

# RSM Bird Cameron Partners

Chartered Accountants

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8 December 2010

## **TO CREDITORS**

Dear Sir/Madam

### **Base Earthmoving Pty Ltd (In Liquidation) ACN 079 210 816 ("the Company")**

As you are aware Greg Dudley and Mark Conlan were appointed by the Director of the Company as Joint and Several Administrators on 21 April 2010.

As detailed in our recent circular dated 24 August 2010, the Company failed to execute a Deed of Company Arrangement and defaulted into Liquidation on 20 August 2010. Greg Dudley and Mark Conlan were subsequently appointed Joint and Several Liquidators on this date.

I now enclose for your information:-

1. Notice of a Meeting of Creditors to be held at the offices of RSM Bird Cameron Partners, on Wednesday 22 December 2010 at 11.00am (WST);
2. Report to Creditors dated 8 December 2010;
3. Liquidator's Remuneration Report dated 8 December 2010;
4. Proof of Debt for voting purposes;
5. Proxy form; and
6. Statement of Independence;

Please note that Proofs of Debt and Proxy forms should be lodged at this office by 4.00pm on the day prior to the meeting.

Should you have any queries regarding the above matter, please contact Johnathon Busing of this office on telephone 9261 9279.

Yours faithfully



**GREG DUDLEY**  
Joint and Several Liquidator

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Liability limited by a  
scheme approved under  
Professional Standards  
Legislation

Major Offices in:  
Perth, Sydney, Melbourne,  
Adelaide and Canberra  
ABN 36 965 185 036

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FORM 529

CORPORATIONS ACT 2001

Subregulation 5.6.12(6)

NOTICE OF MEETING OF CREDITORS

BASE EARTHMOVING PTY LTD  
(IN LIQUIDATION)  
ACN 079 210 816 ("the Company")

NOTICE is hereby given that a meeting of the creditors of the Company will be held at the offices of RSM Bird Cameron Partners, on Wednesday, 22 December 2010 at 11.00am (WST).

AGENDA

1. To receive and consider the progress report of the Liquidator as to the administration of the liquidation to date.
2. To consider and, if thought fit, approve the remuneration of the Liquidator, his partners and staff.
3. To consider and, if thought fit, approve the future remuneration of the Liquidator, his partners and staff.
4. Any other business that may be lawfully brought forward.

Proxies to be used at the meeting should be lodged at the office of the Liquidator by 4.00pm on the day prior to the meeting. A corporation may only be represented by proxy or by an attorney appointed pursuant to Corporations Regulations 5.6.28 and 5.6.31A respectively or, by a representative appointed under Section 250D of the Corporations Act 2001.

In accordance with Regulation 5.6.23(1) of the Corporations Regulations, creditors will not be entitled to vote at this meeting unless they have previously lodged particulars of their claim against the Company with the Liquidator.

DATED this 8<sup>th</sup> day of December 2010.



GREG DUDLEY  
Joint and Several Liquidator

Email: [clare.hayman@rsmi.com.au](mailto:clare.hayman@rsmi.com.au)

CLHA: C1: B901316

8 December 2010

## Report to Creditors of:

### **Base Earthmoving Pty Ltd (In Liquidation) ACN 079 210 816 ("the Company")**

#### 1. Introduction

- 1.1. As you are aware Mark Conlan and I were appointed by the Director of the Company as Joint and Several Administrators on 21 April 2010.
- 1.2. At the adjourned second meeting of creditors held on 30 July 2010, creditors resolved to execute a Deed of Company Arrangement ("DOCA"). Accordingly, pursuant to section 444B of the Corporations Act 2001 ("the Act"), the Company had fifteen (15) business days from the date of the Adjourned Meeting to execute the DOCA, being on or before 20 August 2010. As discussed at the meeting of creditors the execution of the DOCA was to occur simultaneously with payment of the DOCA sum by the Director.
- 1.3. Regrettably the Director was unable to source the DOCA sum and as such the DOCA was not executed and the Company defaulted into Liquidation on 20 August 2010. Accordingly Mark Conlan and I were appointed Joint and Several Liquidators of the Company.
- 1.4. This report is to be read in conjunction with the Statement of Administrators' Opinion ("the VA Report") dated 19 May 2010 and Supplementary Report dated 22 July 2010. A copy of both Reports can be obtained from [www.rsmi.com.au](http://www.rsmi.com.au)
- 1.5. I now report on the progress of the Liquidation, particularly in relation to the focus of work since the date of my appointment as Joint & Several Liquidators which has included:
  - 1.5.1. Sale of the Company's plant and equipment;
  - 1.5.2. Attempted sale of the Company's Slag Product;
  - 1.5.3. Ongoing recovery of outstanding debtors, both pre and post appointment; and
  - 1.5.4. Further investigations into and the quantification of:

1.5.4.1. Claims against the Director for insolvent trading; and

1.5.4.2. Voidable Transactions against related and unrelated parties.

## 2. Meeting of Creditors

2.1. A meeting of creditors will be convened at the offices of RSM Bird Cameron, 8 St George's Terrace, Perth, WA, 6000 on Wednesday, 22 December 2010 at 11.00am WST. For your attention and information please find enclosed:

2.1.1. Form 529 – Notice of Meeting;

2.1.2. Form 532 – Appointment of Proxy; and

2.1.3. Informal Proof of Debt Form.

2.2. Proxy forms or facsimile copies of proxy forms must be lodged with me by no later than 5.00pm (WST) on 21 December 2009. Where a facsimile copy of a proxy is lodged, the original must be lodged within 72 hours after issue of the faxed copy. A person claiming to be an attorney of a creditor must show to the Chairperson the instrument by which he/she was appointed attorney.

2.3. Attendance by telephone conference will be available. If you wish to attend by telephone please contact Johnathon Busing of my office on (08) 9261 9279 at least 24 hours prior to the meeting.

2.4. The balance of this report is under the following main headings:

Section	Details	Page
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### Annexure

A	Estimated Dividend to Unsecured Creditors
B	Statement of the Liquidators’ Receipts and Payments

### 3. Cessation of Business

- 3.1. As a result of the Company's default into Liquidation, the Company **ceased** to trade on 20 August 2010 at which time all remaining staff, including the Director, were terminated and all work ceased. Final invoices were issued for all work completed to this date.
- 3.2. Whilst the Director was unable to source the DOCA sum in full a party related to the Director had obtained sufficient finance to purchase a substantial component of the Company's freehold plant and equipment. The assets purchased were substantially those identified to form part of the original DOCA proposal. It was agreed that party related to the Director would purchase these items at a market value of \$200,055. As the assets were sold at market value and costs such as transport, insurance and realisation costs were not incurred this transaction maximised the value of the applicable assets.
- 3.3. I understand that a business known as "Base Equipment Hire", which involves the Director in at least an operational capacity, now trades from the Company's former trading premises.

### 4. Asset Realisations

#### Debtors

- 4.1. Set out below in Table 1 is a summary of the debtor position as at 29 November 2010:

	Balance	Received	Written Off	Balance
	\$	\$	\$	\$
Pre Appointment	317,765	279,286	23,757	14,722
Post Appointment	467,998	455,667	-	12,331
<b>Total</b>	<b>785,763</b>	<b>734,953</b>	<b>23,757</b>	<b>27,053</b>

**Table 1: Summary of Trade Debtors as at 29 November 2010**

- 4.2. I have recently issued instructions to my solicitor to issue recovery action against the remaining pre-appointment debtor of \$14,722.
- 4.3. The remaining post appointment debtor relates to invoicing on a project that was abandoned upon the cessation of trade. I am endeavouring to negotiate with the debtor to seek partial payment of the invoice to recover the costs in undertaking work up to cessation.

#### Related Party Debtors

- 4.4. As detailed in the VA Report, the Company was owed debts totalling \$188,909 by the Director and his related parties.
- 4.5. Demands for the repayment of these monies have been issued.
- 4.6. A response was received on 19 November 2010 wherein the Director and his related entities made counter claims against the Company for rental back charges for the Company's use of personal property, namely 44 Weston Street Naval Base, the Company's former trading premises and property in Exmouth used to store plant and equipment.

- 4.7. Upon consideration of the above counter claims, I still maintain the following debts are due to the Company:
- 4.7.1. Elaine Greaves - \$25,072.52; and
- 4.7.2. Wildstrike Pty Ltd ATF the Oldbury Trust ("the Trust") - \$62,094.
- 4.8. On the basis that Ms Greaves was not a registered proprietor of the Naval Base property I believe she is not entitled to claim any setoff. The Company's historical financial statements do not reflect any rental charges imposed on the Company for use of the Exmouth property, therefore I do not believe the Trust has a valid counter claim.
- 4.9. In respect to the Director's claim, I make the following comments:
- 4.9.1. Section 553C(2) of the Act provides that a person is not entitled to claim a set off under section 553C if, at the time of giving credit to the Company, or at the time of receiving credit from the Company, that person had notice of the fact that the Company was insolvent; and
- 4.9.2. The Company's externally prepared financial statements for the year ending 30 June 2008 and 2009 disclose rental charges in respect to the Company's occupation of the Naval Base the property.
- 4.10. Given the above, whilst the Director has argued that he has an ability to offset rental charges for the period subsequent to 30 June 2009, this offset is post the Company's suspected date of insolvency and as such I contend no set off can be claimed.
- 4.11. Further consideration is being given to the matter and it is my intention to respond to the Director and related third parties prior to the forthcoming creditors meeting.

## **Slag Product**

- 4.12. As previously reported to creditors the Slag Product refers to various stockpiles of material that is used for road base or cement aggregate.
- 4.13. The Slag Product was located at the Hismelt Operations in Naval Base.
- 4.14. At the time of my appointment the Company had a contract in place with Hismelt under which it was allowed access to a slag stockpile to process the slag into various slag products whilst extracting pig iron. The pig iron retained by Hismelt and the Slag Product becomes the property of the Company.
- 4.15. The Director's proposed DOCA allowed for \$100,000 for the repurchase of the Slag Product. This amount was well below market value, however it was highlighted in both previous reports and at the meeting of creditors in the event the Company was wound up the net realisation value estimated for the Slag Product was estimated to be significantly less than market value.
- 4.16. As a result of the Director's failure to execute a DOCA and the Company's default into Liquidation I sought Gregsons Auctioneers and Valuers advice and assistance with locating a prospective purchaser to purchase the Company's Slag Product.

- 4.17. An offer for the purchase of the Slag Product was ultimately received and agreed to with Urban Resources Pty Ltd ("Urban"). The estimated value of the sale of the Slag Product to Urban was approximately \$220,000. However, this offer was subject to Urban's ability to negotiate an assignment of contract with Hismelt.
- 4.18. I instructed my solicitors to draft a Sale Agreement and on 26 October 2010 the agreement was executed and a refundable deposit of \$50,000 was receipted into RSM Bird Cameron's Trust Account. The terms of the Sale Agreement provided that upon the successful negotiation of an assignment of Contract between Urban and Hismelt the deposit would be drawn upon by the Liquidators.
- 4.19. However, despite assurances, Urban was ultimately unsuccessful in their negotiations with Hismelt and were not able to obtain an assignment of contract and were unable to proceed with the purchase of the product as the cost of removing and storing the Slag Product at an alternative site to Hismelt were well in excess of the agreed value of the Slag Product sale price. Accordingly, the deposit of \$50,000 has been returned to Urban.
- 4.20. In addition, Hismelt had given notice to the Liquidator that they required the Slag Product to be removed from site. As previously eluded to in the VA Report, the removal and storage of the Slag Product was well in excess of the market value of the Slag Product.
- 4.21. Accordingly, the Hismelt's contract with the Company and the Slag Product were disclaimed and no further value will be received.

**Plant and Equipment**

- 4.22. Subsequent to my appointment as Liquidator all remaining freehold plant and equipment, not purchased by a party related to the Director, was sold at auction.
- 4.23. In addition to the freehold equipment a number of leased assets, where it was estimated substantial equity existed, were auctioned under the instructions of the Liquidator with the relevant financier's agreement.
- 4.24. Detailed below in Table 2 is a summary of plant and equipment assets sales controlled by the Liquidator (excluding auctioneer's costs):

	\$
Freehold Plant and Equipment sold to Director related party	200,055
Freehold Plant and Equipment sold at Auction	93,300
Gross Sale Proceeds of Leased Plant and Equipment sold at Auction	405,000
<b>Total</b>	<b>698,355</b>

**Table 2: Summary of Plant & Equipment Proceeds of Sale**

- 4.25. All plant and equipment has been sold and no further realisations are expected.

## **Other Assets**

4.26. In addition to freehold plant and equipment, I also agreed to transfer the following assets to an entity related to the Director, for \$5,000:

4.26.1. Telephone line;

4.26.2. Facsimile;

4.26.3. Four (4) nominated mobile telephone phones and associated plan; and

4.26.4. Four (4) email addresses.

## **5. Creditors**

### **Partly Secured Creditors**

5.1. As previously reported the Company held a number of leased assets which were subject to Hire Purchase Agreements with a number of financiers.

5.2. Upon my appointment as Liquidators and the cessation of trade, a determination was made in respect to the remaining leased assets, namely:

5.2.1. Leased assets with little to no equity were disclaimed to the relevant financier; and

5.2.2. As referred to paragraph 4.23 above, in respect of leased assets where it was estimated substantial equity existed, an agreement with the relevant financier was sort whereby the assets would be retained by the Liquidator and sold.

5.3. In the respect to the disclaimed leased assets, at the date of writing this report I have been advised by the relevant financiers that upon the sale of their respective equipment an estimated deficiency of \$1,428,244 exists, which now represents an unsecured claim against the Company.

5.4. This estimated deficiency is inline with the estimates detailed in the VA Report.

### **Priority Creditors – Employees**

5.5. Employees are afforded priority under Section 556 of the Act and include entitlement for wages, superannuation, annual leave, long services leave and payment in lieu of notice.

5.6. On 18 October 2010 all former employees were given notice of my intention to pay a first and final dividend in respect of eligible employee entitlements. The dividend of 100 cents in the dollar will be declared on or before 10 December 2010.

5.7. Detailed below is Table 3 is a summary of employee entitlements to be paid on or before 10 December 2010:

	<b>Annual Leave \$</b>	<b>Long Service Leave \$</b>	<b>Superannuation \$</b>	<b>Pay in Lieu of Notice \$</b>	<b>Total \$</b>
Employees	19,603.59	16,524.00	13,015.40	12,706.00	61,848.99

**Table 3: Summary of Employee Entitlements**

5.8. Creditors should note that the Australian Taxation Office ("ATO") will formally claim for unpaid superannuation on employees' behalf. Upon receipt of the funds the ATO will distribute the money to the relevant employees' superannuation fund.

5.9. Upon payment of the above dividend all employee claims will be extinguished.

**Unsecured Creditors**

5.10. Set out below in Table 4 is a summary of unsecured creditor claims (excluding partly-secured creditor deficiency as referred to in paragraph 5.3) as detailed in the Director's Statement of Affairs, my estimation at 22 July 2010 and my current estimate of possible claims:

	<b>Director's Statement \$</b>	<b>Administrators' Estimate \$</b>	<b>Liquidators' Estimate \$</b>
Unsecured Creditors	1,266,736	1,357,774	855,387

**Table 4: Summary of Unsecured Creditors as at 22 November 2010**

5.11. The above table represents my current estimate, ultimately an accurate assessment of unsecured creditors will only be available when all creditors have submitted a Formal Proof of Debt.

*Bankwest*

5.12. As detailed in the VA Report, at the date of my appointment Bankwest's debt was \$561,157.08. The proceeds from the sale of the Company's former trading premises, as referred to in paragraph 7.11.1 below were applied to the discharge of the property's mortgage and the balance was applied to the Company's debt.

5.13. Detailed below in Table 5 is a summary of the Bankwest's debt as at the date of writing this report:

	<b>Account Number</b>	<b>\$</b>
Business Edge Loan	089-230503-0	135,059.34
Credit Card (Corporate)	5586 0290 0105 8775	<u>21,410.54</u>
<b>Total</b>		<b>\$156,469.88</b>

**Table 5: Summary of Bankwest's debt as at 30 November 2010**

- 5.14. As previously reported whilst Bankwest does not hold a fixed and floating charge over the Company's assets, its debt is secured by personal property owned by the Director and his related entities.

## *Related Parties*

- 5.15. Shortly after issuing demands for the repayment of loans, as referred to in paragraph 4.5 above, the Director and Ms Greaves submitted a proof of debt in the liquidation in the amount of \$434,351.25 for the payment of personal funds to satisfy Company debts.
- 5.16. This figure has not been included in the above table, nor in the dividend estimates as referred to paragraph 8.3. I am undertaking further investigations into the merits of the claim.

## **6. Voidable Transactions – Unfair Preferences**

- 6.1. The VA Report noted numerous transactions involving payments to various creditors totalling \$80,996 which may be recoverable by a future liquidator.
- 6.2. A more detailed analysis of the Company's books and records has now been undertaken and has resulted in further payments being identified as possible unfair preferences. Claims now total \$91,951.
- 6.3. Demands will be issued in the coming months.
- 6.4. Some of the identified claims may require formal legal proceedings to be initiated in order to achieve a commercial recovery.

## **7. Insolvent Trading Claims**

- 7.1. My preliminary investigations identified likely claims against the Director for insolvent trading estimated at \$464,585.
- 7.2. The VA Report noted 30 June 2009 as the possible date of insolvency, upon further consideration I am still of the view that whilst the Company started to experience cashflow difficulties in January 2009 and may have been insolvent as early as 1 April 2009, it was most likely insolvent from at least 30 June 2009.
- 7.3. Accordingly, it is my intention to issue a demand on the Director for payment of the above amount.
- 7.4. Should the Director fail to make the payment or enter into discussions with a view of reaching a commercial settlement I will engage solicitors to pursue the matter further.

## **Defences**

- 7.5. As outlined in the VA Report section 588H of the Act provides defences available to a Director against an insolvent trading claim.
- 7.6. We suspect that the Company's Director may argue that he undertook the following steps to stop the Company from trading whilst insolvent:

- 7.6.1. Personal assets offered as security for Company borrowings; and
  - 7.6.2. He at all times had a reasonable expectation that Hismelt operation would re-open; and
  - 7.6.3. He was able to obtain alternative sources of funding.
- 7.7. My investigations suggest that points one (1) and three (3) above have no merit on the basis that:
- 7.7.1. The Director's personal properties were offered as security to the Company's Bankwest borrowings at the time of creation of the respective business loans, last being created in December 2007 prior to the identified date of insolvency; and
  - 7.7.2. The Director's proven inability to obtain funding to support his DOCA proposal suggests that he would have been unable to source alternatives for funding to assist the Company's solvency position.
- 7.8. According, I still maintain that a director of similar competency occupying a position equivalent to that occupied by the Director, in a company in like circumstances to those in which the Company found itself, would have or should have been aware, at the relevant time, that there were reasonable grounds to suspect that the Company was or may be insolvent.
- 7.9. I do not believe any of the defences pursuant to section 588H of Act would be available to the Directors given the Company's circumstances.

## **Director's Personal Financial Position**

- 7.10. The VA Report indicated that the Director held both residential and investment properties either individually or in joint names with Ms Greaves.
- 7.11. A summary of the status of each of these properties is detailed below:
- 7.11.1. Naval Base Property - The Director's commercial property, namely the Company's former trading address, was sold on 2 August 2010 and the proceeds of sale were paid to Bankwest and were applied to discharge the mortgage over the property and the balance was applied to the Company's debt;
  - 7.11.2. Oldbury Property - The Directors residential property that he owns jointly with Ms Greaves is currently on the market for \$2,550,000. The property is encumbered to the Bankwest by way of registered mortgage; and
  - 7.11.3. Exmouth Property – We understand that this property is still held in the name of the Trust and remains encumbered to Bankwest.
- 7.12. It is my understanding that Bankwest intends to issue default notices to the Director and his related parties in respect to their personal and corporate borrowings.
- 7.13. My preliminary investigations suggest possible equity may be available after the satisfaction of Bankwest's debt.

- 7.14. As detailed in paragraph 5.3 above, there exists a substantial deficiency owed to partly-secured creditors, the majority of which hold personal guarantees. It is likely given the Company's liquidation and estimated return to unsecured creditors, as referred to in paragraph 8.1 below, that the relevant financiers will also seek to mitigate their loss by pursuing the Director personally.
- 7.15. Accordingly, whilst possible equity may exist after the satisfaction of Bankwest's debt, there remains competing claims against the Director by way of personal guarantees. Notwithstanding, it is still my intention to proceed with making a claim against the Director.

## 8. Dividend

### Priority Employee Entitlements

- 8.1. As referred to paragraph 5.6 it is my intention to declare a first and final dividend to all employee priority creditors on or before 10 December 2010.

### Unsecured Creditors

- 8.2. A distribution to unsecured creditors will only take place after the satisfaction of priority creditors and costs of the liquidation.
- 8.3. I estimate that the dividend for ordinary unsecured creditors will range between 15 cents in the dollar and 28 cents in the dollar.
- 8.4. Attached as Annexure A is a table detailing the dividend estimate.
- 8.5. The quantum of a dividend to unsecured creditors is subject:
- 8.5.1. Future costs of the Liquidation;
  - 8.5.2. The level of unsecured creditor claims;
  - 8.5.3. Bankwest's ability to satisfy its debt from sale of the Director's and his related entities properties; and
  - 8.5.4. Recoveries in relation to:
    - 8.5.4.1. Unfair preferences; and
    - 8.5.4.2. Claims against the Director.
- 8.6. I intend to facilitate a first dividend to ordinary unsecured creditors in the first quarter of 2011. Appropriate notices will follow the meeting of creditors.

## 9. Report to Australian Securities and Investments Commission ("the ASIC")

- 9.1. A report was submitted to the ASIC pursuant to Section 438D of the Act during the VA period. The ASIC have responded stating that it will await the receipt of my report pursuant to Section 533 of the Act.
- 9.2. Section 533 of the Act requires a Liquidator to make a report to the ASIC where:

9.2.1. A director or officer has committed an offence in accordance with the Act; or

9.2.2. If the Liquidator is unable to pay a dividend to unsecured creditors of more than 50 cents in the dollar.

9.3. It is my intention to make a report to the ASIC pursuant to Section 533 of the Act prior to the forthcoming creditors meeting. The contents of that report remain confidential.

**10. Liquidators' Remuneration**

10.1. Refer to the attached Remuneration Report.

**11. Liquidators' Statement of Receipts and Payments**

11.1. A Statement of the Liquidators' Receipts and Payments for the period 20 August 2010 to 26 November 2010 is attached as Annexure B.

Should you have any queries regarding please contact Clare Hayman or Johnathon Busing of this office on (08) 9261 9100.

Yours faithfully



**GREG DUDLEY**  
Joint and Several Liquidator

**Base Earthmoving Pty Ltd (In Liquidation)**  
**ACN 079 210 816**

**Estimated Return to Creditors**  
**As at November 2010**

	LIQUIDATION	
	Low	High
	\$	\$
<b><u>Assets</u></b>		
Net Cash at Bank (as at 22 November 2010)	416,348	416,348
Debtors		
Pre-Appointment	-	14,722
Post-Appointment	-	12,331
Related Parties	43,072	127,166
Voidable Recoveries		
Unfair Preferences	60,000	90,000
Insolvent Trading Claim	60,000	190,000
<b>Estimated Funds Available for Distribution Before Costs</b>	<b>579,420</b>	<b>850,567</b>
<b><u>Distribution per s556(1) of the Corporations Act 2001</u></b>		
Costs, Charges & Expenses of Liquidator(GST Inclusive)		
Liquidators' Remuneration & Disbursements at 22 November 2010	85,253	85,253
Liquidators' Estimated Future Fees & Disbursements	75,000	75,000
Estimated Future Legal Fees	15,000	30,000
<b>Total Estimated Costs</b>	<b>175,253</b>	<b>190,253</b>
Priority Dividend - Employees	48,834	48,834
Priority Dividend - Superannuation/ATO	13,015	13,015
<b><u>Estimated Surplus Funds for Distribution to Unsecured Creditors</u></b>	<b>342,318</b>	<b>598,465</b>
Unsecured Creditors	2,283,630	2,127,150
<b>Estimated Return to Unsecured Creditors (Cents/\$)</b>	<b>0.15</b>	<b>0.28</b>

**Base Earthmoving Pty Ltd (In Liquidation)**  
**ACN 079 210 816**

**Liquidators' Receipts & Payments**  
**for the period 20 August 2010 to 26 November 2010**

<b>Receipts</b>	<b>\$</b>
Sales	224,373
Workers Compensation Refund	16,924
Refund of Lease Payments	11,241
Sale of Plant & Equipment	698,355
Sale of Telephone Lines	5,000
Recovery of Petty Cash	158
Bank Interest	2,458
Balance of Administrators Account	303,567
<b>Total</b>	<b><u>1,262,077</u></b>
<b>Payments</b>	
Gas	94
Insurance	12,546
Lease payments and payouts	247,356
Repairs & Maintenance	1,045
Superannuation	20,620
Telephone & Fax	629
Transport of Assets	627
Vehicle Running Costs	18,474
Wages & Salaries	19,252
Stamp Duty	1,028
Vehicle Registrations	224
Auctione Auctioneers Charges	38,792
Bank Charges	95
Legal Fees	2,580
Administrators Remuneration and Disbursements	334,597
Tax Payments	134,364
<b>Total</b>	<b><u>832,323</u></b>
<b>Balance of funds available 26 November 2010</b>	<b><u>\$ 429,754</u></b>

Email: [johnathon.busing@rsmi.com.au](mailto:johnathon.busing@rsmi.com.au)

## LIQUIDATORS' REMUNERATION REPORT

### Base Earthmoving Pty Ltd (In Liquidation) ACN 079 210 816 ("the Company")

#### 1. Statement of Remuneration Claim

- 1.1. This Remuneration Report is prepared in accordance with the Insolvency Practitioners Association of Australia Code of Professional Practice, for the purpose of providing creditors with meaningful disclosure on the work undertaken to allow creditors to make an informed decision on approving the Administrators' current and future remuneration resolutions.

#### Current Remuneration Claim

- 1.2. At the adjourned meeting of creditors held on 30 July 2010 creditors resolved to approve the Administrators remuneration of:-

1.2.1. \$123,003.30 for the period 18 May 2010 to 16 July 2010.

1.2.2. \$40,000.00 for the period 17 July 2010 to 30 July 2010.

1.2.3. \$27,000.00 for the period 31 July 2010 to the execution of the Deed of Company Arrangement.

- 1.3. No fee approval was sought for future Liquidators fees. Accordingly at the forthcoming meeting of creditors, the Liquidators will be seeking creditors' approval for the remuneration of the Liquidators, their partners and their staff for the period 20 August 2010 to 30 November 2010 in the amount of \$85,252.37 (plus GST).

- 1.4. Creditors will be asked to consider and, if deemed appropriate, resolve:-

*"That the remuneration of the Liquidators, their partners and their staff is hereby fixed on a time basis in accordance with the hourly rates set by RSM Bird Cameron Partners from time to time for the period 20 August 2010 to 30 November 2010 in the sum of \$85,252.57 plus GST, and such remuneration be approved and paid".*

- 1.5. A description of the work completed and a calculation of the remuneration claimed for the period 20 August 2010 to 30 November 2010 are attached as Annexure A and Annexure B respectively.

F:\B901316\Creditors\Creditor Reports\0007-Remuneration Report.doc

- 1.6. Detailed timesheets and supporting documentation are available for inspection at a mutually convenient time.

## **Future Remuneration of Liquidators**

- 1.7. At the forthcoming meeting, creditors will be asked to consider, and if deemed appropriate, resolve:

*"That the future remuneration of the Liquidators, their partners and their staff from 1 December 2010 be hereby fixed on a time basis in accordance with the hourly rates set by RSM Bird Cameron Partners from time to time subject to an overall limit for the time being of \$75,000 plus GST, beyond which the Liquidators may seek further approval, and that the Liquidators be authorised to make periodic payments on account of such accruing remuneration".*

- 1.8. A description of work which may be undertaken by the Liquidators and a calculation of their estimated remuneration claim for the time being, is attached as Annexure C.

## **2. Remuneration Methods**

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

### **Time based / hourly rates**

- 2.2. This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.

### **Fixed Fee**

- 2.3. The total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration. Sometimes a Practitioner will finalise an administration for a fixed fee.

### **Percentage**

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

### **Contingency**

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

### **Method chosen**

- 2.6. Given the nature of this administration we propose that our remuneration be calculated on a time basis in accordance with RSM Bird Cameron Partners' scale of fees and hourly rates for staff of various levels of skill and experience.
- 2.7. This is because calculation of remuneration based on a time basis takes into account all tasks performed by the Practitioners and their staff. This includes tasks which may not be represented if remuneration was calculated using another method. The method therefore results in greater

transparency and a more accurate reflection of the time necessarily incurred by the Practitioners and their staff.

### 3. Explanation of Hourly Rates

3.1. The rates for our remuneration calculation are set out in the following table together with a general guide showing the qualifications and experience of staff engaged in the administration and the role they take in the administration. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.

Classification	Rate (\$) (Excl. GST)	Experience
Partner/Appointee	525.00	The Partner/Appointee is a registered Liquidator and member of the ICAA and IPAA bringing specialist skills to the administration or insolvency task. For specific experience and other details of the appointee/s, please visit our website at <a href="http://www.rsmi.com.au">www.rsmi.com.au</a>
Principal	440.00	Generally, minimum of 12 years experience at least 2 years of which is to be at Manager level. University degree; member of the ICAA and IPAA with deep knowledge and lengthy experience in relevant insolvency legislation and issues.
Manager I	360.00	Generally, more than 7 years experience with at least 2 years as a Manager. University degree; member of the ICAA and IPAA; very strong knowledge of relevant insolvency legislation and issues.
Manager II	300.00	Generally, 5 – 7 years chartered accounting or insolvency management experience. University degree; member of the ICAA and IPAA; sound knowledge of relevant insolvency legislation and issues.
Supervisor	260.00	Generally, 4 – 6 years chartered accounting or insolvency management experience. University degree; member of the ICAA; completing IPAA Insolvency Education Program. Good knowledge of relevant insolvency legislation and issues.
Senior I	230.00	Generally, 2 – 4 years chartered accounting or insolvency management experience. University degree; completing the ICAA's CA program. Good knowledge of basic insolvency legislation and issues.
Senior II	175.00	Generally, 2 – 3 years chartered accounting or insolvency management experience. University degree, ICAA's CA program commenced.
Intermediate I	145.00	0 to 2 years experience. Has completed or substantially completed a degree in finance/accounting.

		Under supervision, takes direction from senior staff in completing administrative tasks.
Intermediate II	120.00	0 – 1 year experience. Undertaking a degree part-time in finance/accounting. Under supervision, takes direction from senior staff in completing administrative tasks.
Personal Assistant	180.00	Appropriate skills including machine usage.
Secretary	145.00	Appropriate skills including machine usage.
Junior	100.00	Completed schooling and plans to undertake further studies. Required to assist in administration and day to day field work under the supervision of more senior staff.

**Notes:**

1. *Remuneration is calculated on a time basis in accordance with the above rates.*
2. *The Firm maintains its time records in a computerised system.*
3. *Staff are classified in accordance with academic qualifications and insolvency experience.*

## 4. Disbursements

### 4.1. Disbursements are divided into three types: **A, B1, B2.**

**A** Disbursements are all externally provided professional services and are recovered at cost. An example of an A disbursement is legal fees.

**B1** Disbursements are externally provided non-professional costs such as travel, accommodation and search fees. B1 disbursements are recovered at cost

**B2** Disbursements are internally provided non-professional costs such as photocopying and document storage. B2 disbursements are charged at cost except for photocopying, printing and telephone calls which are charged at a rate which is intended to recoup both variable and fixed costs.

### 4.2. Particulars of disbursements, both current and estimated future, are set out in the attached Annexures, as follows:

4.2.1. Annexure A - Disbursements for the period 20 August 2010 to 30 November 2010;

4.2.2. Annexure C - Estimated disbursements for the period from 1 December 2010 onwards;

## 5. Information Sheet

### 5.1. For further information creditors are directed to review the Australian Securities and Investment Commission's information sheet "Approving fees: a guide for creditors" attached as Annexure D.

# RSM Bird Cameron Partners

Chartered Accountants

Should you have any queries please do not hesitate to contact Mr Johnathon Busing of my office or the undersigned.

Dated this 8<sup>th</sup> day of December 2010

Yours faithfully



GRÉG DUDLEY  
Joint & Several Administrator

Base Earthmoving Pty Ltd (In Liquidation)  
ACN: 079 210 816

Remuneration Report

Part 1: Calculation of Remuneration

Period From 20 August 2010 to 30 November 2010

Employee	Position	Average \$ / hour (ex GST)	Total actual hours	Total (\$)	Task Area							
					Assets (\$)	Creditors (\$)	Employees (\$)	Trade on (\$)	Investigation (\$)	Dividends (\$)	Administration (\$)	
Greg Dudley	Partner	525.00	49.4	25,935.00	12,915.00	1,102.50	2,992.50	1,155.00	6,615.00			1,155.00
Clare Hayman	Manager 1	360.00	66.5	23,940.00	13,284.00	5,616.00	396.00	720.00	180.00			3,744.00
Nicholas Kidziak	Senior 1	230.00	37.1	8,533.00	184.00		3,473.00	2,415.00	1,495.00		460.00	506.00
Prishtha Balakrishnan	Senior 2	160.00	3.0	480.00								480.00
Jerome Mohen	Intermediate 1	140.00	16.4	2,296.00	482.00	42.00	282.00	84.00	1,358.00			98.00
Johnathon Busing	Intermediate 1	140.00	129.8	18,172.00	4,382.00	1,106.00	3,094.00	2,660.00	1,974.00	42.00		4,914.00
Met Huang	Intermediate 2	120.00	0.5	826.00				42.00				784.00
Corey Turner	Secretary	145.00	5.2	754.00	14.50			101.50				60.00
Hayley Forshaw	Secretary	100.00	0.8	81.66	23.33							638.00
Michelle Mason	Secretary	180.00	23.2	4,174.71	502.71	108.00		1,656.00				58.33
<b>TOTAL (excluding GST)</b>		<b>252.36</b>	<b>337.8</b>	<b>85,252.37</b>	<b>31,767.54</b>	<b>7,974.50</b>	<b>10,207.50</b>	<b>8,833.80</b>	<b>11,622.00</b>	<b>502.00</b>		<b>14,346.33</b>
GST				\$8,525.24								
<b>TOTAL (including GST)</b>				<b>\$ 93,777.61</b>								

Disbursements

A - Externally provided professional services  
B1 - Advertising and Searches  
B2 - Faxes, Photocopying, Stationery and Printing

<b>TOTAL</b>	1,066.10
GST	563.23
<b>TOTAL (including GST)</b>	<b>1,629.33</b>
	162.93
<b>TOTAL (including GST)</b>	<b>\$1,792.26</b>
<b>GRAND TOTAL</b>	<b>\$93,940.54</b>

Base Earthmoving Pty Ltd (In Liquidation)  
ACN: 079 210 816

Remuneration Report

Part 2: Description of Work Completed

Period from 20 August 2010 to 30 November 2010

Task Area	General Description	Includes
Assets [\$30,906.54]	Plant and Equipment	Preparation of asset list Liaising with valuers, auctioneers and interested parties
	Debtors	Reviewing and assessing debtors ledgers Correspondence with debtors Liaising with debt collectors and solicitors
	Stock	Conducting stocktakes/reviews Reviewing stock values Liaising with purchasers
	Leased Assets	Reviewing leasing documents Liaising with owners / lessors Tasks associated with disclaiming leases Equity assessments
	Other Assets	All tasks associated with realising other assets
Creditors [\$3,480.50]	Creditor Reports	Preparing creditor reports, investigation, meeting and general reports
	Creditor Enquiries	Receive and follow up creditor enquiries via telephone / email Review and prepare correspondence to creditors via letter/fax/email Correspondence with committee of creditors meetings
	Secured Creditor Reports	Preparing reports to secured creditors Liaising with secured creditors via telephone / email Responding to secured creditor queries
	Meetings of Creditors	Preparation of notices, proxies and advertisements Forwarding notice of meeting to all known creditors Preparation for meeting including agenda, attendance register, list of creditors, advertisement, draft minutes Finalisation and lodgement of minutes with ASIC Stakeholders queries re meeting outcomes
	Proofs of Debts - Receipt	Receipting and filing POD's
Employees [\$8,799.50]	Employees Enquiries	Receive and reply to employee queries Preparation of letters to employees regarding entitlements and options
	Calculation of Entitlements	Review of company records to calculate employee entitlements Reconciliation of superannuation amounts Reviewing awards Liaising with solicitors regarding employee entitlements
	Employee Dividend	Correspondence with employees Correspondence with ATO regarding SGC proof of debt Calculation of the dividend rate, advertisement of the dividend Receipting and adjudication of POD's Payment of the dividend and PAYG to ATO
	Workers Compensation Claims	Review of insurance policies Liaising with claimant, insurer and solicitors re claims
Trade On [\$8,459.50]	Trade On Tasks	Attendance on site, liaising with management and employees Liaising with suppliers, determining terms of trade finalising purchase order register
	Processing Receipts	Preparation of receipt forms for input into internal computer system Liaising with accounts receivable regarding receipts
	Processing Payments	Preparation of payment forms for input into internal computer system Liaising with accounts payable regarding payments
Investigation [10,246.50]	Conducting Investigation	Collection / copying relevant company books and records Searches (property, charges, ASIC) Review of company records / financial statements Review of cashbook for voidable transactions Preparation of investigation file
	Litigation / Recoveries	Determination of potential actions and brief to solicitors Liaising with solicitors and defendants
	ASIC Reporting	Preparation of statutory investigation reports (eg 533) Liaising with ASIC
Dividend [\$460.00]	Processing Proofs of Debt	Correspondence to creditors calling for POD's Assessment and adjudication of POD's Advising claimant of outcome of adjudication (admitt/reject)
		Preparation of notices to creditors of intention to declare dividend

	Dividend Procedures	Advertisement of dividend Calculation of dividend Preparation of dividend file Correspondance to creditors with dividend payment
Administration [\$13,370]	Checklists / File Review	Initial and bi monthly reviews File review Checklist completion
	Appointment Documents	Court order / Directors minutes / Bank appointment docs Liaising with solicitors etc re indemnities / validity of appointment
	Directors / Officers	Correspondence and meetings with Directors including interviews Directors questionnaire
	ASIC Forms	Preparing and lodgement of ASIC forms including 524,505, 911 etc Correspondence with ASIC regarding statutory forms
	ATO & other statutory reporting	Notification of appointment and registration Preparation and lodgement of BAS returns Completing Group certificates Completing FBT returns/ payroll tax / stamp duty etc
	Bank Account Administration	Opening and closing administration bank accounts Bank account reconcilliations Bank correspondence
	Insurance	Notification to Willis and prior broker Work of insurance claims
	Books and Records / Storage	Dealing with records in storage Sending job files to and from storage

Estimated Future Remuneration of the Liquidators – For the Period from 1 December 2010 Onwards

Task Area	General Description	Includes
<b>Assets</b> Estimated No. of hours: 20 Estimated Costs: \$5,000	Debtors	Correspondence and subsequent communications Reviewing and assessing debtors ledgers Liaising with solicitors Recovery of debts outstanding
	<b>Creditors</b> Estimated No. of hours: 100 Estimated Cost: \$20,000	Creditor Enquiries
Creditor reports		Preparing general reports to creditors
Meeting of Creditors		In respect of committee of inspection and general body of creditors Preparation meeting notices, proxies and advertisements Forward notice of meeting to all known creditors Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting. Preparation and lodgement minutes of meetings with ASIC Respond to stakeholder queries and questions immediately following meeting
Dealing with Proofs of debt		Receipting and filing of POD's when received Corresponding with creditors regarding POD's when not filled in correctly
<b>Trade On</b> Estimated No. of hours: 10 Estimated Cost: \$2,500	Processing receipts and payments	Entering receipt and payments into accounting system
<b>Employees</b> Number of hours: 20 Estimated Cost: \$5,000	Employee Enquiry	Receive and reply to employee queries Preparation of letters to employees regarding entitlements and options
	Employee Dividends	Correspondence with employees Correspondence with ATO regarding SGC proof of debt Calculation of the dividend rate, advertisement of the dividend Receipting and adjudication of POD's Payment of the dividend and PAYG to ATO
<b>Dividend</b> Number of hours: 45 Estimated Cost: \$12,500	Processing Proofs of Debt	Correspondence to creditors calling for POD's Receipt and registration of POD's Assessment and adjudication of POD's Correspondence to claimant requesting further information Advising claimant of outcome of adjudication (admit/reject)
	Dividend Procedures	Preparation of notices to creditors of intention to declare dividend Advertisement of dividend Calculation of dividend Preparation of dividend distribution (cheques/letters) Preparation of dividend file Correspondence to creditors with dividend payment
<b>Investigation</b> Number of hours: 100 Estimated Cost: \$25,000	Litigation / Recoveries	Internal meetings to discuss status of litigation Preparing brief to solicitors Liaising with solicitors regarding recovery actions

Task Area	General Description	Includes
		Attending to negotiations Attending to settlement matters
	Conducting Investigation	Collection / Copying relevant company books and records Searches (property, charges, ASIC) ASIC correspondence books and records Reviews of company records / financial statements Review of cashbook for voidable transactions Preparation of investigations file
	ASIC Reporting	Preparation of statutory investigations reports (eg. 533) Liaising with ASIC
<b>Administration</b> Estimated No. of hours: 20 Estimated Cost: \$5,000	Document maintenance/file review/checklist	First month, then 6 monthly administration review Filing of documents File reviews Updating checklists
	Bank account administration	Preparing correspondence closing accounts Requesting bank statements Bank account reconciliations Correspondence with bank regarding specific transfers
	ASIC Form 524 and other forms	Preparing and lodging ASIC forms including 505, 524, 911 etc Correspondence with ASIC regarding statutory forms
	ATO & other statutory reporting	Preparing BAS' Completing payment summaries
	Finalisation	Notifying ATO of finalisation Cancelling ABN / GST / PAYG registration Completing checklists Finalising WIP
	Books and records / storage	Dealing with records in storage

#### Estimated Future Disbursements - For the period from 23 November 2010

Details of estimated disbursements are as follows:

- A** Legal Fees \$15,000 to \$30,000;
- B1** Advertising and searches \$2,500; and
- B2** Faxes, postage, stationery and printing \$2,500.

The above listed tasks and associated costs are estimates only. These estimates are based on our limited understanding of the Company's affairs. Actual tasks undertaken and associated costs will be dependent on the matters encountered in the Liquidation.



# ASIC

Australian Securities & Investments Commission

## INFORMATION SHEET 85

### Approving fees: a guide for creditors

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

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

#### Entitlement to fees and costs

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

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

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

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

For more on the tasks involved, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors* and INFO 74 *Voluntary administration: a guide for creditors*.

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

**Important note:** This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

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

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

## Who may approve fees

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

**Table 1: Who may approve fees**

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

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

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

<sup>3</sup> Unless an application is made for a fee review.

<sup>4</sup> If there is no creditors' committee or the committee fails to approve the fees.

<sup>5</sup> If insufficient creditors turn up to the meeting called by the liquidator to approve fees, the liquidator is entitled to be paid up to a maximum of \$5000, or more if specified in the Corporations Regulations 2001.

## Creditors' committee approval

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

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

To find out more about creditors' committees and how they are formed, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors*, INFO 74 *Voluntary administration: a guide for creditors* and INFO 41 *Insolvency: a glossary of terms*.

## Creditors' approval

Creditors approve fees by passing a resolution at a creditors' meeting. Unless creditors call for a poll, the resolution is passed if a simple majority of creditors present and voting, in person or by proxy,

indicate that they agree to the resolution. Unlike where acting as committee members, creditors may vote according to their individual interests.

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

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

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

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

## Calculation of fees

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

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

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

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

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

It is important to note that the hourly rates do not represent an hourly wage for the external administrator and their staff. The external administrator is running a business—an insolvency practice—and the hourly rates will be based on the cost of running the business, including overheads such as rent for business premises, utilities, wages and superannuation for staff who are not charged out at an hourly rate (such as personal assistants), information technology support, office equipment and supplies, insurances, taxes, and a profit.

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

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

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

## Report on proposed fees

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

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

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

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

## Deciding if fees are reasonable

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

You may find the following information from the external administrator useful in deciding if the fees claimed are reasonable:

- the method used to calculate fees
- the major tasks that have been performed, or are likely to be performed, for the fees
- the fees/estimated fees (as applicable) for each of the major tasks
- the size and complexity (or otherwise) of the external administration
- the amount of fees (if any) that have previously been approved
- if the fees are calculated, in whole or in part, on a time basis:
  - the period over which the work was, or is likely to be performed
  - if the fees are for work that has already been carried out, the time spent by each level of staff on each of the major tasks
  - if the fees are for work that is yet to be carried out, whether the fees are capped.

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

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

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

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

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

## Reimbursement of out-of-pocket costs

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

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

## Queries and complaints

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

ASIC Complaints  
PO Box 9149  
TRARALGON VIC 3844

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

## To find out more

For an explanation of terms used in this information sheet, see ASIC's information sheet INFO 41 *Insolvency: a glossary of terms*. For more on external administration, see ASIC's related information sheets at [www.asic.gov.au/insolvencyinfosheets](http://www.asic.gov.au/insolvencyinfosheets):

- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 75 *Voluntary administration: a guide for employees*
- INFO 45 *Liquidation: a guide for creditors*
- INFO 46 *Liquidation: a guide for employees*
- INFO 54 *Receivership: a guide for creditors*
- INFO 55 *Receivership: a guide for employees*
- INFO 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*

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