



**Marth Holdings Pty Ltd (In Liquidation) ATF M & L  
Family Trust  
A.C.N. 603 680 520 (“the Company”)**

Statutory Report to Creditors

3 January 2023

## 1. Executive Summary

### 1.1. Liquidator appointment

I was appointed as Liquidator of the Company on 4 October 2022 in accordance with a resolution passed pursuant to section 496(6) of *the Corporations Act 2001*, replacing Mr Ian Niccol (“Mr Niccol”) of Aston Chace Group who was appointed as member’s voluntary liquidator on 17 July 2020.

This report should be read in conjunction with my initial report to creditors dated 17 October 2022.

### 1.2. Purpose of this report

The purpose of this report is to:

- provide you with an update on the progress of the liquidation;
- advise you of the likelihood of a dividend being paid in the liquidation; and

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

Should you have any queries in relation to this matter, please contact Angelo Cadiz on (02) 8020 5856 or via email at [acadiz@hogansprowles.com.au](mailto:acadiz@hogansprowles.com.au).

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**. I am not proposing to hold a meeting of creditors at this time.

### 1.3. Summary of investigations

Based on my investigations to date, the Company was the trustee of the M & L Family Trust.

The Company previously owned the property located at 65 Fiddens Wharf Road, Killara NSW 2071 (“the Property”) which was transferred to Jingxi Li (“Ms Li”) on or around July 2019. We understand Ms Li is the ex-wife of the former director, Mr Mark Chong Ma (“Mr Ma”). Our investigations in relation to whether the Company owned the Property in its own right or in its capacity as Trustee of the Trust are continuing.

I have sought information from various parties and issued 530B notices to:

- Belle Lou of Eakin McCaffery Cox
- Central Accounting & Taxation Advisory Pty Ltd
- Ms Jingxi Li
- Mr Mark Ma.
- Golden Ants Group Pty Ltd (In Liquidation) (“GAG”); and
- Australia Investment and Trade Pty Ltd (In Liquidation) (“AIT”)

The bank accounts record transactions between the Company, the former director/shareholder, and other related parties. Further investigations are required to determine the nature of the transactions and whether they were loans or income/expenses.

At this stage, I have identified the following possible offences and recovery actions available for me to pursue.

Investigation / Recovery	Corporations Act	Total claim \$
Unreasonable Director-Related Transactions	Section 588FDA	TBC
Uncommercial Transactions	Section 588FB	TBC
Insolvent Trading	Section 588G	TBC

## 2. Update on Liquidation

### 2.1 Company Background and Timeline

Below is a timeline for the Company leading up to my appointment on 4 October 2022:

Date	Event
14 January 2015	The Company was registered on 14 January 2015.
14 January 2015	The Company is appointed as the trustee of the M & L Family Trust, in accordance with the M & L Family Discretionary Trust Deed dated 14 January 2015.
14 January 2015 - 13 November 2019	Mr Ma was the sole director and secretary of the Company from 14 January 2015 to 13 November 2019. Mr Ma was also the previous sole shareholder of the Company.
13 November 2019	Mr Ante Lucic (“the Director”) was appointed as director and secretary of the Company on 13 November 2019. Mr Lucic is the current sole shareholder of the Company.
17 July 2020	Mr Ian Malcolm Niccol (“Mr Niccol”) of Aston Chace Group was appointed liquidator of the Company on 17 July 2020. The appointment type was member’s voluntary liquidation.
16 February 2021	GAG lodged an amended proof of debt (“POD”) form in the external administration of the Company on 16 February 2021 for \$4,531,100.
4 March 2021	AIT lodged an amended POD form in the external administration of the Company on 4 March 2021 for \$2,517,000.
5 August 2021	Mr Kong Yao Chin, the liquidator of GAG and AIT commenced proceedings in the Supreme Court of NSW (Proceedings No. 2021/223418) to examine Mr Ma.
9 May 2022	Mr Niccol of Aston Chace Group issued Form 537, Notice as to Rejection of Formal POD or Claim in the Company on 9 May 2022 to GAG and AIT, for the entire amounts of their proofs.

- 10 August 2022 On 10 August 2022, the Australian Taxation Office (“ATO”), lodged a POD in the amount of \$2,705,154.40 in the winding up the Company. The ATO requested that Mr Niccol convene a meeting of creditors of the Company in accordance with Section 496 of the Corporations Act 2001 to convert the winding up of the Company from a Members Voluntary winding up to a Creditors Voluntary winding up.
- 18 August 2022 Maria Llorca of the ATO, contacted me on 18 August 2022, requesting me to provide a Consent to Act to replace Mr Niccol as liquidator of the Company. On this same day, I provided my consent to act as liquidator of the Company.
- 4 October 2022 The meeting pursuant to Section 496 of the Corporations Act 2001 was convened by Mr Niccol on 4 October 2022. At the meeting, it was resolved that I be appointed as liquidator of the Company and the winding up be converted to creditor’s voluntary liquidation.

## 2.2 ASIC Search

An ASIC Search conducted for the Company discloses the following:

Company Details		
Registration Date	14 January 2015	
Registered Office	Unit 5, Level 4 405-411 Sussex Street Haymarket NSW 2000	
Principal Place of Business	Unit 5, Level 4 405-411 Sussex Street Haymarket NSW 2000	
Director	Appointed	Ceased
Ante Lucic	13-11-2019	-
Mark Ma	15-01-2015	13-11-2019
Secretary	Appointed	Ceased
Ante Lucic	13-11-2019	-
Mark Ma	15-01-2015	13-11-2019
Share Structure	Amount Paid	Amount Unpaid
100 Ordinary Shares	\$100.00	\$0.00
Current Shareholders	Shares Held/Type	Fully Paid
Ante Lucic	100	Yes

## 2.3 Personal Property Securities Register (“PPSR”)

A search of the PPSR indicates that there are no registered security interests.

## 2.4 Directorship search

A personal historical search has been conducted of ASIC's record for the Director, Ante Lucic and the former director, Mr Ma.

Below is a summary of the directorships of the Director held over the last six (6) years:

Company	Position	Commenced
<b>Ante Lucic</b>		
Marth Holdings Pty Ltd	Director & Secretary	13 Nov 2019
Total Form Construction Pty Ltd	Director & Secretary	18 Mar 2009
Tracking Consulting Pty Ltd	Director & Secretary	13 Oct 2017 - 26 Sep 2019
Tracking Consulting Holding Pty Ltd	Director & Secretary	28 May 2018 - 7 Apr 2020
Dimension Line Developments Pty Ltd	Director & Secretary	27 Jun 2016 - 7 Dec 2017
123 Kent Pty Ltd	Director & Secretary	4 Apr 2017 - 26 Sep 2019

Below is a summary of the directorships of the former director held over the last five (5) years:

Company	Position	Commenced
<b>Mark Ma</b>		
Marth Holdings Pty Ltd	Director & Secretary	13 Nov 2019
Mark Ma Holding Pty Limited	Director & Secretary	1 Oct 2015
Mash Capital Pty Ltd	Director & Secretary	1 Jun 2016
Maxing Holdings Proprietary Limited	Director & Secretary	16 Sep 2015
Australia Investments & Trading Pty Limited	Director & Secretary	6 Dec 2015 - 25 Dec 2019
Australian Investments and Trading Pty Limited	Director & Secretary	24 Dec 2015 - 25 Dec 2019
De Shing Holdings Pty Limited	Director & Secretary	22 Sep 2015 - 19 Feb 2018
Golden Ants Group Pty Ltd	Director & Secretary	18 Feb 2015 - 22 Jun 2017
Lytin Group Pty Limited	Director & Secretary	8 Feb 2016 - 6 Apr 2016
<b>Mark Chong Ma - China</b>		
Golden Paradise Pty Limited	Director & Secretary	14 Feb 2016
Lane Cove GPS Consulting Pty Ltd	Director & Secretary	7 July 2020
Marley Capital Pty Limited	Director & Secretary	8 Feb 2016
MM GPS Consulting Pty Ltd	Director & Secretary	23 Aug 2019
MM GPS Holding Pty Ltd	Director & Secretary	23 Aug 2019
Supay Technology Pty Ltd	Director	18 Jul 2017
Australia Investment and Trade Pty Limited	Director & Secretary	2 Jun 2015 - 23 Jun 2017
Marth Holdings Pty Ltd	Director & Secretary	14 Jan 2015 - 13 Nov 2019
<b>Mark Chong Ma - Jilin, China</b>		
Marsh Capital Pty Ltd	Director & Secretary	20 Jun 2017
Australian Land Developments Group Pty. Ltd.	Director	12 Nov 2012 - 25 Dec 2019
Lytin Pty. Ltd	Director	6 Feb 2009 - 30 June 2017
Massing Holdings Pty Ltd	Director	27 Dec 2014 - 20 Jun 2016

**Mark Chong Ma – Chengchun, Jilin, China**

The Shine Holdings (Group) Pty Ltd

Director & Secretary

13 Nov 2012 - 25 Dec 2019

### 3. Estimated Position Statement

Below is an estimated position of the Company:

Estimated Position	Notes	ROCAP (\$)	Liquidator's estimate (\$)
<b>Assets</b>	3.1		
Cash at Bank		-	-
<b>Circulating assets / recoveries</b>			
Voidable Transactions	3.2	-	TBC
Insolvent Trading	3.2	-	TBC
<b>Less: Liquidation costs</b>			
Liquidators remuneration and disbursements	3.4	-	26,000
<b>Total surplus/deficiency for unsecured creditors</b>		-	TBC
<b>Unsecured creditors</b>	3.5	-	TBC
<b>Total surplus/deficiency</b>		-	TBC

#### Notes

##### **Note 1 Assets**

The Company did not have any assets on the date of my appointment.

The pre-appointment bank accounts were held with Westpac Banking Corporation (“Westpac”) and the National Australia Bank (“NAB”).

These bank accounts had a nil balance on the date of my appointment.

##### **Note 2 Voidable Transactions**

###### Uncommercial Transactions

My preliminary investigations indicate that there may be transactions that are Uncommercial Transactions pursuant to Section 588FB.

Please refer to Section 6.3 for more information.

###### Unreasonable Director-Related Transactions

My preliminary investigations indicate that there may be transactions that are Unreasonable Director-Related Transactions pursuant to Section 588FDA.

Please refer to Section 6.3 for more information.

### Note 3 Insolvent Trading

Please refer to Section 6.4 of this report for further information.

### Note 4 Liquidators remuneration and disbursements

On 31 October 2022, I received remuneration and disbursements approval from the creditors via proposal without a meeting of \$25,000 and \$1,000 excluding GST respectively.

To this date, I have incurred fees of circa \$32,000.

I will not be seeking further remuneration approval from creditors at this time.

### Note 5 Unsecured creditors

My investigations to date reveal the following unsecured creditors:

Creditor	Amount (\$)	Related party
Australian Taxation Office	2,705,154	
Australia Investment and Trade Pty Ltd (In Liquidation)	2,517,000	Yes
Central Accounting & Taxation Advisory Pty Ltd	2,750	
Golden Ants Group Pty Ltd (In Liquidation)	4,531,100	Yes
Mark Chonga Ma	3,347,802	Yes
Jingxi Li	3,096,580	Yes
<b>TOTAL</b>	<b>16,200,386</b>	

## 4. Report on Company Activities and Property (“ROCAP”)

The Act requires the director and secretary to comply and provide to the liquidator a ROCAP, detailing the financial position of the company at the date of my appointment, being 20 May 2022.

The Director returned the ROCAP on Friday, 15 July 2022. A summary of the ROCAP was provided in section 3 of this report.

## 5. Financial Analysis

At the date of this report, I have obtained the following information which I have based my preliminary investigations on:

- The Company’s tax returns for the year ended 30 June 2017, 30 June 2018, and 30 June 2019.
- The Company’s financial statements for the year ended 30 June 2019.

- Bank statements for the period 24 June 2015 to 30 July 2019 provided by National Australia Bank.
- Bank statements for the period 19 May 2015 to 29 June 2017 provided by Westpac Banking Corporation.

The prepared financial statements for FY19 and tax returns for FY17 to FY19 do not record any trading activity for the Company. I have also been unable to locate management accounts for the Company.

My investigations in relation to the transactions recorded on the Company's bank statements are continuing.

I am therefore unable to prepare comparative financial statements.

## 6. Investigations

### 6.1 Books and records

Based on my review of the books and records I have received to date, I am of the view that the Company's books and records were not kept in a manner that complies with Section 286 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 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.

I have issued section 530B notices requesting books and records to the following parties:

1. Belle Lou of Eakin McCaffery Cox;
2. Central Accounting & Taxation Advisory Pty Ltd;
3. Ms Li; and
4. Mr Ma

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

- A copy of the M & L Family Trust financial statements for the year ended 30 June 2019;
- The Company's financial statements for the year ended 30 June 2019 and tax returns for the year ended 30 June 2017, 30 June 2018, and 30 June 2019;
- Bank statements for the period 24 June 2015 to 30 July 2019;
- Documents in relation to the transfer of the Property from the Company to Jingxi Li; and
- A copy of the Discretionary Trust Deed for M & L Family Trust.



## 6.2 Reasons for Failure

The Director did not provide reasons for business failure because he believed that the Company did not fail and had no liabilities at the time of Mr Niccol or my appointments as liquidator of the Company.

I have insufficient records at this stage to comment on the reasons for failure.

## 6.3 Recoveries, offences and voidable transactions

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

Pursuant to Part 5.7B 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 has been available, I have conducted the following preliminary investigations in relation to recoveries, offences and voidable transactions:

- Review books and records for the period approximately six months prior to the appointment of the liquidator to determine whether any creditors have been preferred over the general body of creditors as a result of any transaction; and
- Investigations into the Director's misconducts and breaches of director's duties.

The relation back date period is 4 April 2022 to 4 October 2022.

### 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 transactions 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.

Based on my review of the Company's bank statements, I have not identified any unfair preference transactions. Further investigations are required to verify this claim.

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

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

For an uncommercial transaction to be voidable, the transaction would have taken place during the two (2) years ending on the relation-back day or if a related entity was the other party to the transaction, during the four (4) years ending on the relation-back day.

My investigations in relation to the transfer of the Property and transactions appearing on the Company's bank statements are continuing. These transactions may be subject to this Section of the Act.

**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.

Based on the Company books and records available to me, I have not identified any transactions that would be subject to this Section of the Act.

**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 investigations in relation to the transfer of the Property and transactions appearing on the Company's bank statements are continuing. These transactions may be subject to this Section of the Act.

**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.

Based on the Company books and records available to me, I have not identified any transactions that would be subject to this Section of the Act.

**6.4 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"*

Based on the limited information available to me at this stage, I am unable to determine a date in which the Company was insolvent.

### a) Presumption of Insolvency

Pursuant to Section 286 of the Act, the Company is required to maintain financial records that would:

- correctly record and explain its transactions and financial position and performance; and
- would enable true and fair financial statements to be prepared and audited for the period of 7 years.

Failure to maintain sufficient books and records will give rise to presumption of insolvency throughout the period. As mentioned in section 6.1 above, it is my opinion that the books and records have not been kept in a manner that complies with Section 286 of the Act.

I would expect that the Company would have maintained the following to comply with Section 286 of the Act:

- Financial statements for the period commencing FY15 to FY20 which record the transactions appearing on the Company's bank statements and transfer of the Property;
- Management accounts; and
- Loan agreements/invoices supporting the transactions appearing on the Company's bank statements.

At this point, we have not received these documents.

### b) Balance sheet test/net asset deficiency

The balance sheet test is commonly used in assessing a company's solvency as it reviews whether a company has sufficient realisable assets to meet its liabilities. As discussed in section 4.2 of this report, the Company's management account discloses adjusted net assets deficit since FY19.

#### 6.4.1 Insolvent Trading Quantum/Claim

On 24 March 2020, the Coronavirus Economic Response Package Omnibus Bill 2020 was implemented and specifically section 588GAAA was introduced into the *Corporations Act 2001* granting temporary relief for financially distressed businesses. This amendment provides relief for directors from potential personal liability for insolvent trading.

On 7 September 2020, the Australian Government announced that the temporary relief would be extended until 31 December 2020. Accordingly, the liquidator will not have any ability to pursue the director for insolvent trading for this period.

Pursuant to section 588GAAA(i) the Director would be protected from any insolvent trading claim for any debt incurred in the ordinary course of business during the relief period.

Accordingly, the Director is granted relief from personal liability for insolvent trading pursuant to the Coronavirus Economic Response Package Omnibus Bill 2020 and section 588GAAA of the Act.

The likelihood of dividend from the above depends on the commerciality of the recovery, which lead me with the following factors to consider:

- The quantum of the claim;
- The litigation funding involved;
- The Director's ability to pay;
- The defences available for the Director; and
- The available Liquidator's fund for insolvent trading.

#### **6.4.2 Insolvent Trading Defences**

The defences available to directors pursuant to section 588FGB of the Act 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.

#### **Director's personal financial position**

The Director has not provided a statement of his personal assets and liabilities.

According to the NSW Land Title search the current director holds ownership in real property in NSW and the former director, Mr Ma holds no ownership in real property in NSW.

My investigations in relation to the current and former directors personal positions are continuing.

#### **6.4 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
- Section 184 – Good Faith, Use of Position and Use of Information – Criminal Offences

### **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.

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 distribution of work between the board.

Based on my preliminary investigations, I have not identified any breaches of director's duties.

### **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

My investigations and enquiries as at the date of this report does not identify any breaches of this section of the Act.

### **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.

My investigations as at the date of this report does not identify any breaches of this section of the Act.

## 7. What happens next?

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

- Reporting to the corporate insolvency regulator, the Australian Securities and Investments Commission (“ASIC”);
- Continue my investigations into the affairs of the Company;
- Any other matters relevant to the liquidation.

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. If you have not already submitted your claim, please complete the Proof of Debt form attached as **Annexure A**.

I expect to have completed this liquidation within six months to twelve months.

## 8. Likelihood of a Dividend

At this stage, there are insufficient recoveries to meet the costs of the liquidation and accordingly, there is unlikely to be a dividend distribution to any class of creditors.

## 9. Costs of the Liquidation

On 31 October 2022, I received remuneration and disbursements approval from the creditors via proposal without a meeting of \$25,000 and \$1,000 excluding GST respectively. To this date, I have incurred fees of circa \$32,000.

I will not be seeking further remuneration approval from creditors at this time.

## 10. Receipts and payments

To this date, there have been no receipts or payments.

## 11. Where can you get more information?

The Australian Restructuring Insolvency and Turnaround Association (“ARITA”) provides information to assist creditors with understanding liquidations and insolvency.

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 or have any information to support the liquidation you can contact my office and speak with Tom Farquhar on 02 8020 5861 or via email on [tfarquhar@hogansprowles.com.au](mailto:tfarquhar@hogansprowles.com.au).

Dated: 3 January 2023

**Marth Holdings Pty Ltd (In Liquidation)**



Michael Hogan  
**Liquidator**

**Attachments**

- Annexure A Proof of Debt form
- Annexure B Information Sheet - Creditor Rights in Liquidation

INFORMAL PROOF OF DEBT FORM

**Marth Holdings Pty Ltd (In Liquidation) ATF M & L Family Trust  
A.C.N 603 680 520 ("the Company")**

Name of creditor: .....

Address of creditor: .....

.....

ABN: .....

Telephone number: .....

Amount of debt claimed: \$..... (including GST \$ .....

Consideration for debt (i.e, the nature of goods or services supplied and the period during which they were supplied):

.....

.....

.....

Is the debt secured? YES/NO

If secured, give details of security including dates, etc:

.....

.....

.....

Other information:

.....

.....

.....  
Signature of Creditor  
(or person authorised by creditor)

.....  
Dated

**Notes:**

Under the Insolvency Practice Rules (Corporations) (IPR) 75-85, a creditor is not entitled to vote at a meeting unless:

- a. his or her claim has been admitted, wholly or in part, by the Liquidator; or
- b. he or she has lodged with the Liquidator particulars of the debt or claim, or if required, a formal proof of debt.

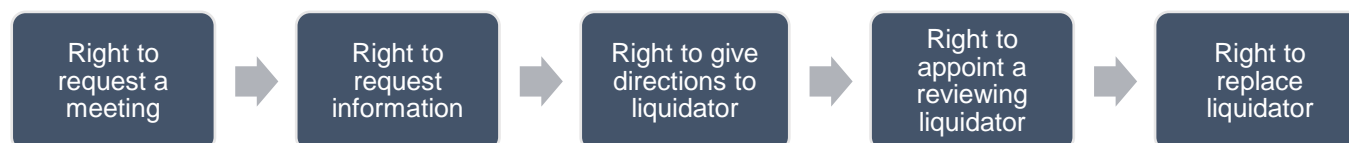
At meetings held under Section 436E and 439A, a secured creditor may vote for the whole of his or her debt without regard to the value of the security (IPR 75-87).

Proxies must be made available to the Liquidator.



## 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.

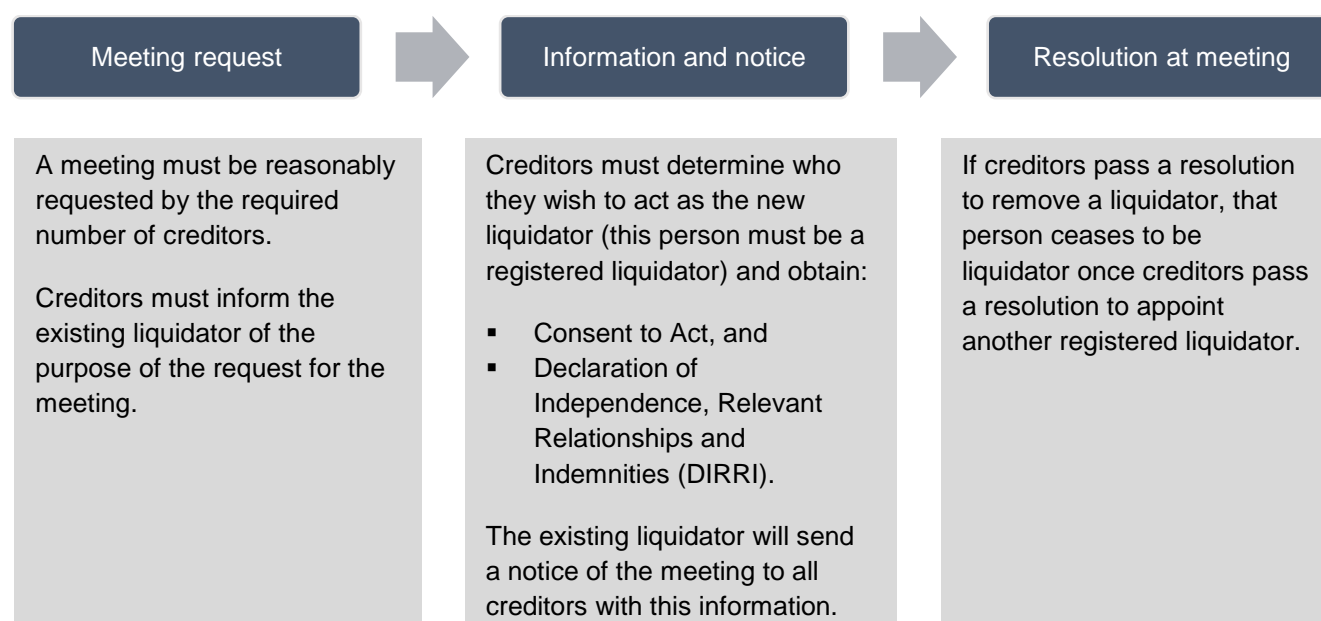
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

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](http://www.arita.com.au/creditors).  
Specific queries about the liquidation should be directed to the liquidator's office.**