaction is a payment, transfer of property, issue of securities or incurring of an obligation by the company; and,
- Made by the director or close associate of the director;
- That a reasonable person in the company's circumstances would not have entered into having regard to the benefit or detriment to the company or other parties.

Should a liquidator establish any such transactions, they may be set aside thereby increasing the funds available to unsecured creditors.

Our preliminary investigations do not reveal any unreasonable director related transactions.

### 6.3.5. Obstruction of Creditors' Rights

Section 588FE of the Act provides for the voiding of transactions designed to defeat, delay or interfere with creditors rights.

Our investigations do not disclose any such transactions

## 6.4. Insolvent Trading

### 6.4.1. Directors' Liability

Section 588G of the Act imposes a positive duty upon company directors to prevent insolvent trading. If a director is found guilty of an offence in contravening Section 588G, the Court may order him or her to pay compensation to the company equal to the amount of loss or damage suffered by its creditors.

The Court may also impose upon the directors' one of two types of civil penalty orders. The first can include a fine not exceeding \$200,000 or an order prohibiting directors from participating in the management of a company. The second, where there is criminal intent and a conviction, a director could also be imprisoned for up to five years or fined as well.

ASIC usually applies for civil penalty orders while applications for compensation payable to the company are usually made by a liquidator, or in specified circumstances, a creditor.

The substantive elements of Section 588G are:

- A person must be a director of a company at a time when the company incurs a debt. This is relevant for the JP Nelson representative who previously acted as a director, Mr Lim;
- The company must be insolvent at that time or becomes insolvent by incurring the debt;
- The director must have reasonable grounds for suspecting that the company is insolvent or would so become insolvent by incurring the debt;

Summarised below are the defences contained in Section 588H:

- The directors had reasonable grounds at the time the debt was incurred to expect the company to be solvent and would remain solvent even after the debt was incurred;
- The directors relied on another person to provide information about whether or not the company was solvent;
- The directors were ill or for some other good reason did not take part in the management of the company;
- The directors took reasonable steps to prevent the incurring of the debt.

A liquidator must form an opinion as to the date the company became insolvent and determine the debts incurred from that date; thereby quantifying the loss to the company.

Based on our analysis at Section 6.2 of this report, we indicated it was probable that the Company was insolvent from at least as early as February 2012, and that the directors would have had reasonable grounds for suspecting so.

In their defence, the directors could argue:

- No substantial debts were incurred beyond this date (if they can substantiate that claim).
- a reasonable expectation that the Company was or would remain solvent due to its major shareholder, JP Nelson, providing funding to address what it viewed as short term working capital deficiencies, at least until 6 August 2012 when the representative of JP Nelson acting as a director resigned.
- Its major unsecured debt, being the historical ATO debt, had been restructured into a payment plan that the Company was meeting.
- The Company was generally meeting its lease obligations to equipment financiers.

The engagement of independent professional advisers to assist in negotiating payment plans with major unsecured creditors (chiefly the ATO) and to identify and implement cost savings.

Again, a liquidator would likely seek legal advice on these issues and conduct more investigations possibly including a public examination.

The costs of proceeding with an insolvent trading action must be considered as does the personal financial capacity of the directors to pay a judgement obtained against them. The latter issue is addressed in Section 6.8 and indicates that the directors do have some property assets, although these may be subject to property mortgages themselves. Further, the directors are burdened with guarantees on almost all of the equipment finance contracts and may have further exposure to unsecured trade creditors through personal guarantees provided on trade accounts. It is unlikely that an insolvent trading action against them would produce any return.

It is therefore our present view that an insolvent trading action would not be commercially viable in that the likely realisations in a liquidation would be nil.

#### **6.4.2. Holding Company Liability**

Section 588V of the Act provides that a holding company may be held liable for the debts of a subsidiary in certain circumstances. The substantive elements of Section 588V are:

- The corporation is the holding company at the time when the company incurs a debt;
- The subsidiary is insolvent at that time, or becomes insolvent by incurring that debt;
- At that time, there are reasonable grounds for suspecting that the subsidiary is insolvent;
- The holding company, or one or more of its directors, is aware at that time there are grounds for suspecting the subsidiary is insolvent; or
- Having regard to the nature and extent of the holding company's control of the subsidiary's affairs, then it would be reasonable to expect that:
  - The holding company would be aware of the subsidiary's financial position;
  - Or at least that the holding company's directors would also be aware.

The defences the holding company may rely upon are set out in Section 588X and are essentially the same as those a director may rely upon under Section 588H.

JP Nelson was a 37% shareholder of the Company from 9 September 2010 and at the appropriate times.

Despite not exercising control of the board through its shareholdings, it may be that the nature and extent of JP Nelson's control over the Company's operations was such that it would be reasonable to expect JP Nelson and its directors had knowledge of the Company's financial position.

We stated at Section 6.2 that the Company was probably insolvent as early as February 2012.

On our preliminary analysis, it does not appear that JP Nelson could be held liable under this section for the debts incurred by the Company from that date.

However, the Courts have held that, as a defence to such proceedings, a holding company can off-set any claim by a liquidator under Section 588W against monies owing under an intercompany loan account. JP Nelson may also argue the following in its defence:

- No substantial debts were incurred beyond June 2012;
- They sought advice in conjunction with the directors on July 2012, which led to the appointment of administrators;
- JP Nelson had a reasonable expectation that additional working capital provided in June 2012 was sufficient to keep the Company's affairs going.
- It was not accurately informed of the financial position of the Company.

Creditors should be aware the JP Nelson is a foreign entity. The costs of pursuing it to judgement here in Australia, and then enforcing that judgement in an overseas jurisdiction, would be prohibitively expensive.

Again, a liquidator would likely seek legal advice on these issues and consider the commerciality of proceeding with recovery action.

At this stage of our preliminary investigations, we are uncertain as to both the ability and the commerciality of pursuing JP Nelson pursuant to Section 588V, and a liquidator would conduct further investigations in this regard.

## **6.5. Director Duties**

A director of a company has certain statutory obligations to act in good faith, to discharge their obligations with reasonable care and diligence, and to avoid any improper use of their position or information including any conflicts of interest. Based on preliminary investigations, we have not identified any breaches by the directors of their statutory or fiduciary duties.

## 6.6. Other Matters Arising from Investigations

### 6.6.1. Avoidance of Employee Entitlements

Provisions contained in Part 5.8A of the Act commenced operation on 30 June 2000 and aim to protect the entitlements of a company's employees from agreements that deliberately defeat the recovery of those entitlements upon insolvency.

Under Section 596AB(1) of the Act, it is an offence for a person to enter into a transaction or relevant agreement with the intention of, or with intentions that include:

- Preventing recovery of employee entitlements; or
- Significantly reducing the amount of employee entitlements recoverable.

The offence created in Part 5.8A is not limited to the company's, directors, officers or employees. The section is applicable to any individual regardless of their relationship to the company or employees.

If a breach is proven, Part 5.8A provides for the imposition of both criminal and civil penalties. Under Section 596AC(1), a civil penalty, in the form of compensation, is available to employees where:

- Section 596AB(1) is contravened;
- The company is being wound up; and,
- Employees suffered loss or damage.

It should be noted the company need not have been insolvent at the time.

A liquidator may take action to recover compensation as a debt due to the company. Employees would have priority to the compensation under Section 556 of the Act.

While the liquidator has priority standing to take the action for any contravention, an employee may sue directly for compensation in certain circumstances pursuant to Section 596AF(1) of the Act.

Based on our investigations to date, there has been no contravention of Part 5.8A by any person.

### 6.6.2. Falsification of Books

Pursuant to Section 1307 of the Act, it is an offence for a person to engage in conduct that results in the concealment, destruction, mutilation or falsification of any securities of or belonging to the company or any books effecting or relating to affairs of the company.

If a breach is proven, Part 9.4 of the Act provides for criminal penalties only. Therefore, any breaches of Section 1307 will not result in recovery of funds by a liquidator.

Our preliminary investigations do not reveal any evidence of falsification of books.

### 6.6.3. False or Misleading Statements

Pursuant to Section 1308 of the Act, a company must not advertise or publish a misleading statement regarding the amount of its capital. It is an offence for a person to make or authorise a statement that, to the person's knowledge, is false or misleading in a material particular.

If a breach is proven, Part 9.4 of the Act provides for criminal penalties only. Therefore, any breaches of Section 1308 will not result in recovery of funds by a liquidator.

Our preliminary investigations do not reveal any evidence of any false or misleading statements.

### 6.6.4. False Information

Pursuant to Section 1309 of the Act, it is an offence for an officer or employee to make available or give information to a director, auditor, member, debenture holder, or trustee for debenture holders of the company that is to the knowledge of the officer or employee:

- (a) False or misleading in a particular manner; or,
- (b) Has omitted from it a matter the omission of which renders the information misleading in a material respect.

If a breach is proven, Part 9.4 of the Act provides for criminal penalties only. Therefore, any breaches of Section 1309 of the Act will not result in any recovery by a liquidator.

Our preliminary investigations do not reveal any evidence of any false information.

## 6.7. Summary of Potential Liquidator's Claims

Set out below is a summary of the potential recoveries by a liquidator in the event the Company is wound up:

Potential Recovery Item	High (\$)	Low (\$)
Unfair Preferences	3,470,339	Nil
Uncommercial Transactions	Nil	Nil
Unfair Loans	n/a	n/a
Unreasonable Director Related Transactions	n/a	n/a
Transactions Undertaken to Obstruct creditors' Creditors' Rights	n/a	n/a
Compensation from Director for Insolvent Trading	Nil	Nil
Compensation from Holding Company for Insolvent Trading	n/a	n/a
Breaches of Directors Duties	n/a	n/a
Avoidance of Employee Entitlements	n/a	n/a
Debts Incurred by Company as Trustee	n/a	n/a
<b>Total</b>	<b>3,470,339</b>	<b>Nil</b>

## 6.8. Directors' Ability to Pay a Liquidator's Claims

We advise that we wrote to the directors on 27 August 2012 requesting information on their personal asset and liability position by 31 August 2012. As at the date of this report we have not yet received that information.

However, we have conducted some limited searches that shows that the directors own real property in Western Australia (however these may be subject to registered mortgages). I am awaiting the result of motor vehicles searches.

The directors also hold a Management Liability policy which includes a directors' and officers' insurance policy which may respond to any claims brought by a liquidator. However, we note that this policy does not cover any insolvent trading claims.

Should we be provided with a copy of their personal asset and liability position before the second creditors meeting we will disclose that information then.

## 7. Creditors' Options, Dividend Estimates & Cost Estimates

Pursuant to Section 439A(4)(b) of the Act, we are required to provide creditors with a statement setting out our opinion on whether it is in the creditors' interests for the:

- Administration to end;
- Company to be wound up; or,
- Company to execute a DOCA.

There is no proposal for a DOCA. Accordingly, creditors have the options of resolving that the administration end or resolving that the Company be wound up.

In forming our opinion, we considered an estimate of the dividend creditors might expect, and the likely costs, under each option.

### 7.1. Administration to End

Creditors may resolve that the administration should end if it appears the Company is solvent or, for some other reason, control of the Company should revert to its directors.

Based on our preliminary investigations and analysis of the Company's financial information, the Company is insolvent. There appears no valid commercial reason why control of the Company should revert to its directors.

If the administration were to end, there is no mechanism controlling an orderly realisation of assets and distribution to creditors. We are unable to say what the Company might ultimately pay creditors or what costs it might incur.

Therefore, our opinion is that it is not in the creditors' interest for the administration to end.

## 7.2. Winding up of Company

Based upon the information in this report, where the Company is wound up, we estimate a dividend to creditors as follows:

Estimated Liquidation Dividend	Ref	High (\$) '000	Low (\$) '000
<b>Non Circulating HP Assets</b>			
Plant & Equipment	i.	Commercially sensitive	
Vehicles	i.	Commercially sensitive	
Less Realisation Costs	i.	unknown	unknown
<b>Net Realisations from Non Circulating Assets</b>		<b>unknown</b>	<b>unknown</b>
<b>Less HP Financiers' Non Circulating Claim</b>		<b>(12,611)</b>	<b>(12,611)</b>
<b>Surplus/(Deficiency) after HP Financiers' Non Circulating Claim</b>		unknown	unknown
<b>Non Circulating Factored Debtor Assets</b>			
Factored Debtors (est collectible)		1,645	822
Less: Realisation Costs		Nil	Unknown
<b>Net Realisations from Non Circulating Factored Debtor Assets</b>		<b>1,645</b>	<b>822</b>
<b>Less Debtor Factored Financier Non Circulating Claim</b>		<b>(1,085)</b>	<b>(1,085)</b>
<b>Surplus/(Deficiency) after Debtor Factored Financier Non Circulating Claim</b>		<b>560</b>	<b>(262)</b>
<b>Circulating Charge Assets</b>			
Cash		-	-
Non Factored Debtors		-	-
Stock	ii.	60	30
Less: Realisation Costs	ii.	unknown	Unknown
<b>Net Realisations from Circulating Charge Assets</b>		<b>60</b>	<b>30</b>
<b>Less Priority Claims</b>			
Administrators' Fees and Disbursements to 31 August 2012	iii.	(154)	(154)
Estimated Administrators' Fees and Disbursements 1 Sep 2012 to 2 <sup>nd</sup> Crs Meeting	iii.	(50)	(75)
Estimated Liquidators' Fees and Disbursements to Conclusion	iii.	(250)	(350)
Employee Entitlements	iv.		
• Wages/Superannuation		(365)	(365)
• Annual Leave		(583)	(583)
• Long Service Leave		(54)	(54)
• Redundancy		TBD	TBD
• Pay in Lieu of Notice		TBD	TBD
• Sick Leave / Rostered Days Off / Allowances		(120)	(120)
<b>Total Priority Claims</b>		<b>(1,576)</b>	<b>(1,701)</b>
<b>Net Funds Available to Secured Creditor After Priority Claims</b>		<b>(956)</b>	<b>(1,933)</b>
<b>Add: Recovery of Voidable Transactions</b>			
Less Recovery Costs	vi.	(500)	(350)
<b>Total Funds Available to Ordinary Unsecured Creditors</b>		<b>2,970</b>	<b>(350)</b>
Shortfall to Secured Creditor's Claim	v.	(6,754)	(6,754)
Known Unsecured Creditor Claims		(4,591)	(4,591)
Shortfall to HP Financiers	vii.	TBD	TBD
Excluded Employee Entitlements		-	-
<b>Estimated Surplus/Shortfall to Ordinary Unsecured Creditors</b>		<b>(8,375)</b>	<b>(11,695)</b>
<b>Estimated Return to Ordinary Unsecured Creditors (cents in \$)</b>		<b>26c</b>	<b>nil</b>

The above analysis provides a high and low estimate of the realisable value of the assets if the Company were wound up, however as the valuation of the plant and equipment has not yet been completed (and would in any event be deemed commercially sensitive), the true estimation of a return to unsecured creditors cannot yet be calculated.

We make the following comments in relation to the above:

- i. As we are presently unfunded, we have not commissioned a valuation of the plant, equipment and motor vehicles in the Company's possession. At the date of writing we are discussing a proposal with the equipment financiers to complete this task. In any event, the value of that equipment would be considered commercially sensitive as the equipment financiers will attempt to realise the equipment the subject of their security to recoup their losses. Similarly, we are not in a position to estimate realisation costs of the same. There is a limited quantity of equipment that is owned by the Company and not subject to security held by equipment financiers. We are in the process of having this valued separately and negotiating a sale.
- ii. The Company is in possession of stock with a book value of \$87K. While this has also not been valued, we have discounted this to between \$30K and \$60K in a realisation process.
- iii. The Administrators current and estimated costs along with the Liquidators prospective costs have been enclosed in the Administrators' Remuneration Report attached to this Report. Despite the current lack of funding in the administration, the Administrators' will be seeking creditor approval for these amounts at the upcoming second meeting of creditors.
- iv. Should the Company progress into liquidation, then as the Company does not have sufficient assets to meet employee entitlements itself, employees will be able to make an application to GEERS, a scheme administered by the Federal Government to enable employees of insolvent entities to claim certain unpaid employee entitlements. It is important to note that GEERS is a discretionary scheme, and will not respond to claims for superannuation, sick leave, rostered days off or allowances. I will correspond separately with employees in order to lodge a claim with GEERS on behalf of employees should the company be wound up.
- v. As set out previously in this report, there are three secured creditors holding fixed and floating charges over the assets of the Company, being the Westpac Banking Corporation, SPBF, and DLL. It is unlikely that there will be sufficient assets to meet any of the secured debts under the fixed and floating charges, after equipment financiers have been repaid from assets they hold specific security over, and priority creditors have been paid from circulating assets available to them ahead of secured creditors. Accordingly, the amounts owed to the secured creditors is shown as a separate category together with unsecured creditors in order for them to participate in any recovery of voidable transactions.
- vi. The voidable transactions have been set out in section 6.3 of this Report above, and comprise chiefly amounts paid to the ATO under a payment plan, and other amounts remitted to the ATO after the payment plan was implemented (as it is considered that the ATO then had knowledge of the company's inability to pay its debts as and when they fell due). Recovery of such amounts can be both complex and costly. In the above table, we have allowed for between \$350,000 to \$500,000 for recovery of up to \$3.5 million. Such recovery may require the involvement of a litigation funder given the currently unfunded status of the Company. A litigation funder would require a significant percentage of any recoveries made (typically around 40%) to compensate it for the risk in funding the litigation. Recoveries of preferences are only available to unsecured creditors, however secured creditors are permitted to prove their debt as an unsecured claim to participate in a distribution arising from preference recoveries.
- vii. An amount may also be claimable by HP financiers for any shortfall remaining after they have realised the equipment they hold security over. This amount cannot be estimated at present, however they would be entitled to claim for such amounts through an unsecured claim against the Company.

While the high value scenario above estimates a potential return to unsecured creditors, it is important to emphasise that this any return to unsecured creditors would be dependent upon:

- Substantial value being realised from the HP financiers from their leased equipment to reduce the combined debt owed of \$12.6 million. The book value of the financed equipment is in excess of this figure, however it is our experience that the realisable value, particularly where the realisation process must occur through auction or forced sale scenario's realises a much lesser amount than the written down value recorded on the Company's books. This is even more prevalent in the construction or civil engineering industry, where equipment is typically subject to a high level of wear and tear and resale value of equipment is correspondingly lower.
- The receivables have been heavily discounted in the above statement of position. As discussed above, we have been unable to access debtors to date as the Company factored its debts to improve the cash collection cycle, and had effectively sold its debt book. The debt financier is entitled to repayment from debtors that it collects initially, and must then account to us for collections to date and the Company will be entitled to collect the balance. Again, it is our experience in such situations that the debtors remaining will be doubtful or bad debts, or will be unwilling to pay, or may seek to offset their debts owed against claims for breach of contract or liquidated damages claims.
- Any return to unsecured creditors will also be dependent upon successful recovery action for preference payments made to the ATO, and potentially other such creditors. Whilst the claim appears solid, a liquidator would need to conduct further investigations and the outcome of litigation to recover such claims is never certain.
- Any return to unsecured creditors will also be affected by the costs of the administration / liquidation. We have estimated this to range between \$250,000 and \$350,000 for the liquidation.

Employees may be entitled to claim their entitlements (other than superannuation) under the Federal Government's GEERS, however GEERS will not respond to all claims, such as superannuation and does not typically classify sick leave or RDO's as claimable entitlements under the Operational Arrangements of the Scheme.

Should any return to creditors eventuate, we do not anticipate that this would occur before 30 June 2013, due to time required for:

- Completion of sale of unencumbered plant and equipment
- Recovery of any preference payments or voidable transactions that may be available to creditors.

## 8. Administrators' Opinion

As stated in section 7.1 above, the option of the administration ending is clearly not viable. I do believe that an adjournment would benefit creditors, as the option to realise assets or parts of the business will continue to be available to a liquidator. **Accordingly, we recommend that the company be wound up at the second meeting of creditors.**

## 9. Administrators' Remuneration Report

Pursuant to Section 446E of the Act, we enclose as Annexure 1 the Administrators' Remuneration Report. While there are currently no funds in the Company at present, at the second meeting of creditors, we intend seeking approval of the remuneration set out in the remuneration report. Details of disbursements incurred are also included in the remuneration report.

## 10. Further Queries

We will advise creditors in writing, if practicable, of any additional matter that comes to our attention after the dispatch of this report that, in our view, is material to creditors' deliberations.

In the meantime, should creditors have any queries, please do not hesitate to contact this office on either 08 9214 1497 or by email to [dghoists@fh.com.au](mailto:dghoists@fh.com.au).

DATED this 6th September 2012



**Martin Jones**  
Joint and Several Administrator

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# **Annexure 1**

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Administrators' Remuneration Report

# CORPORATIONS ACT 2001

Section 449E

## **D&G HOISTS & CRANES (AUS) PTY LTD (ADMINISTRATORS APPOINTED) (THE COMPANY) ACN 136 357 054**

### **REMUNERATION REPORT**

We, Martin Jones and Andrew Saker of Ferrier Hodgson have undertaken a proper assessment of this remuneration claim for our appointment as Voluntary Administrators of D&G Hoist & Cranes (AUS) Pty Ltd (Administrators Appointed) in accordance with the law and applicable professional standards. We are satisfied that the remuneration claimed is in respect of necessary work, properly performed in the conduct of the administration.

The Administrators' Remuneration Report, prepared pursuant to Section 449E of the Corporations Act 2001, takes the following format.

#### **Part A**

- A1 Schedule of hourly rates and general guide to staff experience.
- A2 Tasks undertaken by the Administrators and remuneration calculation for the period 10 August 2012 to 31 August 2012.
- A3 Schedule of the Administrators' anticipated tasks and remuneration estimate for the period 1 September 2012 to the 14 September 2012.
- A4 Where Liquidators are appointed, a schedule of the Liquidators' anticipated tasks and remuneration estimate from 15 September 2012 to the conclusion of the liquidation.
- A5 Remuneration approved and drawn to date.
- A6 Resolutions to be put to creditors at the meeting convened for 14 September 2012.

#### **Part B**

- B1 Administrators' disbursements.
- B2 Summary of Receipts and Payments for the period 10 August 2012 to 31 August 2012.
- B3 Other creditor information on remuneration.
- B4 Initial advice to creditors.

The Remuneration Report must be read in conjunction with the report to creditors dated 6 September 2012.

## **PART A**

### **A1 SCHEDULE OF HOURLY RATES & GENERAL GUIDE TO STAFF EXPERIENCE**

<b>Title</b>	<b>Rate (\$)</b>	<b>Experience</b>
Partner / Executive Director	580	The Partner/Appointee is a registered liquidator and member of the ICAA and, generally, the IPA, bringing specialist skills to the administration or insolvency task. For specific experience and other details of the appointee/s, please visit our website at <a href="http://www.ferrierhodgson.com">www.ferrierhodgson.com</a>
Director	490	Generally, minimum of 12 years experience at least 2 years of which is to be at Manager level. University degree; member of the ICAA and, generally, the IPA, with deep knowledge and lengthy experience in relevant insolvency legislation and issues.
Senior Manager	440	Generally, more than 7 years experience with at least 2 years as a Manager. University degree; member of the ICAA and, generally, the IPA; very strong knowledge of relevant insolvency legislation and issues.
Manager	370	Generally, 5-7 years chartered accounting or insolvency management experience. University degree; member of the ICAA and generally, the IPA; sound knowledge of relevant insolvency legislation and issues.
Assistant Manager	330	Generally, 4-6 years chartered accounting or insolvency management experience. University degree; member of the ICAA; completing IPAA Insolvency Education Program. Good knowledge of relevant insolvency legislation and issues.
Senior Analyst	285	Generally, 2-4 years chartered accounting or insolvency management experience. University degree; completing the ICAA's CA program. Good knowledge of basic insolvency legislation and issues.
Analyst	255	Generally, 2-3 years chartered accounting or insolvency management experience. University degree, ICAA's CA program commenced.
Accountant	200	0 to 2 years experience. Has completed or substantially completed a degree in finance/accounting. Under supervision, takes direction from senior staff in completing administrative tasks.
Junior Accountant	120	0 – 1 years experience. Undertaking a degree part-time in finance/accounting. Under supervision, takes direction from senior staff in completing more complex administrative tasks.
Senior Secretary	170	Appropriate skills including machine usage.
Accounts Clerk / Filing Clerk	140	Completed schooling and plans to undertake further studies. Required to assist in administration and day to day field work under the supervision of more senior staff.

#### **Notes:**

1. The hourly rates are exclusive of GST.
2. The guide to staff experience is intended only as a general guide to the qualifications and experience of our staff engaged in the administration. Staff may be engaged under a classification that we consider appropriate for their experience.
3. Time is recorded and charged in six-minute increments.
4. Rates are subject to change from time to time. The hourly rates reflect the total cost of providing professional services and should **not** be compared to an hourly rate. See Part B1 for details of disbursements.

**A2. Tasks undertaken by the Administrators and remuneration calculation for the period from 10 August 2012 to 31 August 2012.**

<b>Task Area</b>	<b>General Description</b>	<b>Includes:</b>	
<b>Assets</b> 52.7 hours \$17,699.50	Sale of business as a going concern	<ul style="list-style-type: none"> <li>▪ Liaising with valuers, auctioneers and interested parties</li> <li>▪ Internal meetings to discuss/review offers received</li> <li>▪ Meetings with major shareholder on reconstructions of company</li> </ul>	
	Plant and equipment	<ul style="list-style-type: none"> <li>▪ Liaising with valuers, auctioneers and interested parties</li> <li>▪ Reviewing asset listings</li> </ul>	
	Assets subject to specific charges	<ul style="list-style-type: none"> <li>▪ Understand locality of all HP assets</li> <li>▪ Preparing and comparing the fixed asset register with the HP Assets</li> <li>▪ Meetings with various financiers</li> </ul>	
	Debtors	<ul style="list-style-type: none"> <li>▪ Correspondence with debtors</li> <li>▪ Reviewing and assessing debtors ledgers</li> <li>▪ Liaising with debt collectors</li> </ul>	
	Stock	<ul style="list-style-type: none"> <li>▪ Conducting stock takes</li> <li>▪ Reviewing stock values</li> <li>▪ Liaising with ROT creditors</li> </ul>	
	Leasing	<ul style="list-style-type: none"> <li>▪ Reviewing leasing documents</li> <li>▪ Liaising with owners/lessors</li> <li>▪ Tasks associated with disclaiming leases</li> </ul>	
<b>Creditors</b> 66.6 hours \$19,435.00	Other assets	<ul style="list-style-type: none"> <li>▪ Tasks associated with realising other assets</li> </ul>	
	Creditor Enquiries	<ul style="list-style-type: none"> <li>▪ Receive and follow up creditor enquiries via telephone and email</li> <li>▪ Maintaining creditor enquiry register</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> <li>▪ Correspondence with committee of creditors members</li> </ul>	
	Retention of Title Claims	<ul style="list-style-type: none"> <li>▪ Receive initial notification of creditor's intention to claim</li> <li>▪ Provision of retention of title claim form to creditor</li> <li>▪ Receive completed retention of title claim form</li> <li>▪ Maintain retention of title file</li> <li>▪ Adjudicate retention of title claim</li> </ul>	
	Secured creditor reporting	<ul style="list-style-type: none"> <li>▪ Preparing reports to secured creditor/financers</li> <li>▪ Responding to secured creditors queries</li> </ul>	
	Creditor reports/circulars	<ul style="list-style-type: none"> <li>▪ Prepare further reports to creditors pursuant to section 439A of the Act</li> </ul>	
	Dealing with proofs of debt	<ul style="list-style-type: none"> <li>▪ Receipting and filing POD's when not related to a dividend</li> <li>▪ Corresponding with OSR and ATO regarding POD's when not related to a dividend</li> </ul>	
	Meeting of Creditors	<ul style="list-style-type: none"> <li>▪ Preparation of meeting notices, proxies and advertisements</li> <li>▪ Forward notice of meeting to all known creditors</li> <li>▪ Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting</li> <li>▪ Preparation and lodgement of minutes of meetings with ASIC</li> <li>▪ Respond to stakeholder queries and questions immediately following meeting</li> </ul>	
	Shareholder enquiries	<ul style="list-style-type: none"> <li>▪ Liaising with major shareholder on various enquiries</li> </ul>	
	<b>Employees</b> 17.5 hours \$5,490.50	Employee enquiries	<ul style="list-style-type: none"> <li>▪ Receive and follow up employee enquiries via telephone</li> <li>▪ Maintain employee enquiry register</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> </ul>

Task Area	General Description	Includes:
		<ul style="list-style-type: none"> <li>▪ Preparation of letters to employees advising of their entitlements and options available</li> <li>▪ Receive and prepare correspondence in response to employees objections to leave entitlements</li> </ul>
	Calculation of entitlements	<ul style="list-style-type: none"> <li>▪ Reviewing employee files and the Company's books and records</li> <li>▪ Calculating employee entitlements</li> <li>▪ Reconciling superannuation accounts</li> <li>▪ Reviewing awards (EBAs)</li> </ul>
	Workers compensation claims	<ul style="list-style-type: none"> <li>▪ Review insurance policies</li> <li>▪ Receipt of claim</li> <li>▪ Liaising with claimant</li> <li>▪ Liaising with insurers and solicitors regarding claims</li> <li>▪ Identification of potential issues requiring attention of insurance specialists</li> <li>▪ Correspondence with Blue Broking regarding initial ongoing workers compensation insurance requirements</li> <li>▪ Correspondence with previous brokers</li> <li>▪ Correspondence with Child Support</li> <li>▪ Correspondence with Unions</li> </ul>
	Other employee issues	
	Trade On Management	<ul style="list-style-type: none"> <li>▪ Liaising with suppliers</li> <li>▪ Liaising with management and staff</li> <li>▪ Attendance on site</li> <li>▪ Authorising purchase orders</li> <li>▪ Maintaining purchase order registry</li> <li>▪ Preparing and authorising receipt vouchers</li> <li>▪ Preparing and authorising payment vouchers</li> <li>▪ Liaising with OSR regarding payroll tax issues</li> </ul>
<b>Trade On</b>		
117 hours		
\$39,047.00		
	Processing receipts and payments	<ul style="list-style-type: none"> <li>▪ Entering receipt and payments into accounting system</li> </ul>
	Budgeting & financial reporting	<ul style="list-style-type: none"> <li>▪ Reviewing the Company's budgets and financial statements</li> <li>▪ Preparing budgets and cashflow forecast</li> <li>▪ Meetings to discuss cashflow forecast</li> </ul>
	Conducting investigation	<ul style="list-style-type: none"> <li>▪ Collection of the Company's books and records</li> <li>▪ Correspondence with ASIC to receive assistance in obtaining books and records</li> <li>▪ Reconstruction of financial statements</li> <li>▪ Reviewing the Company's books and records and Report as to Affairs</li> <li>▪ Review and preparation of the Company's nature and history</li> <li>▪ Liaising with directors regarding certain transactions</li> <li>▪ Preparation of investigation file</li> </ul>
<b>Investigations</b>		
32.2 hours		
\$11,924.00		
	Litigation/Recoveries	<ul style="list-style-type: none"> <li>▪ Internal meetings to discuss status of litigation</li> <li>▪ Preparing brief to solicitors</li> <li>▪ Liaising with solicitors regarding recovery actions</li> <li>▪ Attending to negotiations</li> <li>▪ Attending to settlement matters</li> </ul>
	ASIC reporting	<ul style="list-style-type: none"> <li>▪ Preparing statutory investigation reports</li> <li>▪ Preparing affidavits seeking non lodgements assistance</li> <li>▪ Liaising with ASIC</li> </ul>
	Processing proofs of debt	<ul style="list-style-type: none"> <li>▪ Receipt of PODs</li> <li>▪ Maintain POD register</li> <li>▪ Adjudicating PODs</li> <li>▪ Request further information from claimants regarding POD</li> </ul>
<b>Dividend</b>		
0.2 hours		
\$51.00		

Task Area	General Description	Includes:
<b>Administration</b> 164.9 hours \$59,840.50	Correspondence Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>▪ General correspondence</li> <li>▪ First month administration review</li> <li>▪ Filing documents</li> <li>▪ File reviews</li> <li>▪ Updating checklists</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>▪ Identification of potential issues requiring attention of insurance specialists</li> <li>▪ Correspondence with Blue Broking regarding initial and ongoing insurance requirements</li> <li>▪ Reviewing insurance policies</li> <li>▪ Correspondence with previous brokers</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>▪ Preparing correspondence opening and closing accounts</li> <li>▪ Requesting bank statements</li> <li>▪ Bank account reconciliations</li> <li>▪ Correspondence with bank regarding specific transfers</li> </ul>
	ASIC Form 524 and other forms	<ul style="list-style-type: none"> <li>▪ Preparing and lodging ASIC forms including 505, 911 etc</li> <li>▪ Correspondence with ASIC regarding statutory forms</li> </ul>
	ATO & other statutory reporting	<ul style="list-style-type: none"> <li>▪ Notification of appointment</li> <li>▪ Preparing BAS'</li> <li>▪ Completing group certificates</li> </ul>
	Planning / Review	<ul style="list-style-type: none"> <li>▪ Discussions regarding status/strategy of administration</li> </ul>
	Books and records/storage	<ul style="list-style-type: none"> <li>▪ Dealing with records in storage</li> <li>▪ Sending job files to storage</li> </ul>

## A2 (cont) Tasks undertaken by the Administrators and remuneration calculation for the period from 10 August 2012 to 31 August 2012

Employee	Position	Current Charge Rate \$	Total		Assets		Creditors		Administration		Employees		Trade On		Investigation		Dividend	
			Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$
Martin Jones	Partner	580.00	43.80	25,404.00	-	-	2.40	1,392.00	35.70	20,706.00	-	-	5.70	3,306.00	-	-	-	-
Andrew Saker	Partner	580.00	0.40	232.00	-	-	-	-	0.20	116.00	-	-	0.20	116.00	-	-	-	-
Malcolm Field	Director	490.00	70.70	34,643.00	13.90	6,811.00	9.70	4,753.00	22.30	10,927.00	1.90	931.00	8.60	4,214.00	14.30	7,007.00	-	-
Sean Powell	Senior Manager	440.00	4.40	1,936.00	-	-	-	-	4.40	1,936.00	-	-	-	-	-	-	-	-
Bob Bickford	Assistant Manager	330.00	6.50	2,145.00	0.20	66.00	-	-	6.30	2,079.00	-	-	-	-	-	-	-	-
Kieran Chu	Assistant Manager	330.00	21.30	7,029.00	-	-	4.00	1,320.00	4.10	1,353.00	9.10	3,003.00	-	-	4.10	1,353.00	-	-
Shannon Coleman	Assistant Manager	330.00	100.30	33,099.00	12.30	4,059.00	5.30	1,749.00	11.10	3,663.00	0.50	165.00	70.50	23,265.00	0.60	198.00	-	-
Dario Musilin	Senior Analyst	285.00	12.40	3,534.00	0.40	114.00	-	-	11.00	3,135.00	-	-	1.00	285.00	-	-	-	-
Lauren McCann	Senior Analyst	285.00	14.60	4,161.00	-	-	7.10	2,023.50	7.50	2,137.50	-	-	-	-	-	-	-	-
Gregory Swan	Senior Analyst	285.00	6.20	1,767.00	1.50	427.50	-	-	4.00	1,140.00	0.70	199.50	-	-	-	-	-	-
Greshan Swam	Analyst	255.00	44.60	11,373.00	-	-	-	-	4.30	1,096.50	0.50	127.50	26.60	6,783.00	13.20	3,366.00	-	-
Anna Madetko	Analyst	255.00	23.90	6,094.50	23.50	5,992.50	-	-	-	-	0.40	102.00	-	-	-	-	-	-
Lucas Telles	Analyst	255.00	19.50	4,972.50	-	-	-	-	15.90	4,054.50	-	-	3.60	918.00	-	-	-	-
William Hulmes	Analyst	255.00	13.10	3,340.50	0.90	229.50	10.50	2,677.50	-	-	1.50	382.50	-	-	-	-	0.20	51.00
Thomas Guthrie	Accountant	200.00	7.30	1,460.00	-	-	2.30	460.00	5.00	1,000.00	-	-	-	-	-	-	-	-
Jason Soo	Accountant	200.00	34.00	6,800.00	-	-	25.30	5,060.00	5.00	1,000.00	2.90	580.00	0.80	160.00	-	-	-	-
Ashleigh Weaver	Accountant	200.00	16.40	3,280.00	-	-	-	-	16.40	3,280.00	-	-	-	-	-	-	-	-
Aimee Siekierka	Accountant	200.00	7.60	1,520.00	-	-	-	-	7.60	1,520.00	-	-	-	-	-	-	-	-
Jacqui Westwood	Senior Secretary	170.00	4.00	680.00	-	-	-	-	4.00	680.00	-	-	-	-	-	-	-	-
Talia Newland	Filing Clerk	170.00	0.10	17.00	-	-	-	-	0.10	17.00	-	-	-	-	-	-	-	-
<b>Total</b>			451.1	153,487.5	52.7	17,699.5	66.6	19,435.0	164.9	59,840.5	17.5	5,490.5	117.0	39,047.0	32.2	11,924.0	0.2	51.0
<b>GST</b>				15,349		1,770		1,944		5,984		549		3,905		1,192		5
<b>TOTAL (incl. GST)</b>				168,836		19,469		21,379		65,825		6,040		42,952		13,116		56
<b>Average hourly rate</b>				340		336		292		363		314		334		370		255

**A3 Schedule of the Administrators' anticipated tasks and remuneration estimate for the period 1 September 2012 to 14 September 2012.**

Based on the following anticipated tasks, I estimate the Administrators' fees for the above period to be \$75,000 (exclusive of GST).

<b>Task Area</b>	<b>General Description</b>	<b>Includes:</b>
<b>Assets</b> 80 hours \$30,000	Plant and equipment	<ul style="list-style-type: none"> <li>▪ Liaising with valuers, auctioneers and interested parties</li> <li>▪ Reviewing asset listings</li> </ul>
	Assets subject to specific charges	<ul style="list-style-type: none"> <li>▪ All tasks associated with realising a charged asset including liaising with financiers to determine strategy</li> </ul>
	Debtors	<ul style="list-style-type: none"> <li>▪ Correspondence with debtors</li> <li>▪ Reviewing and assessing debtors ledgers</li> <li>▪ Liaising with debt collectors and solicitors</li> </ul>
	Stock	<ul style="list-style-type: none"> <li>▪ Conducting stock takes</li> <li>▪ Reviewing stock values</li> <li>▪ Liaising with ROT creditors</li> </ul>
	Leasing	<ul style="list-style-type: none"> <li>▪ Reviewing leasing documents</li> <li>▪ Liaising with owners/lessors</li> <li>▪ Tasks associated with disclaiming leases</li> </ul>
	Other assets	<ul style="list-style-type: none"> <li>▪ Tasks associated with realising other assets</li> </ul>
<b>Creditors</b> 42 hours \$12,500	Creditor Enquiries	<ul style="list-style-type: none"> <li>▪ Receive and follow up creditor enquiries via telephone and email</li> <li>▪ Maintaining creditor enquiry register</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> <li>▪ Correspondence with committee of creditors members</li> </ul>
	Retention of Title Claims	<ul style="list-style-type: none"> <li>▪ Receive initial notification of creditor's intention to claim</li> <li>▪ Provision of retention of title claim form to creditor</li> <li>▪ Receive completed retention of title claim form</li> <li>▪ Maintain retention of title file</li> <li>▪ Meeting claimant on site to identify goods</li> <li>▪ Adjudicate retention of title claim</li> <li>▪ Forward correspondence to claimant notifying outcome of adjudication</li> <li>▪ Preparation of payment vouchers to satisfy valid claim</li> <li>▪ Preparation of correspondence to claimant to accompany payment of claim (if valid)</li> </ul>
	Secured creditor reporting	<ul style="list-style-type: none"> <li>▪ Preparing reports to secured creditor</li> <li>▪ Responding to secured creditors queries</li> </ul>
	Creditor reports/circulars	<ul style="list-style-type: none"> <li>▪ Prepare further reports to creditors</li> </ul>
	Dealing with proofs of debt	<ul style="list-style-type: none"> <li>▪ Receipting and filing POD's when not related to a dividend</li> <li>▪ Corresponding with OSR and ATO regarding POD's when not related to a dividend</li> </ul>
	Meeting of Creditors	<ul style="list-style-type: none"> <li>▪ Preparation of meeting notices, proxies and advertisements</li> <li>▪ Forward notice of meeting to all known creditors</li> <li>▪ Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting</li> <li>▪ Preparation and lodgement of minutes of meetings with ASIC</li> <li>▪ Respond to stakeholder queries and questions immediately following meeting</li> </ul>
	Shareholder enquiries	<ul style="list-style-type: none"> <li>▪ Responding to any shareholder enquiries</li> </ul>

<b>Task Area</b>	<b>General Description</b>	<b>Includes:</b>
<b>Employees</b> 16 hours \$5,000	Employee enquiries	<ul style="list-style-type: none"> <li>▪ Receive and follow up employee enquiries via telephone</li> <li>▪ Maintain employee enquiry register</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> <li>▪ Preparation of letters to employees advising of their entitlements and options available</li> <li>▪ Receive and prepare correspondence in response to employees objections to leave entitlements</li> </ul>
	GEERS	<ul style="list-style-type: none"> <li>▪ Correspondence with GEERS</li> </ul>
	Calculation of entitlements	<ul style="list-style-type: none"> <li>▪ Reviewing employee files and the Company's books and records</li> <li>▪ Calculating employee entitlements</li> <li>▪ Reconciling superannuation accounts</li> <li>▪ Reviewing awards</li> <li>▪ Liaising with solicitors regarding entitlements</li> </ul>
	Workers compensation claims	<ul style="list-style-type: none"> <li>▪ Review insurance policies</li> <li>▪ Receipt of claim</li> <li>▪ Liaising with claimant</li> <li>▪ Liaising with insurers and solicitors regarding claims</li> <li>▪ Identification of potential issues requiring attention of insurance specialists</li> <li>▪ Correspondence with Blue Broking regarding initial ongoing workers compensation insurance requirements</li> <li>▪ Correspondence with previous brokers</li> </ul>
	Other employee issues	<ul style="list-style-type: none"> <li>▪ Correspondence with Child Support</li> <li>▪ Correspondence with Centrelink and Unions</li> </ul>
<b>Trade On</b> 20 hours \$7,500	Trade On Management	<ul style="list-style-type: none"> <li>▪ Liaising with suppliers</li> <li>▪ Liaising with management and staff</li> <li>▪ Attendance on site</li> <li>▪ Authorising purchase orders</li> <li>▪ Maintaining purchase order registry</li> <li>▪ Preparing and authorising receipt vouchers</li> <li>▪ Preparing and authorising payment vouchers</li> <li>▪ Liaising with superannuation funds regarding contributions, termination of employees employment</li> <li>▪ Liaising with OSR regarding payroll tax issues</li> </ul>
	Processing receipts and payments	<ul style="list-style-type: none"> <li>▪ Entering receipt and payments into accounting system</li> </ul>
	Budgeting & financial reporting	<ul style="list-style-type: none"> <li>▪ Reviewing the Company's budgets and financial statements</li> <li>▪ Preparing budgets</li> <li>▪ Preparing Statement of Position</li> <li>▪ Finalising trading profit or loss</li> <li>▪ Meetings to discuss trading position</li> </ul>
	Conducting investigation	<ul style="list-style-type: none"> <li>▪ Collection of the Company's books and records</li> <li>▪ Correspondence with ASIC to receive assistance in obtaining books and records</li> <li>▪ Reconstruction of financial statements</li> <li>▪ Reviewing the Company's books and records and Report as to Affairs</li> <li>▪ Review and preparation of the Company's nature and history</li> <li>▪ Liaising with directors regarding certain transactions</li> <li>▪ Preparation of investigation file</li> <li>▪ Lodgement of report to ASIC pursuant to section 438D of the act</li> <li>▪ Preparation and lodgement of supplementary report if required</li> </ul>
<b>Investigations</b> 12 hours \$5,000	Litigation/Recoveries	<ul style="list-style-type: none"> <li>▪ Internal meetings to discuss status of litigation</li> </ul>

Task Area	General Description	Includes:
		<ul style="list-style-type: none"> <li>▪ Preparing brief to solicitors</li> <li>▪ Liaising with solicitors regarding recovery actions</li> <li>▪ Attending to negotiations</li> <li>▪ Attending to settlement matters</li> </ul>
	ASIC reporting	<ul style="list-style-type: none"> <li>▪ Preparing statutory investigation reports</li> <li>▪ Preparing affidavits seeking non lodgements assistance</li> <li>▪ Liaising with ASIC</li> </ul>
	Correspondence	<ul style="list-style-type: none"> <li>▪ General correspondence</li> </ul>
	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>▪ First month administration review</li> <li>▪ Filing documents</li> <li>▪ File reviews</li> <li>▪ Updating checklists</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>▪ Identification of potential issues requiring attention of insurance specialists</li> <li>▪ Correspondence with Willis regarding initial and ongoing insurance requirements</li> <li>▪ Reviewing insurance policies</li> <li>▪ Correspondence with previous brokers</li> </ul>
<b>Administration</b>	Bank account administration	<ul style="list-style-type: none"> <li>▪ Preparing correspondence opening and closing accounts</li> <li>▪ Requesting bank statements</li> <li>▪ Bank account reconciliations</li> <li>▪ Correspondence with bank regarding specific transfers</li> </ul>
48 hours		
\$15,000		
	ASIC Form 524 and other forms	<ul style="list-style-type: none"> <li>▪ Preparing and lodging ASIC forms including 505, 524, 911 etc</li> <li>▪ Correspondence with ASIC regarding statutory forms</li> </ul>
	ATO & other statutory reporting	<ul style="list-style-type: none"> <li>▪ Notification of appointment</li> <li>▪ Preparing BAS'</li> <li>▪ Completing group certificates</li> </ul>
	Planning / Review	<ul style="list-style-type: none"> <li>▪ Discussions regarding status/strategy of administration</li> </ul>
	Books and records/storage	<ul style="list-style-type: none"> <li>▪ Dealing with records in storage</li> <li>▪ Sending job files to storage</li> </ul>

**A3 (cont) Schedule of anticipated tasks and remuneration estimate for the period from 1 September 2012 to 14 September 2012**

Employee	Position	Current Charge Rate \$	Total		Assets		Creditors		Administration		Employees		Trade On		Investigation	
			Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$
Martin Jones	Partner	580.00	16	9,280	7	4,060	1	580	5	2,900	-	-	3	1,740	-	-
Sean Powell	Senior Manager	440.00	55	24,200	30	13,200	5	2,200	5	2,200	2	880	5	2,200	8	3,520
Kieran Chu	Assistant Manager	330.00	39	12,918	15	4,950	3	825	5	1,650	8	2,693	5	1,650	3	1,150
Shannon Coleman	Assistant Manager	330.00	22	7,293	2	660	9	2,970	8	2,640	1	396	1	297	1	330
Lauren McCann	Senior Analyst	285.00	29	8,339	15	4,388	4	998	5	1,425	1	171	5	1,358	-	-
William Hulmes	Analyst	255.00	28	7,256	11	2,742	12	2,984	5	1,275	-	-	1	255	-	-
Jason Soo	Accountant	200.00	18	3,604	-	-	10	1,944	6	1,200	2	460	-	-	-	-
Ashleigh Weaver	Accountant	200.00	8	1,600	-	-	-	-	6	1,200	2	400	-	-	-	-
Jacqui Westwood	Senior Secretary	170.00	2	340	-	-	-	-	2	340	-	-	-	-	-	-
Talia Newland	Filing Clerk	170.00	1	170	-	-	-	-	1	170	-	-	-	-	-	-
<b>Total</b>			219	75,000	80	30,000	42	12,500	48	15,000	16	5,000	20	7,500	12	5,000
<b>GST</b>				7,500		3,000		1,250		1,500		500		750		500
<b>TOTAL (incl. GST)</b>				82,500		33,000		13,750		16,500		5,500		8,250		5,500
<b>Average hourly rate</b>				342		374		295		313		307		381		400

**A4 Where Liquidators are appointed, a schedule of the Liquidators' anticipated tasks and remuneration estimate from 15 September 2012 to the conclusion of the administration.**

Based on the following anticipated tasks of the Liquidation, I estimate the Liquidators' fees to be \$250,000 (exclusive of GST).

<b>Task Area</b>	<b>General Description</b>	<b>Includes:</b>
<b>Assets</b> 191 hours \$70,000	Plant and equipment	<ul style="list-style-type: none"> <li>▪ Liaising with valuers, auctioneers and interested parties</li> <li>▪ Reviewing asset listings</li> </ul>
	Sale of real property	<ul style="list-style-type: none"> <li>▪ Liaising with valuers, agents and strata agent</li> <li>▪ Attendance at auction</li> </ul>
	Assets subject to specific charges	<ul style="list-style-type: none"> <li>▪ All tasks associated with realising a charged asset including liaising with financiers to determine strategy</li> </ul>
	Debtors	<ul style="list-style-type: none"> <li>▪ Correspondence with debtors</li> <li>▪ Reviewing and assessing debtors ledgers</li> <li>▪ Liaising with debt collectors and solicitors</li> </ul>
	Stock	<ul style="list-style-type: none"> <li>▪ Conducting stock takes</li> <li>▪ Reviewing stock values</li> <li>▪ Liaising with purchasers</li> </ul>
	Leasing	<ul style="list-style-type: none"> <li>▪ Reviewing leasing documents</li> <li>▪ Liaising with owners/lessors</li> <li>▪ Tasks associated with disclaiming leases</li> </ul>
	Other assets	<ul style="list-style-type: none"> <li>▪ Tasks associated with realising other assets</li> </ul>
<b>Creditors</b> 150 hours \$40,000	Creditor Enquiries	<ul style="list-style-type: none"> <li>▪ Receive and follow up creditor enquiries via telephone and email</li> <li>▪ Maintaining creditor enquiry register</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> <li>▪ Correspondence with committee of creditors members</li> </ul>
	Retention of Title Claims	<ul style="list-style-type: none"> <li>▪ Receive initial notification of creditor's intention to claim</li> <li>▪ Provision of retention of title claim form to creditor</li> <li>▪ Receive completed retention of title claim form</li> <li>▪ Maintain retention of title file</li> <li>▪ Meeting claimant on site to identify goods</li> <li>▪ Adjudicate retention of title claim</li> <li>▪ Forward correspondence to claimant notifying outcome of adjudication</li> <li>▪ Preparation of payment vouchers to satisfy valid claim</li> <li>▪ Preparation of correspondence to claimant to accompany payment of claim (if valid)</li> </ul>
	Secured creditor reporting	<ul style="list-style-type: none"> <li>▪ Preparing reports to secured creditor</li> <li>▪ Responding to secured creditors queries</li> </ul>
	Creditor reports/circulars	<ul style="list-style-type: none"> <li>▪ Prepare further reports to creditors</li> </ul>
	Dealing with proofs of debt	<ul style="list-style-type: none"> <li>▪ Receipting and filing POD's when not related to a dividend</li> <li>▪ Corresponding with OSR and ATO regarding POD's when not related to a dividend</li> </ul>
	Meeting of Creditors	<ul style="list-style-type: none"> <li>▪ Preparation of meeting notices, proxies and advertisements</li> <li>▪ Forward notice of meeting to all known creditors</li> <li>▪ Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting</li> <li>▪ Preparation and lodgement of minutes of meetings with ASIC</li> <li>▪ Respond to stakeholder queries and questions immediately following meeting</li> </ul>

<b>Task Area</b>	<b>General Description</b>	<b>Includes:</b>
<b>Employees</b> 66 hours \$20,000	Shareholder enquiries	<ul style="list-style-type: none"> <li>▪ ITAA section 104-145(1) declarations</li> <li>▪ Responding to any shareholder legal action</li> </ul>
	Employee enquiries	<ul style="list-style-type: none"> <li>▪ Receive and follow up employee enquiries via telephone</li> <li>▪ Maintain employee enquiry register</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> <li>▪ Preparation of letters to employees advising of their entitlements and options available</li> <li>▪ Receive and prepare correspondence in response to employees objections to leave entitlements</li> </ul>
	GEERS	<ul style="list-style-type: none"> <li>▪ Correspondence with GEERS</li> </ul>
	Calculation of entitlements	<ul style="list-style-type: none"> <li>▪ Reviewing employee files and the Company's books and records</li> <li>▪ Calculating employee entitlements</li> <li>▪ Reconciling superannuation accounts</li> <li>▪ Reviewing awards</li> <li>▪ Liaising with solicitors regarding entitlements</li> </ul>
	Workers compensation claims	<ul style="list-style-type: none"> <li>▪ Review insurance policies</li> <li>▪ Receipt of claim</li> <li>▪ Liaising with claimant</li> <li>▪ Liaising with insurers and solicitors regarding claims</li> <li>▪ Identification of potential issues requiring attention of insurance specialists</li> <li>▪ Correspondence with Blue Broking regarding initial ongoing workers compensation insurance requirements</li> <li>▪ Correspondence with previous brokers</li> </ul>
	Other employee issues	<ul style="list-style-type: none"> <li>▪ Correspondence with Child Support</li> <li>▪ Correspondence with Centrelink and Unions</li> </ul>
	Trade On Management	<ul style="list-style-type: none"> <li>▪ Liaising with suppliers</li> <li>▪ Liaising with management and staff</li> <li>▪ Attendance on site</li> <li>▪ Authorising purchase orders</li> <li>▪ Maintaining purchase order registry</li> <li>▪ Preparing and authorising receipt vouchers</li> <li>▪ Preparing and authorising payment vouchers</li> <li>▪ Liaising with superannuation funds regarding contributions, termination of employees employment</li> <li>▪ Liaising with OSR regarding payroll tax issues</li> </ul>
	Processing receipts and payments	<ul style="list-style-type: none"> <li>▪ Entering receipt and payments into accounting system</li> </ul>
	Conducting investigation	<ul style="list-style-type: none"> <li>▪ Collection of the Company's books and records</li> <li>▪ Correspondence with ASIC to receive assistance in obtaining books and records</li> <li>▪ Reconstruction of financial statements</li> <li>▪ Reviewing the Company's books and records and Report as to Affairs</li> <li>▪ Review and preparation of the Company's nature and history</li> <li>▪ Liaising with directors regarding certain transactions</li> <li>▪ Preparation of investigation file</li> <li>▪ Lodgement of report to ASIC pursuant to section 533 of the act</li> <li>▪ Preparation and lodgement of supplementary report if required</li> </ul>
	Examinations	<ul style="list-style-type: none"> <li>▪ Preparing brief to solicitor</li> <li>▪ Liaising with solicitor(s) regarding examinations</li> <li>▪ Attendance at examination</li> <li>▪ Reviewing examination transcripts</li> <li>▪ Liaising with solicitor(s) regarding outcome of</li> </ul>

Task Area	General Description	Includes:
		examinations and further actions available
	Litigation/Recoveries	<ul style="list-style-type: none"> <li>▪ Internal meetings to discuss status of litigation</li> <li>▪ Preparing brief to solicitors</li> <li>▪ Liaising with solicitors regarding recovery actions</li> <li>▪ Attending to negotiations</li> <li>▪ Attending to settlement matters</li> </ul>
	ASIC reporting	<ul style="list-style-type: none"> <li>▪ Preparing statutory investigation reports</li> <li>▪ Preparing affidavits seeking non lodgements assistance</li> <li>▪ Liaising with ASIC</li> </ul>
<b>Dividend</b> 59 hours \$20,000	Processing proofs of debt	<ul style="list-style-type: none"> <li>▪ Preparation of correspondence to potential creditors inviting lodgement of POD</li> <li>▪ Receipt of PODs</li> <li>▪ Maintain POD register</li> <li>▪ Adjudicating PODs</li> <li>▪ Request further information from claimants regarding POD</li> <li>▪ Preparation of correspondence to claimant advising outcome of adjudication</li> </ul>
	Correspondence	<ul style="list-style-type: none"> <li>▪ General correspondence</li> </ul>
	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>▪ Six (6) monthly administration review</li> <li>▪ Filing documents</li> <li>▪ File reviews</li> <li>▪ Updating checklists</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>▪ Identification of potential issues requiring attention of insurance specialists</li> <li>▪ Correspondence with Blue Broking regarding initial and ongoing insurance requirements</li> <li>▪ Reviewing insurance policies</li> <li>▪ Correspondence with previous brokers</li> </ul>
<b>Administration</b> 105 hours \$30,000	Bank account administration	<ul style="list-style-type: none"> <li>▪ Preparing correspondence opening and closing accounts</li> <li>▪ Requesting bank statements</li> <li>▪ Bank account reconciliations</li> <li>▪ Correspondence with bank regarding specific transfers</li> </ul>
	ASIC Form 524 and other forms	<ul style="list-style-type: none"> <li>▪ Preparing and lodging ASIC forms including 505, 524, 911 etc</li> <li>▪ Correspondence with ASIC regarding statutory forms</li> </ul>
	ATO & other statutory reporting	<ul style="list-style-type: none"> <li>▪ Notification of appointment</li> <li>▪ Preparing BAS'</li> <li>▪ Completing group certificates</li> </ul>
	Planning / Review	<ul style="list-style-type: none"> <li>▪ Discussions regarding status/strategy of administration</li> </ul>
	Books and records/storage	<ul style="list-style-type: none"> <li>▪ Dealing with records in storage</li> <li>▪ Sending job files to storage</li> </ul>

**A4 (cont) Where Liquidators are appointed, a schedule of the Liquidators' anticipated tasks and remuneration estimate from 15 September 2012 to the conclusion of the administration.**

Employee	Position	Current Charge Rate \$	Total		Assets		Creditors		Administration		Employees		Trade On		Investigation		Dividend	
			Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$
Martin Jones	Partner	580.00	45	15,660	28	16,240	2	1,160	5	2,900	-	-	5	2,900	5	2,900	-	-
Sean Powell	Senior Manager	440.00	135	59,400	45	19,800	10	4,400	10	4,400	15	6,600	10	4,400	30	13,200	15	6,600
Kieran Chu	Assistant Manager	330.00	130	42,900	40	13,200	15	4,950	10	3,300	10	3,300	15	4,950	30	9,900	10	3,300
Shannon Coleman	Assistant Manager	330.00	98	32,293	9	2,864	20	6,600	15	4,950	5	1,650	5	1,650	25	8,250	19	6,275
Lauren McCann	Senior Analyst	285.00	107	30,449	40	11,400	15	4,275	14	3,880	8	2,410	5	1,358	25	7,125	-	-
William Hulmes	Analyst	255.00	83	21,111	10	2,496	20	5,100	10	2,550	8	2,040	5	1,275	15	3,825	15	3,825
Jason Soo	Accountant	200.00	84	16,800	10	2,000	30	6,000	15	3,000	10	2,000	10	2,000	9	1,800	-	-
Ashleigh Weaver	Accountant	200.00	100	19,982	10	2,000	38	7,515	20	4,000	10	2,000	7	1,466	15	3,000	-	-
Jacqui Westwood	Senior Secretary	170.00	5	850	-	-	-	-	5	850	-	-	-	-	-	-	-	-
Talia Newland	Filing Clerk	170.00	1	170	-	-	-	-	1	170	-	-	-	-	-	-	-	-
<b>Total</b>			787	250,000	191	70,000	150	40,000	105	30,000	66	20,000	62	20,000	154	50,000	59	20,000
<b>GST</b>				25,000		7,000		4,000		3,000		2,000		2,000		5,000		2,000
<b>TOTAL (incl. GST)</b>				275,000		77,000		44,000		33,000		22,000		22,000		55,000		22,000
<b>Average hourly rate</b>				318		341		267		287		301		322		325		339

## A5 Remuneration approved and drawn to date

Creditors have not yet approved the Administrators' remuneration.

## A6 Resolutions to be put to creditors at the meeting convened for 6 September 2012

At the meeting of creditors convened for 6 September 2012, creditors will be asked to consider the following resolutions

*"That the Administrators' remuneration as set out in the Administrators' remuneration report dated 14 September 2012 for the period 10 August 2012 to 31 August 2012 be fixed in the amount of \$153,487.50 (exclusive of costs and GST)."*

*"The Administrators' estimated remuneration for the period 1 September 2012 to 14 September 2012 be fixed in accordance with the hourly rates of Ferrier Hodgson as detailed in the Administrators' remuneration report dated 14 September 2012 up to the amount of \$75,000 (exclusive of costs and GST), and that the Administrators be authorised to draw such amount monthly in arrears."*

If the Company is placed into Liquidation:

*" That the Liquidators' remuneration, as set out in the Administrators remuneration report dated 6 September 2012 for the period 14 September 2012 to the conclusion of the liquidation be fixed in accordance with the Ferrier Hodgson hourly rates up to the sum of \$250,000 (exclusive of costs and GST), but subject to upward revision by a resolution of creditors, the Committee of Inspection or the Court, and the Liquidators be authorised to make periodic payments on account of such accruing remuneration."*

## **PART B**

### B1 Administrators' Disbursements

Disbursements are divided into three types **D1**, **D2** and **D3**.

- D1 Disbursements are all externally provided professional services and are recovered at cost. An example of a D1 disbursement is legal fees.
- D2 Disbursements are externally provided non-professional costs such as travel, accommodation and search fees. D2 disbursements are recovered at cost.
- D3 Disbursements are internally provided non-professional costs such as photocopying and document storage. D3 disbursements are charged at cost except for photocopying, printing and telephone calls which are charged at a rate which is intended to recoup both variable and fixed costs. The relevant rates are set out below.

Disbursements	Charges (Excluding GST)
Advertising	At cost
Couriers	At cost
Mileage Reimbursement	\$0.67 per kilometre
Photocopying & document production (colour)	50 cents per copy
Photocopying & document production (mono)	20 cents per copy
Postage	At cost
Searches	At cost
Storage	At cost
Telephone	At cost

Creditor approval for the payment of disbursements is not required. However, the Administrators must account to creditors. Creditors have the right to question the incurring of disbursements and can challenge disbursements in court.

The disbursements incurred in the Administration for the period up to 31 August 2012 are detailed below:

Disbursements	Classification	Total (\$) (Excluding GST)
Photocopying	D3	23.40
Printing	D3	1,637.90
Stationery	D3	15.75
<b>Total</b>		<b>1,677.05</b>

## B2 Summary of Receipts and Payments for the period from 10 August 2012 to 31 August 2012

	\$
<b>RECEIPTS</b>	
Funds held on Trust	963
Pre-Appointment Debtor	982
<b>Total Receipts</b>	<b>1,945</b>
<b>PAYMENTS</b>	
Advance to D&G Hoists & Cranes Pty Ltd	(963)
Total Payments	(963)
<b>Cash at Bank as at 31 August 2012</b>	<b>\$982</b>

## B3 Other Creditor Information on Remuneration

The partners of Ferrier Hodgson Western Australia are members of the Insolvency Practitioners Association of Australia and follow the IPA Code of Professional Practice. A copy of the Code of Professional Practice may be found on the IPA website at [www.ipaa.com.au](http://www.ipaa.com.au)

An information sheet concerning approval of remuneration in external administrations can also be obtained from the IPA website.

## B4 Initial Advice to Creditors

### Remuneration Methods

There are four basic methods that can be used to calculate the remuneration charged by an insolvency Practitioner. They are:

- 1. Time based / hourly rates**  
 This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.
- 2. Fixed Fee**  
 The total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration. Sometimes a Practitioner will finalise an administration for a fixed fee.

**3. Percentage**

The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.

**4. Contingency**

The practitioner's fee is structured to be contingent on a particular outcome being achieved.

**Method chosen**

Given the nature of this administration and having regard to our earlier engagement with creditors on the issue, we propose that our remuneration be calculated on time based hourly rates.

This method was selected as it is the most practical method, and provides the most transparency to creditors given the nature of this administration.

Queries regarding remuneration should be directed to Jason Soo or William Hulmes of this office.

Dated this 6<sup>th</sup> day of September 2012



**Martin Jones**

Joint and Several Administrator  
D&G Hoists & Cranes (AUS) Pty Ltd

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# **Annexure 2**

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IPA Creditor Information Sheets

# Creditor Information Sheet

## Offences, Recoverable transactions and Insolvent Trading



### Offences

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

180	Failure by officer to exercise a reasonable degree of care and diligence in the exercise of his powers and the discharge of his duties.
181	Failure to act in good faith.
182	Making improper use of position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of his position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for proper purpose. Use of position or information dishonestly to gain advantage or cause detriment.
206A	Contravening an order against taking part in management of a corporation.
206A, B	Taking part in management of corporation while being an insolvent under an administration.
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 auditor.
314-7	Failure to comply with requirements for financial statement preparation.
437C	Performing or exercising a function or power as officer while a company is under administration.
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 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.

### Voidable Transactions

#### *Preferences*

A preference is a transaction such as a payment between the company and one or more of its creditors, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant time period is six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent as a result of the transaction.

Where a creditor receives a preferred payment, 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 either 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 time period is four years and if the intention of the transaction is to defeat creditors, the time period is ten years.



The company must have been insolvent at the time of the transaction, or become insolvent as a result 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 have to have been entered into any time on or before the day when 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 transactions made to, on behalf of, or for the benefit of, a director or close associate of a director. To fall within the scope of the section, 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 are voidable by a liquidator:

- Floating charge created with six months of the liquidation unless it secures a subsequent advance;
- Unregistered charges; and
- Charges in favour of related parties who attempt to enforce the charge within 6 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 actually 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

## INFORMATION SHEET 85

# Approving fees: a guide for creditors

If a company is in financial difficulty, it can be put under the control of an independent external administrator.

This information sheet gives general information for creditors on the approval of an external administrator's fees in a liquidation of an insolvent company, voluntary administration or deed of company arrangement (other forms of external administration are not discussed in this information sheet). It outlines the rights that creditors have in the approval process.

## Entitlement to fees and costs

A liquidator, voluntary administrator or deed administrator (i.e. an 'external administrator') is entitled to be:

- paid reasonable *fees*, or remuneration, for the work they perform, once these fees have been approved by a creditors' committee, creditors or a court, and
- reimbursed for out-of-pocket *costs* incurred in performing their role (these costs do not need creditors' committee, creditor or court approval).

External administrators are only entitled to an amount of fees that is reasonable for the work that they and their staff properly perform in the external administration. What is reasonable will depend on the type of external administration and the issues that need to be resolved. Some are straightforward, while others are more complex.

External administrators must undertake some tasks that may not directly benefit creditors. These include reporting potential breaches of the law and lodging a detailed listing of receipts and payments with ASIC every 6 months. The external administrator is entitled to be paid for completing these statutory tasks.

For more on the tasks involved, see ASIC's information sheets 'Liquidation: a guide for creditors' and 'Voluntary administration: a guide for creditors'.

Out-of-pocket costs that are commonly reimbursed include:

- legal fees

**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. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

- valuer’s, real estate agent’s and auctioneer’s fees
- stationery, photocopying, telephone and postage costs
- retrieval costs for recovering the company’s computer records, and
- storage costs for the company’s books and records.

Creditors have a direct interest in the level of fees and costs, as the external administrator will, generally, be paid from the company’s available assets before any payments to creditors. If there are not enough assets, the external administrator may have arranged for a third party to pay any shortfall. As a creditor, you should receive details of such an arrangement. If there are not enough assets to pay the fees and costs, and there is no third party payment arrangement, any shortfall is not paid.

## Who may approve fees

Who may approve fees depends on the type of external administration: see Table 1. The external administrator must provide sufficient information to enable the relevant decision-making body to assess whether the fees are reasonable.

**Table 1: Who may approve fees**

	Creditors’ committee	Creditors	Court
Administrator in a voluntary administration	✓ <sup>1</sup>	✓	✓
Administrator of a deed of company arrangement	✓ <sup>1</sup>	✓	✓
Creditors’ voluntary liquidator	✓ <sup>1</sup>	✓ <sup>3, 6</sup>	✗ <sup>4</sup>
Court-appointed liquidator	✓ <sup>1</sup>	✓ <sup>5, 6</sup>	✓ <sup>2</sup>

<sup>1</sup> If there is one.

<sup>2</sup> If there is no approval by the committee or the creditors.

<sup>3</sup> If there is no creditors’ committee.

<sup>4</sup> Unless an application is made for a fee review.

<sup>5</sup> If there is no creditors’ committee or the committee fails to approve the fees.

<sup>6</sup> If insufficient creditors turn up to the meeting called by the liquidator to approve fees, the liquidator is entitled to be paid up to a maximum of \$5000, or more if specified in the *Corporations Regulations 2001*.

### Creditors’ committee approval

If there is a creditors’ committee, members are chosen by a vote of creditors as a whole. In approving the fees, the members represent all the creditors, not just their own individual interests.

There is not a creditors’ committee in every external administration. A creditors’ committee makes its decision by a majority in number of its members present at a meeting, but it can only act if a majority of its members attend.

To find out more about creditors' committees and how they are formed, see ASIC's information sheets 'Liquidation: a guide for creditors', 'Voluntary administration: a guide for creditors' and 'Insolvency: a glossary of terms'.

### **Creditors' approval**

Creditors approve fees by passing a resolution at a creditors' meeting. Unless creditors call for a poll, the resolution is passed if a simple majority of creditors present and voting, in person or by proxy, indicate that they agree to the resolution. Unlike committee members, creditors may vote according to their individual interests.

If a poll is taken, rather than a vote being decided on the voices or by a show of hands, a majority in *number* and *value* of creditors present and voting must agree. A poll requires the votes of each creditor to be recorded.

A separate resolution of creditors is required for approving fees for an administrator in a voluntary administration and a deed of company arrangement, even if the administrator is the same person in both administrations.

A proxy is where a creditor appoints someone else to represent them at a creditors' meeting and to vote on their behalf. A proxy can be either a *general* proxy or a *special* proxy. A general proxy allows the person holding the proxy to vote as they wish on a resolution, while a special proxy directs the proxy holder to vote in a particular way.

A creditor will sometimes appoint the external administrator as a proxy to vote on the creditor's behalf. An external administrator, their partners or staff must not use a general proxy to vote on approval of their fees; they must hold a special proxy in order to do this. They must vote all special proxies as directed, even those against approval of their fees.

### **Calculation of fees**

Fees may be calculated using one of a number of different methods, such as:

- on the basis of *time spent* by the external administrator and their staff
- a quoted *fixed fee*, based on an upfront estimate, or
- a *percentage of asset realisations*.

Charging on a time basis is the most common method. External administrators have a scale of hourly rates, with different rates for each category of staff working on the external administration, including the external administrator.

If the external administrator intends to charge on a time basis, you should receive a copy of these hourly rates soon after their appointment and before you are asked to approve the fees.

The external administrator and their staff will record the time taken for the various tasks involved, and a record will be kept of the nature of the work performed.

It is important to note that the hourly rates do not represent an hourly wage for the external administrator and their staff. The external administrator is running a business—an insolvency practice—and the hourly rates will be based on the cost of running the business, including overheads such as rent for business premises, utilities, wages and superannuation for staff

who are not charged out at an hourly rate (such as personal assistants), information technology support, office equipment and supplies, insurances, taxes, and a profit.

External administrators are professionals who are required to have qualifications and experience, be independent and maintain up-to-date skills. Many of the costs of running an insolvency practice are fixed costs that must be paid, even if there are insufficient assets available to pay the external administrator for their services. External administrators compete for work and their rates should reflect this.

These are all matters that committee members or creditors should be aware of when considering the fees presented. However, regardless of these matters, creditors have a right to question the external administrator about the fees and whether the rates are negotiable.

It is up to the external administrator to justify why the method chosen for calculating fees is an appropriate method for the particular external administration. As a creditor, you also have a right to question the external administrator about the calculation method used and how the calculation was made.

## Report on proposed fees

When seeking approval of fees, the external administrator must send committee members/creditors a report with the notice of meeting setting out:

- information that will enable the committee members/creditors to make an informed assessment of whether the proposed fees are reasonable
- a summary description of the major tasks performed, or to be performed, and
- the costs associated with each of these tasks.

Committee members/creditors may be asked to approve fees for work already performed or based on an estimate of work yet to be carried out.

If the work is yet to be carried out, it is advisable to set a maximum limit ('cap') on the amount that the external administrator may receive. For example, future fees calculated according to time spent may be approved on the basis of the number of hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X. If the work involved then exceeds this figure, the external administrator will have to ask the creditors' committee/creditors to approve a further amount of fees, after accounting for the fees already incurred.

## Deciding if fees are reasonable

If asked to approve an amount of fees either as a committee member or by resolution at a creditors' meeting, your task is to decide if that amount of fees is reasonable, given the work carried out in the external administration and the results of that work.

You may find the following list of factors useful in deciding if the fees claimed are reasonable. This list includes those factors that a court takes into account in setting or reviewing fees for external administrators, and not all these factors may be relevant to a particular external administration. Factors to consider include:

- the extent to which the work performed, or likely to be performed, was reasonably necessary
- the period during which the work was, or is or likely to be, performed
- the quality of the work performed, or likely to be performed
- the complexity (or otherwise) of the work performed, or likely to be performed
- the extent (if any) to which the external administrator was, or is likely to be, required to deal with extraordinary issues
- the extent (if any) to which the external administrator was, or is likely to be, required to accept a higher level of risk or responsibility than is usually the case
- the value and nature of any property dealt with, or likely to be dealt with
- whether the external administrator was, or is likely to be, required to deal with other external administrators
- the number, attributes and behaviour, or the likely number, attributes and behaviour, of the company's creditors, and
- if the remuneration is ascertained, in whole or in part, on a time basis:
  - the time properly taken, or likely to be properly taken, in performing the work
  - whether the remuneration is capped, and
- any other relevant matters.

If you need more information about fees than is provided in the external administrator's report, you should let them know before the meeting at which fees will be voted on.

## **What can you do if you think the fees are not reasonable?**

If you do not think the fees being claimed are reasonable, you should raise your concerns with the external administrator. It is your decision whether to vote in favour of, or against, a resolution to approve fees.

Generally, if fees are approved by a creditors' committee/creditors and you wish to challenge this decision, you may apply to the court and ask the court to review the fees. Special rules apply to court liquidations.

You may wish to seek your own legal advice if you are considering applying for a court review of the fees.

## **Reimbursement of out-of-pocket costs**

An external administrator should be very careful incurring costs that must be paid from the external administration—as careful as if they were dealing with their own money. Their report on fees should also include information on the out-of-pocket costs of the external administration.

If you have questions about any of these costs, you should ask the external administrator and, if necessary, bring it up at a creditors' committee/creditors' meeting. If you are still concerned, you have the right to ask the court to review the costs.

## Queries and complaints

You should first raise any queries or complaints with the external administrator. If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ASIC at [www.asic.gov.au](http://www.asic.gov.au), or write to:

Manager National Assessment & Action  
ASIC  
GPO Box 9827  
IN YOUR CAPITAL CITY

ASIC will usually not become involved in matters of commercial judgement by an external administrator. Complaints against companies and their officers can also be made to ASIC. For other enquiries, email ASIC through [infoline@asic.gov.au](mailto:infoline@asic.gov.au), or call ASIC's Infoline on 1300 300 630 for the cost of a local call.

### To find out more

For an explanation of terms used in this information sheet, see ASIC's 'Insolvency: a glossary of terms'. For more on external administration, see ASIC's related information sheets at [www.asic.gov.au/insolvencyinfosheets](http://www.asic.gov.au/insolvencyinfosheets):

- Voluntary administration: a guide for creditors
- Voluntary administration: a guide for employees
- Liquidation: a guide for creditors
- Liquidation: a guide for employees
- Receivership: a guide for creditors
- Receivership: a guide for employees
- Insolvency: a guide for shareholders
- Insolvency: a guide for directors
- Independence of external administrators: a guide for creditors

These are also available from the Insolvency Practitioners Association (IPA) website at [www.ipaa.com.au](http://www.ipaa.com.au). The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.



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