



**Blackcitrus Pty Ltd  
(In Liquidation)  
A.C.N. 160 467 621  
("the Company")**

**Statutory Report to Creditors**

**18 January 2019**

## 1. Executive Summary

### 1.1. Liquidators appointment

Christian Sprowles and I were appointed Joint and Several Liquidators of the Company on 18 October 2018 pursuant to an order made by the Supreme Court of Queensland. The petitioning creditor, DibbsBarker (“the petitioning creditor”) lodged a winding up application with the Supreme Court of Queensland on 31 July 2018.

This report should be read in conjunction with our initial report to creditors of 14 November 2018.

### 1.2. Purpose of this report

The purpose of this report is to:

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

If they have not already done so, creditors are requested to complete and submit to this office a proof of debt form (attached as **Annexure A**).

Creditors have the right to request a meeting that complies with the guidelines set out in the ARITA information sheet “Creditors Rights in Liquidation” as attached as **Annexure B**. We are not proposing to hold a meeting of creditors at this time.

### 1.3. Estimated return to creditors

We forecast, as a minimum, a return from the sale of the Company’s shareholding in Airservice Digital Pty Ltd of \$100,000. This will enable the repayment of the petitioning creditors cost. The balance will initially be set aside to fund the proceedings against James Young, Blackcitrus Ops Pty Limited and Pezh Moradi. Details of these proceedings are provided later in the report. We anticipate that a return to the unsecured creditors will be dependent upon the outcome of these legal proceedings.

If a dividend is going to be paid, you will be contacted before that happens and if you have not already done so, you will be asked to lodge a proof of debt. This formalises your claim in the liquidation and is used to determine all claims against the Company.

The table below provides a summary of potential realisations.

Potential Asset	\$
Shareholding in Airservice Digital Pty Ltd	100,000+
Shareholding in Energylink Holdings Pty Limited (\$411,159)	uncertain
Refund of R&D tax offset (\$122,968)	uncertain
Shareholding in Blackcitrus Ops Pty Limited	uncertain
Claim against Parramatta Eels Football Club	uncertain

## 1.4. Summary of investigations

In our opinion the Company was insolvent as early as 30 May 2018, for reasons outlined in the report. However, we note that the Director may have defences to this claim.

Whilst we have identified possible recovery actions, details of which are provided in section 4 of this report, we will be continuing to assess the commercial viability and the cost benefit of pursuing these actions as we proceed with the liquidation.

Any offences will be reported to the Australian Securities and Investments Commission ("ASIC") in a confidential report issued pursuant to Section 533 of the Corporations Act 2001 ("the Act").

## 2. Update on Liquidation

### 2.1 Background

The Company was registered in NSW on 24 September 2012. The Company has one director and secretary, James Young ("the Director"). Details of the Company's share structure and shareholders are provided below.

Share Structure	Amount Paid	Amount Unpaid
42,950,000 Ordinary Shares	\$805,000	\$0.00
Shareholder	Beneficially Held	Shares Held/Type
Boston Management Services Pty Limited	Yes	5,000,000 Ordinary Shares
A.C.N. 141 370 363 Pty Ltd	Yes	5,000,000 Ordinary Shares
Pezh Moradi	Yes	750,000 Ordinary Shares
P B Moradi Pty Ltd	No	200,000 Ordinary Shares
A.C.N. 141 370 363 Pty Ltd	No	21,262,500 Ordinary Shares
Youngy Enterprises Pty Limited	Yes	10,737,500 Ordinary Shares

The Company held assets in early stage ventures acquired through direct investment, or direct advisory/involvement within the venture capital space. The Company assisted early stage businesses to create the necessary documents and framework to raise capital through workshops, led select opportunities through a pipeline which included strategic partners (those who could help move or promote product) and strategic investors (those who could provide a strategic cash investment), and work closely with businesses as an advisor as they grew to expand their shareholder base and commercialise.

In 2017 James Young, the current director, agreed to manage the orderly realisation of the Company's assets. Originally Blackcitrus Ops Pty Limited was a wholly owned subsidiary of the Company. Then on until 18 August 2017, James Young as director of the Company executed documents transferring the ownership to Youngy Enterprises Pty Limited (James Young owning 51% and Sarah Calman 49% of this entity).

The Company's accountants Nexia Accountants ("Nexia") were engaged on 7 June 2018 and have provided the books and records in their possession. Nexia have lodged a proof of debt in the amount of \$18,250 for professional services rendered to 30 June 2018.

We were appointed Joint and Several Liquidators of the Company on 18 October 2018 pursuant to an order made by the Supreme Court of Queensland. The petitioning creditor, DibbsBarker lodged a winding up application with the Supreme Court of Queensland on 31 July 2018 in respect of a debt of \$10,049.82.

## 2.2 Report as to Affairs ("RATA")

The Act requires directors and secretaries to provide liquidators with a RATA, detailing the financial position of the Company at the date of appointment. The RATA discloses the estimated book value and estimated realisable value ("ERV") of known assets and liabilities.

We have obtained an executed RATA from the Director that discloses that the Company had no assets or liabilities. Below is a summary of the completed RATA together with our estimates based on our investigations to date.

	Notes	RATA Book Value \$	Liquidators ERV \$
<b>Assets</b>			
Shareholdings	2.3	nil	uncertain
Plant and equipment	2.4	nil	minimal
Litigation recoveries	2.5	nil	uncertain
Motor vehicle (leased asset)	2.6	nil	nil
<b>Total Assets</b>		<b>nil</b>	<b>uncertain</b>
<b>Liabilities</b>			
Petitioning creditor's costs	2.7	nil	TBA
Unsecured creditors	2.8	nil	468,141
<b>Total Liabilities</b>		<b>nil</b>	<b>468,141</b>
<b>Surplus/(Deficiency)</b>		<b>nil</b>	<b>uncertain</b>

## 2.3 Shareholdings

The shareholdings of the Company include various investments in private companies that were provided in lieu for services rendered. We understand that the principal assets include equity interests in the following entities:

- Airservice Digital Pty Ltd ("Airservice") - The Company holds 500,000 shares of Airservice. I understand that Airservice have just gone through a round of capital raising that will result in the Company holding approximately 1.2-1.4% of the total shares of Airservice. We are seeking a sale of these shares, realisations from which are expected to be circa \$100,000.

- Energylink Holdings Pty Limited (“Energylink”) - The Company owns 1.2% (137,053 shares) of Energylink. At the date of our appointment the Company was listed as a shareholder with ASIC, however we have been advised by Pezh Moradi (“Mr Moradi”) that he disputes the ownership of the shares. Further details are provided in section 4.7.

There are several other shareholdings owned by the Company which we are continuing to review to determine if there is any value.

## 2.4 Plant and equipment

We have obtained two hard drives from the director and other items contained in a storage facility in Mascot. These items are with our agents, Slattery’s Assets Advisory (“Slattery’s”), who are in the process of selling these items by auction.

## 2.5 Litigation recoveries

We have been made aware of a potential legal recovery against the Parramatta Eels Football Club. We are continuing to the prospects of pursuing this claim further. At this stage are unable to advise creditors of the prospects of any recovery.

## 2.6 Motor vehicle (leased asset)

The Company leased from Morris Finance a Jeep Compass Wagon 2012 vehicle. We have determined that this vehicle has no equity and accordingly disclaimed the asset.

## 2.7 Petitioning creditors costs

Petitioning creditors have a priority over other costs in the administration. We have sought confirmation of the value of this claim.

## 2.8 Unsecured creditors

We provide below a summary of creditors that have or may lodge a claim against the Company. Please note that we have not adjudicated on these claims and given the limited books and records available we currently provide no assurance of their validity.

Summary of Unsecured Creditors	\$
ATY Advisory Pty Ltd	18,515
Dougal Hawkes	5,500
DibbsBarker	11,414
Major's Removals	676
Nexia Sydney Pty Ltd	18,250
Pure Hacking	3,025
Paul Noble	46,200
Rob Medford	5,000
Stephen James Moss	164,000
Silo Corporation Pty Ltd	200,000
<b>Total</b>	<b>468,141</b>

## **2.9 Receipts & Payments**

There have been no receipts or payments since our appointment.

## **3. Financial Analysis**

The Company's accountants, Nexia, have provided us with a laptop, that according to the Director, contains all of the Company's accounting records. The laptop is currently with out IT consultant being imaged.

## **4. Investigations**

### **4.1 Company books and records**

To date, we have received limited books and records to allow us to conduct a thorough investigation into the Company's affairs.

Our current view is that the books and records are not kept in a manner that complies with Section 286 of the Act. The Company's records are not kept in a systematic manner and an information system is not used to capture and record the transactions of the Company. This will be addressed to ASIC in my report pursuant to Section 533 of the Act.

Failure to maintain books and records may also give rise to a presumption of insolvency pursuant to Section 588E of the Act. This presumption may be relied upon by the Liquidators in an application for compensation for insolvent trading and other actions for recoveries pursuant to Part 5.7B of the Act from the directors and related parties.

### **4.2 Reasons for Failure**

The Director has stated he considers that the Company failed due to the Company not receiving communication from the petitioning creditor.

From reviewing the Company's emails we can confidently state that this is incorrect. Following the issue of a statutory demand and lodgement of the winding up application, these documents were emailed to the Director on 3 August 2018. These documents had previously been delivered to the Company's registered office, although the Director had failed to update the Company's registered office.

The Director agreed to pay the outstanding amount and a payment plan was arranged with the petitioning creditor. However, the Company failed to make any of these payments and the winding up application was continued.

We consider the failure of the Company to be caused by the Directors conduct and the misappropriation of Company assets by related parties.

### **4.3 Recoveries, offences and voidable transactions**

A liquidator is required to complete and lodge a report with the ASIC pursuant to Section 533 of the Act where it appears to a liquidator that a past or present officer of a company may have been guilty of an offence in relation to the company and in other circumstances. We intend to lodge a report to ASIC shortly detailing our findings to date.

Pursuant to Part 5.8B of the Act, the liquidator is permitted to recover transactions that appear to be voidable transactions in respect of money, property or other benefits.

To the extent that information is available, we have reviewed the Company books and records for the period approximately six months prior to our appointment and determined whether any creditors have been preferred over the general body of creditors as a result of any transaction.

The relation back date period is 31 January 2018 (six months prior to the lodgement of the winding up application) to 18 October 2018 for a transaction involving a non-related creditor. If the recipient is related to the Company, the period is extended to 4 years before the relation-back day and if there is any attempt to delay or defraud creditors the period is extended to 10 years before the relation-back day.

#### **a) Unfair preferences (Section 588FA)**

Unfair preferences are transactions between the Company and a creditor resulting in the creditor receiving more than the creditor would receive if the transaction were set aside and the creditor was to prove for this amount in the winding-up. Voidable transactions must have taken place in the period beginning six (6) months prior to the relation back day and ending on the date of liquidation.

#### **b) Uncommercial Transactions (Section 588FB)**

Section 588FB of the Corporations Act provides for transactions that were not beneficial or detrimental to the Company as being void. The transaction must have occurred when the Company was insolvent or would become insolvent.

#### **c) Unfair Loans (Section 588FD)**

Section 588FD of the Act provides for loans to be voided in circumstances where interest or charges are considered extortionate.

#### **d) Unreasonable Director-Related Transactions (Section 588FDA)**

Section 588FDA of the Corporations Act provides for transactions where 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, detriments and respective benefits to other parties.

#### **e) Related Party Transactions (Section 588FE(4))**

Section 588FE(4) of the Act provides for payments to related parties may be voided where the Company was insolvent at the time of the transaction.

#### 4.4 Breach of Directors Duties

Section 180 to 183 of the Act sets out duties and powers of directors and officers of a company to enable directors act in the interest of the Company. The duties include:

- Section 180 – Care and Diligence
- Section 181 – Good Faith
- Section 182 – Use of Position
- Section 183 – Use of Information

Pursuant to Section 180 of the Act a director or other officer of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

- (a) were a director or officer of a corporation in the corporation's circumstances; and
- (b) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.

In considering whether a director has met their duties in exercising care and diligence, various circumstances may be considered including the type of company, the size and nature of its business, the composition of its board and the distribution of the work between the board.

The courts have found that where a director breaches the duty of care and diligence in the performance of their duties, an action can be brought under the tort of negligence.

#### 4.5 Disbursement of R&D Refund (\$122,968)

On 15 June 2018, ATY Advisory sent the Company a letter advising that the Company was entitled to claim a refund in relation to research & development in the 2016 – 2017 Financial Year in the amount of \$176,990.

On or around 28 June 2018, on behalf of the Company, Nexia lodged the Company's 2017 Company Tax Return ("Tax Return"). In the Tax Return:

- (a) The Company claimed a "Refund R&D tax offset" in the amount of \$176,989;
- (b) The Company incurred tax in the amount of \$54,021 which was offset as against the R&D Refund; and
- (c) The Company was refunded the balance of \$122,968.

We are aware that the R&D refund was paid into a Blackcitrus Ops Pty Limited account which is a Company wholly owned by Youngy Enterprises Pty Limited.



We have requested the Director to provide us with evidence as to the basis upon which the 2017 Tax Refund was re-directed by him to Blackcitrus Ops Pty Limited. We have not been provided with any substantiation of this transaction.

We are of the view that these actions breach the director's duties to act in good faith (pursuant to Section 181 of the Act) and intend to commence legal action in relation to this claim against both Mr Young and Blackcitrus Ops Pty Limited.

#### **4.6 Transfer of Blackcitrus Ops Pty Limited Shares**

As stated previously Blackcitrus Ops Pty Limited was a wholly owned subsidiary of the Company until 18 August 2017. James Young as director of the Company executed documents transferring the ownership to Youngy Enterprises Pty Limited (James Young owning 51% and Sarah Calman 49% of this entity). We have not been provided with adequate documentation to confirm that appropriate consideration was paid for these shares and understand that Blackcitrus Ops Pty Limited is currently trading under the trading name of Black Group.

We are of the view that these actions breach the director's duties to act in good faith (pursuant to Section 181 of the Act) and intend to commence legal action in relation to this.

#### **4.7 Purported sale of Energylink Holdings Pty Limited Shares (\$411,159)**

At our appointment ASIC records detailed that the Company owned 1.2% (137,053 ordinary shares) of Energylink. We have subsequently been provided with the following documents:

- A share transfer form dated 30 May 2018 executed by the Company and PB Moradi Pty Limited ATF Moradi Super Fund in respect of the purchase of these shares from the Company by PB Moradi for the sum of \$17,300; and
- An unsigned "Memorandum of Resolution of Director(s)" in relation to COZero Holdings Ltd (prior name of Energylink) which resolved to approve the transfer of 137,053 ordinary shares from the Company to PB Moradi for consideration of \$17,300.

On 23 March 2018 COZero Holdings Ltd sent a letter to its shareholders which stated, *inter alia*, that an offer had been received from Mr Geoff Alexander (the CEO of COZero Holdings Ltd) to purchase 100% of the shares in COZero Holdings Ltd for \$1.50 per share, representing a value of \$205,580 for the 137,053 ordinary shares held by the Company.

On 5 December 2018 a Form 484 was lodged with ASIC detailing that Energylink had issued 59,501 ordinary shares, and the amount paid per share was \$3.00. This would represent a value of \$411,159 for the 137,053 ordinary shares held by the Company.

On 19 December 2018 a Form 484 was lodged with ASIC detailing that Energylink had transferred the Company's shareholding of 137,053 ordinary shares to P B Moradi Pty Ltd as at 30 May 2018. The Form 484 stated that the total paid for the shares was \$154,291.39. We had previously advised Anthony Hartmann ("Mr Hartmann") of Energylink that this transfer was disputed and regardless of this has proceeded to lodge the Form 484 with ASIC.

We have requested further documentation supporting the validity of this transfer noting that the Company's bank account does not evidence any transfer of funds for consideration of these shares. We have not been provided with any substantiation of this transaction.

Mr Moradi has previously stated the following:

- That the Company requested a loan from him due to cash-flow issues in late 2017.
- That he lent the Company "circa \$20k under a secured loan agreement, with interest payments over the term totally circa \$38k".
- That the Company defaulted on the loan.
- The Director offered the Energylink shares in lieu of the debt owing, which he accepted.

We have not been provided with and we have not been able to find a copy of the secured loan agreement. Mr Moradi has stated "I recall discussions on destroying it as soon as the Share Transfer was signed to avoid executing a Deed of Release for the loan. IE: the payment of \$29,700.00 was considered a **purchase** rather than a settlement agreement".

We are in possession of a number of emails between the Director and Mr Moradi from December 2017 that appear to relate to the loan. These state that the bank details are for an account in the name of **Blackcitrus Ops Pty Limited** and that the parent company is **Youngy Enterprises Pty Ltd** which at the time was the parent company of **Blackcitrus Ops Pty Limited**. This would suggest that the loan was to be provided to **Blackcitrus Ops Pty Limited** and not the Company.

If the funds were provided to the Company, we are of the view that as Mr Moradi is a shareholder of the Company and therefore considered to be a related party, the sale of the Energylink shares to him would be considered to be a Related Party Transactions in accordance with Section 588FE(4) of the Act and as the Company was insolvent at the time of the transaction, would be voidable.

In order to resolve this matter, we made a without prejudice offer to Mr Moradi for the shares to be sold and for him to be reimbursed 25 per cent of the sale proceeds up to a maximum \$35,000, which was in excess of his purported loan to the Company. This offer was rejected.

We are of the view that this is a misappropriation of the Company's assets by a related party and accordingly, we have instructed our lawyers to commence proceedings against Mr Moradi, Mr Young, Blackcitrus Ops Pty Limited.

#### 4.8 Insolvent Trading (Section 588G)

Section 588G of the Act provides that a company's director(s) has a duty to protect the Company from incurring debt when there are reasonable grounds for suspecting that the Company will be unable to pay its debts as and when they fall due. Section 588M of the Act provides that a Liquidator is able to recover 'damages' from the director(s) of an insolvent company, in an amount equal to the loss or damage suffered by the Company as a result of a breach of duty.

Section 95A(1) of the Corporations Act 2001 provides a definition of a solvent entity as follows:

*“A person is Solvent if, and only if, the person is able to pay all of its debts, as and when they become due and payable”*

An insolvent entity is defined under Section 95A(2) of the Corporations Act 2001 as:

*“A person which is not Solvent is Insolvent”*

Based on the current information available, we have determined that the Company was likely insolvent upon the transfer of the Energylink shares, as at this time it appears that the Company's assets became insufficient to meet its liabilities.

Further consideration of the insolvent trading claim and the financial position of the Director on a cost/benefit may be required before recovery action is taken. Funding may be sought from creditors to pursue the directors for an insolvent trading claim. Creditors are also able to pursue the Director for their own insolvent trading action, subject to the consent of the Liquidators and time frames imposed under the Act.

#### **4.9 What happens next?**

We have instructed our lawyers, Bridges Lawyers, to commence proceedings against Mr Young, Blackcitrus Ops Pty Limited and Mr Moradi in respect of the recoveries, offences and voidable transactions detailed above.

We will be preparing our report to ASIC pursuant to Section 533 of the Act with regards to the breaches and failure to assist the Liquidators.

If creditors have any information which may assist our investigations, please contact my colleague Luke Mann by email at [lmann@hogansprowles.com.au](mailto:lmann@hogansprowles.com.au) or by phone on 02 8020 5862, if you have any information that may assist.

## **5. Costs of the liquidation**

To date we have yet to seek approval for our remuneration by creditors. At this stage, due to the issues surrounding the liquidation and it is uncertain what our costs for the liquidation will be.

We will report to creditors further once realisations have been made, at which time we will seek approval of our remuneration.

## **6. What happens next?**

We are continuing with our investigation into the affairs of the Company and will proceed with the liquidation, including, but not limited to the following:

- Recovering and selling any available property;
- Finalising our investigations, particularly in relation to potential recoveries;

- Pursuing the recoveries identified above;
- Reporting to the corporate insolvency regulator, ASIC; and
- Any other matters relevant to the liquidation.

We will write to you again with further information on the progress of the liquidation. At this stage due to the likelihood of litigation being required to realise the Company's assets we expect this liquidation to continue for at least a further twelve months.

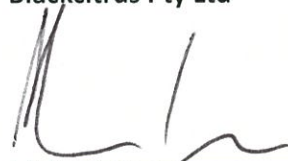
## 7. Where can you get more information?

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

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

If you have any queries, you may contact our office and speak with Luke Mann on 02 8020 5862 or via email on [lmann@hogansprowles.com.au](mailto:lmann@hogansprowles.com.au).

Yours faithfully  
Blackcitrus Pty Ltd



Michael Hogan  
Joint & Several Liquidator

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

To the Joint and Several Liquidators of Blackcitrus Pty Ltd (In Liquidation)

1. This is to state that the company was, on 18 October 2018 <sup>(1)</sup> and still is, justly and truly indebted to<sup>(2)</sup> (full name):

.....  
(‘Creditor’)

.....  
of (full address)

for \$ .....dollars and .....cents.

Particulars of the debt are:

Date	Consideration <sup>(3)</sup> state how the debt arose	Amount \$	GST included \$	Remarks <sup>(4)</sup> include details of voucher substantiating payment

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

Insert particulars of all securities held. Where the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, specify them in a schedule in the following form:

Date	Drawer	Acceptor	Amount \$ c	Due Date

- I am **not** a related creditor of the Company <sup>(5)</sup>
- I am a related creditor of the Company <sup>(5)</sup>  
relationship: \_\_\_\_\_

3A.<sup>(6)\*</sup> I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

3B.<sup>(6)\*</sup> I am the creditor's agent authorised to make this statement in writing. I know that the debt was incurred and for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

DATED this                      day of                      2018

Signature of Signatory .....

NAME IN BLOCK LETTERS .....

Occupation .....

Address.....

**See Directions overleaf for the completion of this form**

**OFFICE USE ONLY**

POD No:		ADMIT (Voting / Dividend) - Ordinary	\$
Date Received:	/ /	ADMIT (Voting / Dividend) – Preferential	\$
Entered into CORE IPS:		Reject (Voting / Dividend)	\$
Amount per CRA/RATA	\$	Object or H/Over for Consideration	\$
<b>Reason for Admitting / Rejection</b>			
PREP BY/AUTHORISED		<b>TOTAL PROOF</b>	\$
DATE AUTHORISED / /			

### Proof of Debt Form Directions

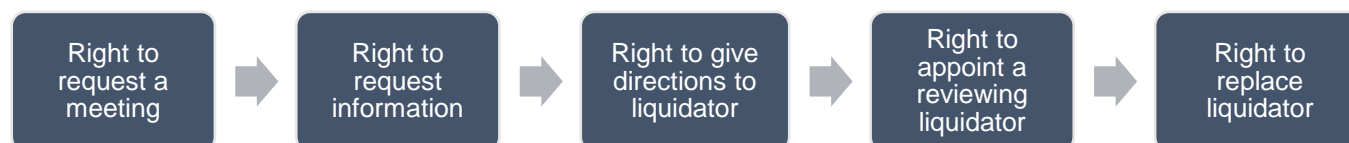
- \* Strike out whichever is inapplicable.
- (1) Insert date of Court Order in winding up by the Court, or date of resolution to wind up, if a voluntary winding up.
- (2) Insert full name and address (including ABN) of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor.
- (3) Under "Consideration" state how the debt arose, for example "goods sold and delivered to the company between the dates of .....", "moneys advanced in respect of the Bill of Exchange".
- (4) Under "Remarks" include details of vouchers substantiating payment.
- (5) Related Party / Entity: Director, relative of Director, related company, beneficiary of a related trust.
- (6) If the Creditor is a natural person and this proof is made by the Creditor personally. In other cases, if, for example, you are the director of a corporate Creditor or the solicitor or accountant of the Creditor, you sign this form as the Creditor's authorised agent (delete item 3A). If you are an authorised employee of the Creditor (credit manager etc), delete item 3B.

### Annexures

- A. If space provided for a particular purpose in a form is insufficient to contain all the required information in relation to a particular item, the information must be set out in an annexure.
- B. An annexure to a form must:
  - (a) have an identifying mark;
  - (b) and be endorsed with the words:
    - i) "This is the annexure of *(insert number of pages)* pages marked *(insert an identifying mark)* referred to in the *(insert description of form)* signed by me/us and dated *(insert date of signing)*; and
  - (c) be signed by each person signing the form to which the document is annexed.
- C. The pages in an annexure must be numbered consecutively.
- D. If a form has a document annexed the following particulars of the annexure must be written on the form:
  - (a) the identifying mark; and
  - (b) the number of pages.
- E. A reference to an annexure includes a document that is with a form.

# Creditor Rights in Liquidations

As a creditor, you have rights to request meetings and information or take certain actions:



## Right to request a meeting

In liquidations, no meetings of creditors are held automatically. However, creditors with claims of a certain value can request in writing that the liquidator hold a meeting of creditors.

A meeting may be requested in the first 20 business days in a creditors' voluntary liquidation by  $\geq 5\%$  of the value of the debts held by known creditors who are not a related entity of the company.

Otherwise, meetings can be requested at any other time or in a court liquidation by:

- $> 10\%$  but  $< 25\%$  of the known value of creditors on the condition that those creditors provide security for the cost of holding the meeting
- $\geq 25\%$  of the known value of creditors
- creditors by resolution, or
- a Committee of Inspection (this is a smaller group of creditors elected by, and to represent, all the creditors).

If a request complies with these requirements and is 'reasonable', the liquidator must hold a meeting of creditors as soon as reasonably practicable.

## Right to request information

Liquidators will communicate important information with creditors as required in a liquidation. In addition to the initial notice, you should receive, at a minimum, a report within the first three months on the likelihood of a dividend being paid.

Additionally, creditors have the right to request information at any time. A liquidator must provide a creditor with the requested information if their request is 'reasonable', the information is relevant to the liquidation, and the provision of the information would not cause the liquidator to breach their duties.

A liquidator must provide this information to a creditor within 5 business days of receiving the request, unless a longer period is agreed. If, due to the nature of the information requested, the liquidator requires more time to comply with the request, they can extend the period by notifying the creditor in writing.

## Requests must be reasonable.

### They are not reasonable if:

Both meetings and information:

- (a) complying with the request would prejudice the interests of one or more creditors or a third party
- (b) there is not sufficient available property to comply with the request
- (c) the request is vexatious

Meeting requests only:

- (d) a meeting of creditors dealing with the same matters has been held, or will be held within 15 business days

Information requests only:

- (e) the information requested would be privileged from production in legal proceedings
- (f) disclosure would found an action for breach of confidence
- (g) the information has already been provided
- (h) the information is required to be provided under law within 20 business days of the request

If a request is not reasonable due to (b), (d), (g) or (h) above, the liquidator must comply with the request if the creditor meets the cost of complying with the request.

Otherwise, a liquidator must inform a creditor if their meeting or information request is not reasonable and the reason why.

## Right to give directions to liquidator

Creditors, by resolution, may give a liquidator directions in relation to a liquidation. A liquidator must have regard to these directions, but is not required to comply with the directions.

If a liquidator chooses not to comply with a direction given by a resolution of the creditors, they must document their reasons.

An individual creditor cannot provide a direction to a liquidator.

## Right to appoint a reviewing liquidator

Creditors, by resolution, may appoint a reviewing liquidator to review a liquidator's remuneration or a cost or expense incurred in a liquidation. The review is limited to:

- remuneration approved within the six months prior to the appointment of the reviewing liquidator, and
- expenses incurred in the 12 months prior to the appointment of the reviewing liquidator.

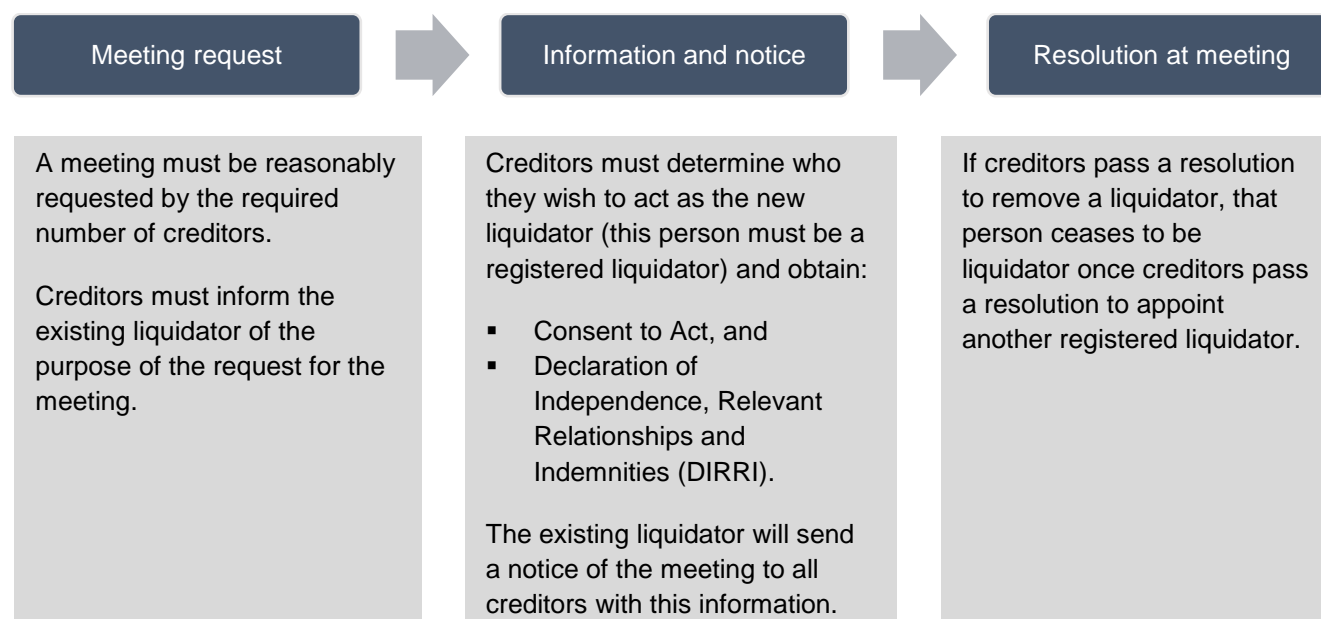
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

An individual creditor can appoint a reviewing liquidator with the liquidator's consent, however the cost of this reviewing liquidator must be met personally by the creditor making the appointment.

## Right to replace liquidator

Creditors, by resolution, have the right to remove a liquidator and appoint another registered liquidator.

For this to happen, there are certain requirements that must be complied with:



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