

Zarliv Constructions Pty Ltd (In Liquidation)
A.C.N. 635 353 794
("the Company")

Statutory Report to creditors

13 October 2022

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ABBREVIATIONS

Accountant	SAS Accountants
Act	Corporations Act 2001
ALLPAP	All Present And After- Acquired Property – No Exceptions
ARITA	Australian Restructuring Insolvency and Turnaround Association
ASIC	Australian Securities & Investments Commission
ATO	Australian Taxation Office
Company	Zarliv Constructions Pty Ltd (In Liquidation)
Directors	Danie Yazbeck
DIRRI	Declaration of Independence, Relevant Relationships & Indemnities
ERV	Estimated Realisable Value
FY	Financial Year ended
IPR	Insolvency Practice Rules
K	‘000’
Liquidator	Brendan Copeland
Mil	Million
CBA	Commonwealth Bank of Australia
Petitioning Creditor	All Cranes 4 Hire Pty Ltd trading as Top Gun Cranes
PPSA	Personal Property Securities Act 2009
PPSR	Personal Property and Securities Register
RoCAP	Report on Company Activities and Property
Petitioning Creditor’s Solicitor	Hilton Bradley Lawyers
TBA	To Be Advised
TBC	To be Concluded
YTD	Year To Date

1 Executive Summary

1.1 Liquidator's appointment

I was appointed Liquidator of the Company on 20 July 2022, pursuant to an order made by the Supreme Court of Victoria. The petitioning creditor is All Cranes 4 Hire Pty Ltd trading as Top Gun Cranes ("**Petitioning Creditor**").

This report should be read in conjunction with my initial report to creditors dated 15 August 2022. If a creditor requires a copy of the previous report, please contact Christine Xiao of this office at cxiao@hogansproles.com.au.

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 creditor have not already done so, you 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" (attached as **Annexure B**). I do not propose to hold a meeting of creditors at this time.

I expect to have completed this liquidation within six (6) to twelve (12) months.

1.3 Estimated return to creditors

There are insufficient assets available in the Liquidation. A dividend to unsecured creditors is reliant on the recoveries from voidable transactions and insolvent trading claim. At this stage, it is unlikely that a dividend will be paid in the liquidation to priority and unsecured creditors.

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

1.4 Summary of investigations

I am currently conducting investigating into the Company's affairs and the possible offences committed by Danie Yazbeck ("**the Director**"). A summary of the offences and recovery action is indicated below:

Offences / recovery action	Corporations Act	Parties	Claim (\$)
Insolvent Trading	S588G	Danie Yazbeck	\$103,562
Voidable transactions	S.588FD, S.588FDA and S.588FE(4)	Danie Yazbeck; Nicole Yazbeck	Uncertain
Unfair Preference	S.588FA	Multiple Parties	Uncertain

My investigation to date revealed that the Company was insolvent from at least July 2020 due to inadequate books and records and the inability to meet tax liability.

With the above recovery actions established, I will need to assess the commercial viability and the cost benefit of pursuing these actions. Further details in section 4 of this report.

Any offences will be reported to the Australian Security and Investments Commission (“ASIC”) in a confidential report issued pursuant to section 533 of the Corporations Act 2001 (“the Act”).

1.5 Declaration of Independence, Relevant Relationships and Indemnities

My initial report to creditors included a Declaration of Independence, Relevant Relationships and Indemnities (“DIRRI”) signed by me as Liquidator of the Company. There have been no changes to the position of the DIRRI.

2 Update on the Liquidation

2.1 Background

I provide a summary again of the information available from ASIC search conducted for the Company:

Company Details		
Registration Date	06 August 2019	
Current Registered Office	81 Kiama Street, Greystanes NSW 2145	
Current Principal Place of Business	81 Kiama Street, Greystanes NSW 2145	
Director	Appointed	Ceased
Danie Yazbeck	06 August 2019	-
Share Structure	Amount Paid	Amount Unpaid
100 Ordinary Shares	\$100.00	\$0.00
Current Shareholders	Shares Held/Type	Fully Paid
Danie Yazbeck	100 Ordinary Shares	Yes

I previously provided a summary of the Directorships and shareholdings under the Director’s names. Please refer to my previous report in relation to same.

2.2 Progress of the Liquidation

Please refer to my initial report to creditors dated 15 August 2022 in relation to tasks previously undertaken since my appointment to 20 July 2022.

Below is a summary of the tasks undertaken since my previous report to creditors:

- Reviewed Company's books and records received;
- Conducted investigation into the Company's affairs; and
- Corresponded with the Director regarding the affairs of the business.

Further investigations are currently being conducted in respect of the affairs of the Company. Details of the RoCAP submitted by the Director and books and records received are disclosed in the sections below.

2.3 Books & Records

To date, I have received the following books and records:

- Completed Report of Company Activities and Property ("**RoCAP**"),
- Tax Return for the Financial Year ended ("**FY**")2020;
- The financial statements prepared by the Accountant for FY20;
- Company's bank statements provided by Commonwealth Bank of Australia ("**CBA**") for the period 1 July 2019 to 20 July 2022.
- ATO documentation; and
- Documentation received from the petitioning creditor's lawyers.

In my opinion the following records including but not limited to, should have also been maintained:

- Financial statements and tax return for FY21;
- Financial records for the period from 1 July 2020 onwards;
- Management accounts;
- Contracts/Agreements;
- Invoices and receipts;
- Correspondence with stakeholders;
- Chattel Mortgage agreements;
- Loan agreements;

Given the above, it is in my opinion that the Company has not properly maintained its books and records from at least July 2020 required as per Section 286 of the Act. Failure to maintain books and records may give rise to a presumption of insolvency pursuant to Section 588E of the Act. This presumption may be relied upon by the Liquidator 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. The result of my investigations will be reported in my confidential report to ASIC.

2.4 Report on Company Activities and Property ("**RoCAP**")

The Act requires the Director to provide to me with a completed RoCAP, detailing the financial position of the Company at the date of my appointment.

Below is a summary of the information provided in the Director's RoCAP and the estimated realisable value ("**ERV**") as per my investigations:

	Notes	RoCAP (\$)	Liquidator's ERV (\$)
Assets			
Cash at Bank	1	Nil	Nil
Total Assets		Nil	Nil
Liabilities			
Less: Secured Creditors	2	Nil	Nil
Priority Creditors - Employees	3	Nil	Nil
Unsecured Creditors	4	67,937	110,415
Total Liabilities		67,937	110,415
Estimated Surplus/Deficiency		(67,937)	(110,415)

2.4.1 Assets

1. Cash at bank

The Director has disclosed in his RoCAP that there is no realisable value available from cash at bank.

The Company operated one (1) account with Commonwealth Bank of Australia ("**CBA**"), which had a credit balance of \$2.22.

2.4.2 Liabilities

2. Security Interest Holders

I remind creditors that following security interest was registered under the name of the Company:

Secured Party	Registration	Collateral class	Registration	Notes
Builders Steel Direct Pty Ltd	202003050061064	Other goods	5 March 2020	Discharged

As mentioned in my previous report dated 15 August 2022, Builders Steel Direct Pty Ltd has provided a discharge statement on 11 August 2022.

3. Priority Creditors – Employees

As to the date of my appointment, the only employee of the Company is the Director himself. There are no outstanding employee entitlements based on my review of the records received to date, nor is the Director claiming any outstanding entitlements.

Should you be aware of outstanding employees' entitlements, please contact my office to provide further information.

4. Unsecured Creditors

The completed RoCAP and records received to date disclose the following creditors of the Company:

Creditors list	Amount (\$)
ATO	39,729
BOM Timber	9,571
Builder Steel Direct	41,732
Heavy Metal Cranes	2,442
Icare	307
Politt Crane	792
Sydney Cranes	3,498
Top Gun Cranes	10,578
Transformer Cranes	1,766
Total	110,415

I advise the above creditors list and amount may increase pending on receipt of proof of debts from creditors and further investigations.

My investigations in respect of the assets and liabilities position are continuing. Creditors will be notified should there be any material updates.

Should you be aware of any other creditors, please contact my office for further information.

Intentionally left blank

3 Financial Records

I have received the below financial statements for the Company for FY20 prepared by the Accountant.

Profit and Loss	FY20	
	(\$)	
Operating Income		
Sales	239,491	
<i>Less: Cost of good sold</i>	<i>75,878</i>	
Gross Profit	163,613	
<i>Gross Margin</i>	<i>68%</i>	
Operating Expense		
Accountancy	1,318	1%
Contract payments	90,433	60%
Directors salaries	43,750	29%
Hire/Rent of plant & equipment	1,888	1%
Insurance	1,887	1%
Motor vehicles	7,400	5%
Replacements	1,478	1%
Telephone	1,072	1%
Others	1,305	1%
	150,532	
EBITDA	13,081	
Less: Interest expenses	1	
Net Profit	13,080	

My comments for the above are as follows:

- The Company provided steel structure and carpentry services and engaged external party to work on the projects.
- The Company ceased trading on the date of my appointment, 20 July 2022.
- The Company generated gross margin of 68% and net profit of \$13K in FY20.
- The Company's majority cost relates to contract payments and director salaries which comprises circa 89% of the Company's total expenses.

Balance Sheet

Balance Sheet	FY20 (\$)
Current Assets	
Cash	5,236
GST	4,700
	9,936
Non-Current Assets	
Loan from third party	6,495
Others	1,450
	7,945
Total Assets	17,880
Current Liabilities	
Statutory liability	8,297
Provision - Dividends	9,483
	17,780
Total Liabilities	100
Net Assets	100

My comments for the above are as follows:

- The Company generated a small net asset surplus of \$100 in FY20.
- The Company's major liabilities include loan liabilities from third parties. I am unable to verify this debt as I have not been provided with any supporting documentation with respect to the loan.
- The Company's FY20 balance sheet recorded statutory liability in the amount of \$8,297. As at the date my appointment, the ATO has submitted their claim for outstanding amount of \$39,728.63. The debt is in relation to the running account BAS deficit and income tax return.
- The Company's FY20 balance sheet recorded approximately \$5K cash. As at the date my appointment there is no balance in the Company's bank account.

4 Investigations

4.1 Company books and records

Liquidators are required to provide an opinion as to whether the Company's books and records are maintained in accordance with Section 286 of the Act for a period of seven years. The Act requires that a company maintain financial records that correctly record and explain its transactions, financial position, and performance, and enable true and fair financial statements to be prepared.

I refer to Section 2.3 of this report, to date, I have not been provided with sufficient Company's books and records. As such, I am of the view that the Company's books and records have not been kept in a manner that complies with Section 286 of the Act.

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

Please refer to my comments in section 2.3 of this report.

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

4.2 Reasons for Failure

The Director's completed RoCAP explained the below factors for the business failure:

- The impact of Covid-19 pandemic on the business.

I agreed with the Director's commentary and in my opinion, the Company's failure is also attributed to the following:

- Inadequate cash flow to attend the liabilities of the Company; and
- Mismanagement of business.

The above opinion is subject to change pending the receipt of further information and documentation from the Director.

4.3 Recoveries, offences and voidable transactions

The Liquidator is required to complete and lodge a report with ASIC pursuant to Section 533 of the Act where it appears that a past or present officer of the Company may have been guilty of an offence in relation to the Company and in other circumstances. I intend to lodge a report pursuant to this section of the Act.

Pursuant to Part 5.8B of the Act, a 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 has been available, I have reviewed the Company books and records for the period approximately six months prior to my 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 20 December 2021 (six months prior to 20 June 2022, the day the winding up petition was filed).

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 months prior to the relation back day.

A review of the records disclosed there were payments made to multiple parties during the relation back period. A summary is provided below:

Parties	Estimated amount (\$)
Janbay Hardware	21,350
Built By Yeps	18,000
Starr Partner Trust	5,750
New Steel Solution	6,992
Others	16,250
Total	68,342

I advise the above may change pending further investigations. I am not aware of any payment arrangements that the Company was in with any of their suppliers or the ATO prior to my appointment.

Due to due to limited books and records received to date, I am unable to provide commentaries with respect to the above payments. My investigation of the above is currently ongoing, creditors will be advised if there are any material updates.

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.

My investigation into the uncommercial transactions is currently ongoing. Creditors will be advised if there are any material updates.

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.

My investigation into unfair loans is currently ongoing. Creditors will be advised if there are any material updates.

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.

My investigation revealed that the Director withdrawn at least \$92K during July 2020 to the date of my appointment. Please refer to section 5.e) below for further details.

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. My investigations revealed that there were withdrawals of at least \$152K made to the related parties, being the Director, Danie Yazbeck and Director's wife Nicole Yazbeck during July 2020 (assumed date of Company being insolvent) to the date of my appointment.

The withdrawals appear to be on account of Director's wages, loan, business expenses and other personal drawings. However due to limited books and records received I am unable to reconcile the loan accounts nor verify the purpose of the payments. My investigation into the recoverability and the commercial benefits associated with pursuing the related party claim is currently ongoing.

f) Circulating security interest created within six months before relation back date (Section 588FJ)

Section 588FJ of the Act provides that a circulating security interest created within six months before relation back date may be rendered void.

There were no circulating security interests that were created within six (6) months before the relation back date. Please refer to section 2.4.2 for further details.

4.4 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"

There are defences available to directors pursuant to section 588FGB of the Act which include:

- If it is provided that, at the payment time, the person had reasonable grounds to expect, and did expect, that the company was solvent at that time and would remain solvent if it made the payment;
- Had reasonable grounds to believe and did believe:
 - That a competent and reliable person (the other person) was responsible for providing to the first-mentioned person adequate information about whether the company was solvent; and

- That the other person was fulfilling that responsibility.
- Expected, on the basis of information provided to the first mentioned person by the other person, that the company was solvent at that time and would remain solvent even if it made the payment.
- Because of illness or for some other good reason, the person did not take part in the management of the company at the payment time.
- The person took all reasonable steps to prevent the company from making the payment; or there were no such steps the person could have taken.

Based on the current information available, I am of the opinion, that the Company was trading whilst insolvent from at least July 2020. The reason for this view is provided below:

a) Presumption of insolvency

As previously discussed, the Company did not properly maintain books and records post July 2020 that complied with Section 286 of the Act. Accordingly, it can be presumed that the Company traded insolvently from at least July 2020.

b) Outstanding lodgements

The Company has not lodged tax returns for the year ended FY21 to FY23, nor single touch payroll ("STP") for FY22 and FY23, and the activity statement for quarters December 21, March 22, June 22 and September 2022 resulting increasing tax liability. The Company failed to prevent the Company from incurring statutory debts, penalties and interests from July 2020. The table below summaries the movement of the Company's ATO periods over the previously quarters.

ATO Debt	Dec-19	Jun-20	Dec-20	Jun-21	22-Jul-22
Running Account balance ("RBA")	2,717	6,553	8,063	19,338	36,131
Income tax acct	-	-	-	3,597	3,597
Total	2,717	6,553	8,063	22,935	39,729

I have received a proof of debt form from the ATO totalling \$39,728.63.

c) Creditor demands

With the limited books and records received, I am unable to comment if the Company had received letter of demands/notices from creditors. Notwithstanding, I have received statement from the several creditors disclosing that there are amounts outstanding since January 2022.

d) Cash, working Capital and current ratio

- The Company carried negative working capital during FY20.

Insolvent Trading Claim

The quantum of claim from July 2020 is currently estimated at \$103,562 being the debt outstanding since the date the Company is deemed insolvent. A summary of the debt incurred is provided as below.

Creditor	Estimated amount (\$)
ATO	33,176
Trade Creditors	70,386
Total	103,562

This amount is subject to change, pending the receipt of further claims or information in relation to the Company. Further investigations would be required to establish the recoverability of the claim.

Director's personal financial position

According to the ASIC search, the director held directorship over the following Companies:

Danie Yazbeck

Company	Position	Commenced	Ceased
Yazco Constructions Pty Ltd	Director & Secretary	25 May 2016	11 Apr 2016
D.Y Carpentry Pty Ltd	Director & Secretary	20 Feb 2003	15 Jul 2007

The Director has not provided his personal assets and liabilities position.

As advised in my previous report, a search conducted on the NSW Land Registry disclosed that there is no property currently registered under the Company or the Director.

In addition, I am currently unfunded to pursue any recoveries against the Director.

Should a creditor intend to fund for any of the recovery actions, please contact Christine Xiao of this office on 02 8020 5858 or via email at cxiao@hogansprowles.com.au.

4.5 Breach of Directors Duties

Section 180 to 184 of the Act sets out duties and powers of directors and officers of a company to enable Director's 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
- Section 184 - Good faith, use of position and use of information

Section 180 – Care and Diligence

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.

Section 181 – Good Faith

Pursuant to Section 181 of the Act, a director or other officer of a corporation must exercise their powers and discharge their duties:

- (a) in good faith in the best interest of the corporation; and
- (b) for a proper purpose

Section 182 – Use of Position

Pursuant to Section 182 of the Act, a director or other officer or employee of a corporation must not improperly use their position to:

- (a) Gain advantage for themselves or someone else; or
- (b) Cause detriment to the corporation.

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.

My investigations are ongoing into whether the Director have contravened any of the above sections in relation to his duty as director.

Further to the points outlined in this report, my investigations into the nature and history of Company are ongoing to identify any personal advantages and detriments to the Company.

I will be preparing my report to ASIC pursuant to Section 533 of the Act with regards to any breaches.

If creditors have any information which may assist my investigations, please email Christine Xiao of my office at cxiao@hogansproawles.com.au or by phone on 02 8020 5858.

5 Likelihood of a dividend

Insufficient assets have been realised to enable a distribution to any class of creditor.

A dividend to unsecured creditors is reliant on the recoveries from voidable transactions and insolvent trading claim. At this stage, it is unlikely that a dividend will be paid in the liquidation to priority and unsecured creditors.

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

6 Receipts and Payments

There has been no receipts and payments to date.

7 Costs of the Liquidation

Following my previous report to creditors of 15 August 2022, remuneration of \$45,000 (excl GST) and internal disbursements of \$2,000 (excl GST) were approved by creditors on 6 September 2022.

At this stage, I will not be seeking further approval of fees from creditors.

8 What happens next?

I will proceed with the liquidation, including, but not limited to:

- Finalise my investigations into the affairs of the Company;
- Reporting to the corporate insolvency regulator ASIC;
- Voidable transaction recovery (if any);
- Any other matters relevant to the liquidation; and
- Finalisation.

I expect to have completed this liquidation within six (6) to twelve (12) months subject to pursuit of any recoveries.

If I receive a request for a meeting that complies with the guidelines set out in the ARITA information sheet "Creditors Rights in Liquidation" as attached at **Annexure B**, I will hold a meeting of creditors.

9 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
- ASIC at www.asic.gov.au (search for "insolvency information sheets").

If you have any queries, you can contact my office and speak with Christine Xiao on 02 8020 5858 or by email on cxiao@hogansprowles.com.au.

Yours faithfully,

Zarliv Constructions Pty Ltd (In Liquidation)



Brendan Copeland
Liquidator

FORM 535
CORPORATIONS ACT 2001

ACN 635 353 794

Subregulation 5.6.49(2)

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Liquidator of Zarliv Constructions Pty Ltd (in Liquidation)

1. This is to state that the company was, on 20 July 2022⁽¹⁾ and still is, justly and truly indebted to⁽²⁾ (full name):

.....
(‘Creditor’)

.....
of (full address)

for dollars and cents.

Particulars of the debt are:

Date	Consideration ⁽³⁾ state how the debt arose	Amount \$	GST included \$	Remarks ⁽⁴⁾ 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 ⁽⁵⁾

☐ I am a related creditor of the Company ⁽⁵⁾
relationship: _____

3A.^{(6)*} 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.^{(6)*} 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 2022

Signature of Signatory

.....

NAME IN BLOCK LETTERS

.....

Occupation

.....

Address

.....

Email

.....

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	\$
Reason for Admitting / Rejection			
PREP BY/AUTHORISED		TOTAL PROOF	\$
DATE AUTHORISED / /			

Proof of Debt Form Directions

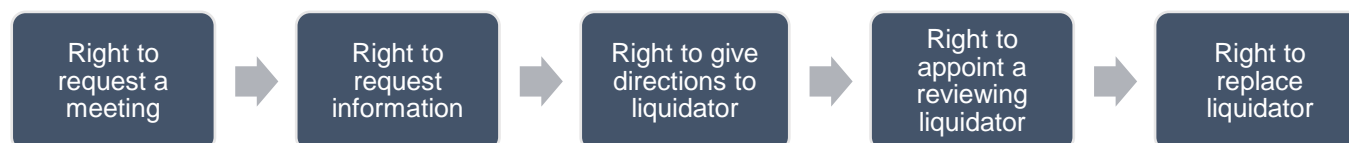
- * Strike out whichever is inapplicable.
- (1) Insert date of Court Order in winding up by the Court, or date of resolution to wind up, if a voluntary winding up.
 - (2) Insert full name and address (including ABN) of the creditor and, if applicable, the creditor's partners. If prepared by an employee 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.

Specific queries about the liquidation should be directed to the liquidator's office.

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.

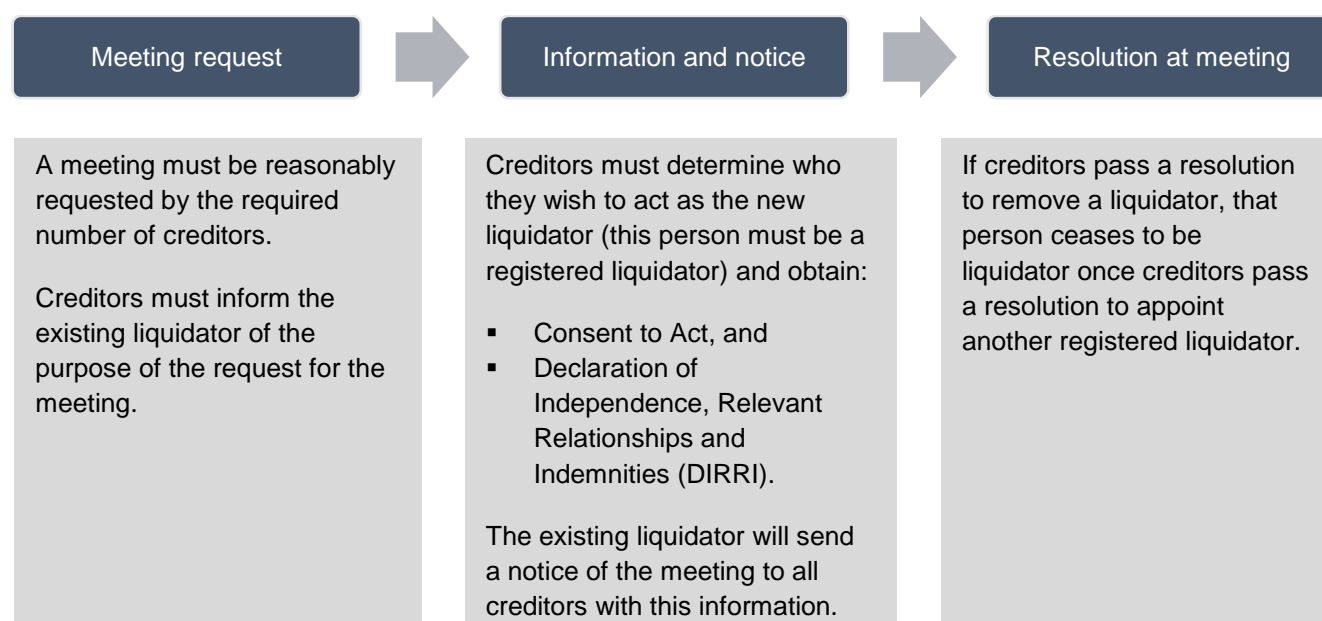
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

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:



**For more information, go to www.arita.com.au/creditors.
Specific queries about the liquidation should be directed to the liquidator's office.**