

# RSM Bird Cameron Partners

Chartered Accountants

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www.rsmi.com.au

Email: Nikhil.gohil@rsmi.com.au

3 September 2008

## **TO CREDITORS**

Dear Sir/Madam

**Diamond Administration Pty Ltd (Administrators Appointed)  
ACN 108 278 397 (“the Company”)  
As Trustee for Diamond Administration Unit Trust**

As previously advised, Mark Conlan and I were appointed Joint and Several Administrators of the Company on 7 August 2008 pursuant to Section 436A of the Corporations Act 2001.

For your information and assistance, I attach the following:-

1. Notice of Meeting to be held at the offices of RSM Bird Cameron Partners, 8 St. Georges Terrace, Perth WA 6000 on 11 September 2008 at 11:00AM.
2. Administrators' Report, including a report on the Company's business, property, affairs and financial circumstances. The report contains a statement setting out our opinion about each of the following matters and our reasons for those opinions:-
  - a. Whether it would be in the creditors' interests for the Company to execute a Deed of Company Arrangement.
  - b. Whether it would be in the creditors' interests for the Company to be wound up.
  - c. Whether it would be in the creditors' interests for the administration to end.
3. Informal Proof of Debt Form for voting purposes. Any Informal Proof of Debt Forms submitted for the purposes of the first meeting of creditors and accepted by the Chairperson of that meeting for voting purposes will be valid for this meeting.
4. Instrument of Proxy.

Should you have any questions in relation to this matter, please contact Nikhil Gohil of this office on (08) 9261 9508.

Yours faithfully



NEIL CRABB

Joint and Several Administrator

*Encl.*

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Major Offices in:  
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Adelaide and Canberra  
ABN 36 965 185 036

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independent member firm of RSM  
International, an affiliation of independent  
accounting and consulting firms.

FORM 529

CORPORATIONS ACT 2001

Subregulation 5.6.12(2)

NOTICE OF MEETING OF CREDITORS  
DIAMOND ADMINISTRATION PTY LTD  
(ADMINISTRATORS APPOINTED)

ACN 108 278 397

AS TRUSTEE FOR DIAMOND ADMINISTRATION UNIT TRUST

NOTICE is given that a meeting of the creditors of the company will be held at the offices of RSM Bird Cameron Partners, 8 St. Georges Terrace, Perth WA 6000 on 11<sup>th</sup> September 2008 at 11:00AM.

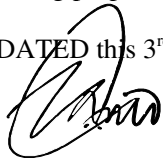
A G E N D A

1. To receive a Statement about the company's business, property, affairs and financial circumstances.
2. For creditors to resolve:
  - a. that the company execute a Deed of Company Arrangement; or
  - b. that the administration should end; or
  - c. that the company be wound up.
3. To fix the remuneration of the Administrator.
4. If the company is to execute a Deed of Company Arrangement to fix the remuneration of the Deed Administrator.
5. If the company is wound up, to consider appointing a Committee of Inspection.
6. If no Committee is appointed, to fix the remuneration of the Liquidator.
7. If no Committee is appointed, to consider the destruction of the books and records at the conclusion of the winding up.
8. Any other business that may be lawfully brought forward.

Proxies to be used at the meeting should be lodged at the office of the Administrator by 4.00pm on the day prior to the meeting. A creditor can only be represented by proxy or by an attorney pursuant to corporations Regulations 5.6.28 and 5.6.32 (inclusive) and if a body corporate by a representative appointed pursuant to Section 250D.

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 in accordance with the Corporations Regulations and that claim has been admitted for voting purposes wholly or in part by the voluntary administrator.

DATED this 3<sup>rd</sup> day of September 2008.



NEIL CRABB  
Joint and Several Administrator

# **RSM** Bird Cameron Partners

Chartered Accountants

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## **STATEMENT OF ADMINISTRATORS' OPINION**

**Corporations Act - Section 439A(4)  
Corporations Regulations - Regulation 5.3A.02**

**Diamond Industries Pty Ltd (Administrators Appointed)  
ACN 099 362 955  
("Industries")**

**Diamond Administration Pty Ltd (Administrators Appointed)  
ACN 108 278 397  
As Trustee for Diamond Administration Unit Trust  
("Administration")**

(together "**the Companies**" or "**the Group**")

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## **1. Introduction**

- 1.1. On 7 August 2008, Neil Cribb and Mark Conlan were appointed Joint and Several Voluntary Administrators of Diamond Industries Pty Ltd (“Industries”) and Diamond Administration Pty Ltd (“Administration”) pursuant to Section 436C of the Corporations Act (“the Act”).
- 1.2. This report is in respect of Industries and Administration. Where necessary they are collectively referred to in this report as “the Group” or “the Companies”.
- 1.3. The Companies effectively ceased to trade upon our appointment.
- 1.4. The first meetings of creditors were held concurrently on 19 August 2008. At these meetings, creditors ratified our appointment as the Joint and Several Voluntary Administrators.
- 1.5. As required by Section 439A(4)(a) of the Act, and to assist creditors in determining the future of the Companies, we have conducted an investigation into the Group’s business, property, affairs and financial circumstances. The outcome of our enquiries and opinions in accordance with Section 439A(4)(a) of the Act are contained in this report.

### **Statement of Independence**

- 1.6. In accordance with the Insolvency Practitioners Association of Australia – Statement of Best Practice, we declare that prior to 7 August 2008, neither Neil Cribb, Mark Conlan, RSM Bird Cameron Partners nor RSM Bird Cameron had provided professional services to the Group.
- 1.7. The first contact with the directors was at a meeting on 6 August 2008, together with the directors’ financial advisor. Between 6 August 2008 and our appointment, we liaised with the directors and the Group’s financier in relation to the Group’s financial position.
- 1.8. Accordingly, we are satisfied that we are not precluded by Section 448 of the Act from acting independently for the benefit of all creditors.

### **Second Meeting of Creditors**

- 1.9. The second meeting of creditors of the Companies will be held concurrently on 11 September 2008. Notice of the meeting is attached. The purpose of the meeting is for creditors to decide the future of each Company. At the meeting creditors may resolve, in respect of each Company that:
  - 1.9.1. The Company execute a Deed of Company Arrangement (“DOCA”); or
  - 1.9.2. The administration should end; or
  - 1.9.3. The Company should be wound up; or
  - 1.9.4. Pursuant to Section 439B(2) of the Act, creditors may adjourn the meetings for up to 60 days.

1.10. The balance of our report is set out under the following major headings.

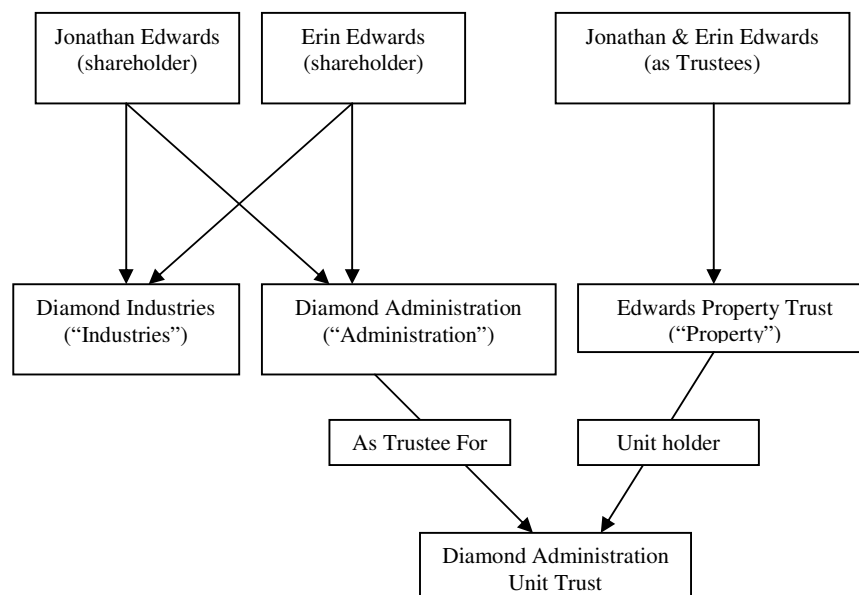
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#### **Annexure**

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| A | Diamond Industries Pty Ltd – Historical Statements of Financial Trading Performance  |
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| G | Diamond Industries Pty Ltd – Detailed description of work completed for the period 7 August 2008 to 29 August 2008                 |
| H | Diamond Administration Pty Ltd - Summary of Administrators fees by Employee for the period 7 August 2008 to 29 August 2008         |
| I | Diamond Administration Pty Ltd – Detailed description of work completed for the period 7 August 2008 to 29 August 2008             |
| J | Diamond Industries Pty Ltd – Administrators' Statement of Receipts and Payments for the period 7 August 2008 to 29 August 2008     |
| K | Diamond Administration Pty Ltd – Administrators' Statement of Receipts and Payments for the period 7 August 2008 to 29 August 2008 |

## 2. Corporate Structure

2.1. A diagrammatic representation of the Group and related entity is shown below:-



- 2.2. Industries is the principal trading entity of the Group, undertaking the various works contracts (Construction and Service), giving rise to trade debtors and trade creditors.
- 2.3. Administration is the administration entity of the Group, engaging the employees and incurring trade creditors associated with the business premises and leased assets. All plant and equipment and building fixtures and fittings are owned by Administration.
- 2.4. Industries paid Administration a service fee for usage of staff, business assets and premises. In the normal course of operations Industries would transfer sufficient monies to discharge the ongoing liabilities of Administration as and when required.
- 2.5. We are not the Administrators of Property. Property is a trust related to the directors, Mr and Mrs Edwards. Property owns two (2) properties, being a commercial premise located at 7 Parker Place, Bentley, WA ("the Bentley Property" or "the Premises"), from which the Group traded, and a residential unit located at 1/39 Bow River Crescent, Burswood, WA ("the Burswood Property"). The Bentley Property and the Burswood Property are secured to the Group's financier pursuant to fixed and floating mortgages and cross guarantees.
- 2.6. Given the relationship between Property, Industries and Administration, and the interwoven nature of the Group's financial affairs, reference is made to Property at various times in this report.

### **3. Executive Summary**

- 3.1. Our preliminary investigation into the Group's business, property, affairs and financial circumstances has identified the following:-
  - 3.1.1. The return to the ordinary unsecured creditors of Industries will range between no return and a maximum return of 12 cents in the dollar.
  - 3.1.2. The return to the ordinary unsecured creditors of Administration will range between no return and a maximum return of 24 cents in the dollar.
  - 3.1.3. A Deed of Company Arrangement ("DOCA") proposal to settle creditor claims has not been forthcoming from either the directors or a third party. Accordingly, we believe it is in the best interests of creditors if Industries and Administration are liquidated. Further comment is made below in Section 16 – Administrators' Opinion.
  - 3.1.4. Limited funds have been realised by the administrators from debtor collections and the disposal of assets. Accordingly, in the absence of a DOCA proposal to settle creditor claims, no dividend will be payable to creditors without the successful pursuit and recovery of the remaining debtors and / or claims against third parties.
  - 3.1.5. It is our opinion that the Companies were insolvent as at 1 June 2008, if not before. Further comment is made in Sections 11 and 12 of this report.
  - 3.1.6. Potential claims for insolvent trading totalling \$1,790,049 have been identified against the directors. Significant costs, being legal and liquidators' costs, estimated to be at least \$100,000 would be incurred to pursue and prosecute such actions. We hold concerns as to the capacity of the directors to satisfy any successful insolvent trading judgement and as such the commercial merits of pursuing any such claims. Details are outlined in Section 12 of this report.

### **4. Business and Affairs**

- 4.1. We make the following comments in regard to statutory information and nature of the businesses.

#### **Statutory Information**

- 4.2. Pursuant to Section 9 of the Act, an officer of a company is defined to include a director, secretary or a person participating in decision making that affects the whole, or a substantial part of the business of the corporation or a person in accordance with whose instructions or wishes the directors of the corporation are accustomed to act. Further comment is made in Section 13 - Duties of Officers.

#### *Directors*

- 4.3. Set out below in Table 1 is a summary of the directors of each of the Companies as at the date of our appointment and those acting in that capacity since inception.

| <b>Name</b>           |            | <b>Industries</b> | <b>Administration</b> |
|-----------------------|------------|-------------------|-----------------------|
| Jonathon Clay Edwards | Appt Date  | 23/01/2002        | 08/03/2004            |
|                       | Cease Date | Continuing        | Continuing            |
| Erin Rose Edwards     | Appt Date  |                   | 08/03/2004            |
|                       | Cease Date |                   | Continuing            |

**Table 1: Directors of the Companies since inception**

- 4.4. The information outlined in Table 1 above is company data maintained in the Australian Securities and Investments Commission (“ASIC”) database.
- 4.5. Our enquiries indicate that both Mr and Mrs Edwards acted as Executive Directors in that they were employed by Administration. Mr Edwards held the position of Managing Director and is understood to have extensive experience in the HVAC and refrigerated engineering and contracting industry.

*Secretary*

- 4.6. Set out below in Table 2 is a summary of the secretary of each of the Companies as at the date of our appointment and those acting in that capacity from inception.

| <b>Name</b>           |            | <b>Industries</b> | <b>Administration</b> |
|-----------------------|------------|-------------------|-----------------------|
| Jonathon Clay Edwards | Appt Date  | 23/01/2002        | 08/03/2004            |
|                       | Cease Date | Continuing        | Continuing            |

**Table 2: Secretary of the Companies since inception**

*Shareholders and Unitholders*

- 4.7. Industries and Administration each has two (2) ordinary shares issued.
- 4.8. Mr and Mrs Edwards each own one (1) share in both Industries and Administration.
- 4.9. Property is the sole unitholder of Diamond Administration Unit Trust and is therefore the ultimate beneficiary.

**Nature of Business**

- 4.10. The Group operated from leased premises at 7 Parker Place, Bentley, Western Australia as a supplier of HVAC, refrigeration engineering and contracting services, specialising in installations for commercial buildings, industrial applications, mine sites, marine and offshore oil and gas industries.
- 4.11. The services were predominantly provided to clients in Western Australia, with the majority of work being completed in the Perth metropolitan area. The Group did tender for work in various locations throughout Australia and had a serviced office based in Queensland.

- 4.12. The Group grew rapidly, such that at the date of our appointment the Group employed more than thirty (30) staff and had an annual turnover of approximately \$22 million in the year ended 20 June 2008.

#### *Industries*

- 4.13. Industries commenced trading in January 2002, with the director, Jon Edwards, as the sole employee.
- 4.14. Industries operated 2 divisions, namely Construction and Service.
- 4.15. At the date of our appointment, the company had six (6) Construction contracts at various stages of completion including:-
- 4.15.1. Lakeside Joondalup with Doric Constructions - works expected to continue until November 2008;
  - 4.15.2. CSIRO Waterford with Doric Constructions - in the final stages with practical completion imminent;
  - 4.15.3. ECU Mount Lawley with Cooper & Oxley - in the final stages with practical completion imminent; and
  - 4.15.4. Three (3) contracts at Brockman 4 in the Pilbara Region of Western Australia with the VDM Group – in the initial stages and site works had not commenced.
- 4.16. From the Service side of the business, Industries held sixteen (16) minor service and maintenance contracts with various parties that had various periods to run, ranging from rolling monthly contracts to a contract that had eleven (11) months until expiry.
- 4.17. Prior to our appointment, we were advised by the director that staff and contractors had been locked out of the various contract sites. This was confirmed upon our appointment.
- 4.18. We were also aware of the fact the company had no available funds in its bank account, such that it was unable to pay urgent trading liabilities, including a payment to Administration to satisfy the wages due to the employees for services rendered for the week ended 7 August 2008.
- 4.19. Accordingly, the company effectively ceased to trade upon our appointment.

#### *Administration*

- 4.20. Administration commenced operating in March 2004 as a service provider of labour and plant and equipment to Industries to enable Industries to service its contractual works.
- 4.21. On our appointment date, Administration had no available funds in its bank account, such that it was unable to pay urgent trading liabilities, including a payment to satisfy the wages due to the employees for services rendered for the week ended 7 August 2008.
- 4.22. Accordingly, the company effectively ceased to trade upon our appointment.

## **5. Sale of the Business as a Going Concern**

- 5.1. Immediately upon our appointment, we mobilised RSM Bird Cameron Partners Turnaround and Insolvency staff to secure the business assets and books and records of the Companies.
- 5.2. It was most apparent that in order to promote any return to creditors from the Companies' business and business assets, we should seek to facilitate a sale as a going concern.
- 5.3. Accordingly, in conjunction with Mr Edwards and other key staff, we set about determining the status of each contract and preparing an information memorandum for interested parties.
- 5.4. This process was undertaken on a urgent basis given the nature of the business and our inability to trade effectively given the Companies had no available funds, and with the support of staff and the larger contract principals.
- 5.5. Expressions of interest were sought with advertisements being placed in The West Australian newspaper on 12 August and 13 August 2008.
- 5.6. An information memorandum was prepared and made available to interested parties on Tuesday 12 August 2008.
- 5.7. Eighteen (18) parties received a copy of the information memorandum upon signing a confidentiality agreement, including a party that had made an offer to acquire the business as a going concern prior to our appointment but subject to numerous conditions including the undertaking of due diligence ("the Pre-appointment Offeror").
- 5.8. Whilst the majority of interested parties concluded a "desktop" review of the information provided, three (3) parties visited the Premises and conducted their due diligence on site on Tuesday 12 August 2008, including the Pre-appointment Offeror.
- 5.9. Despite the level of interest in different parts of the business, no offers were received to acquire the business as a going concern, either in part or as a whole.
- 5.10. Accordingly, we are now progressing to sell the plant and equipment assets by way of auction.

## **6. Reasons for Failure**

- 6.1. The directors have offered a number of reasons as to the failure of the Group including:-
  - 6.1.1. The incurring of trading losses in respect of a major contract in 2007;
  - 6.1.2. The inability to collect debtor payments within terms of trade;
  - 6.1.3. The inability to obtain sufficient working capital funding facilities, either by new or an increase in existing debt facilities or an injection of equity capital;
  - 6.1.4. The significant increases from 2007 onwards in respect of material and labour costs;

- 6.1.5. The lack of available quality project management personnel; and
- 6.1.6. The significant delays in the granting of new works contracts.
- 6.2. It is apparent from our preliminary investigations that the primary factor in the Group's financial demise is the failure by the directors to:
  - 6.2.1. Manage cash-flows so as to generate and / or collect sufficient monies from contract works to satisfy the current liabilities whilst rapidly expanding the operations of the Group;
  - 6.2.2. Respond appropriately and adequately to the warning signs of insolvency such as a declining working capital position, difficulties in gaining and retaining key staff and increasing days to pay creditors;
  - 6.2.3. Ensure adequate capital backing to support the business expansion strategies of the Group, the working capital needs of the growing business and to fund trading losses; and
  - 6.2.4. Properly manage operating fixed costs including those associated with the Premises.

## **7. Books and Records**

- 7.1. Pursuant to Section 286(1) of the Act a company is required to maintain sufficient books and records which:
  - 7.1.1. Correctly record and explain transactions and the financial position; and
  - 7.1.2. Enable true and fair financial statements to be prepared and audited.
- 7.2. The Group maintained a general job costing and accounting system utilising PRONTO software. This software, combined with the usage of Microsoft Excel, was utilised to generate internal management accounts. Formal and unaudited year end financial accounts were then produced by external accountants.
- 7.3. Our review of the Companies' books and records indicates that adequate books and records have been maintained.

## **8. Trading Performance**

- 8.1. A detailed Statement of Financial Performance for each of the Companies as per the unaudited accounts for the years ended 30 June 2004, 2005, 2006, 2007 and as per the Management Accounts for the year ended 30 June 2008 and the period 1 July 2008 to 7 August 2008 are attached as Annexures A and B.
- 8.2. Set out below in Table 3 is a summary of the reported trading performance of each of the Companies for the period 1 July 2003 to the date of our appointment.

|   | Year ended<br>30 June<br>2004<br>(Formal)<br>\$ | Year ended<br>30 June<br>2005<br>(Formal)<br>\$ | Year ended<br>30 June<br>2006<br>(Formal)<br>\$ | Year ended<br>30 June<br>2007<br>(Formal)<br>\$ | Year ended<br>30 June<br>2008<br>(Mgmt)<br>\$ | Period 1<br>July 2008 to<br>7 August<br>2008<br>(Mgmt)<br>\$ |
|---|---|---|---|---|---|--|
| Industries                                | 97,807  | 482,753   | 717,865   | 247,018   | (3,228,375)                                   | (181,771)  |
| Administration                            | 92,569  | 74,211  | 51,923  | (29,711)  | -   | -  |
| <b>Net Profit / (Loss)<br/>before Tax</b> | <b>\$190,376</b>                                | <b>\$556,964</b>                                | <b>\$769,788</b>                                | <b>\$217,307</b>                                | <b>\$(3,228,375)</b>                          | <b>\$(181,771)</b>   |

**Table 3: Summary of Historical Trading Performance**

- 8.3. The accounts reflect that the Group was profitable until the year ended 30 June 2008 when a trading loss of \$3.228 million for Industries was recorded.
- 8.4. Our preliminary investigations reveal that the loss primarily results from a write-off of work in progress reserve included in the debtor balance of \$3.236 million. It appears that Industries had overvalued the value of its recorded work in progress, thus inflating its trading position.
- 8.5. Our preliminary findings indicate that the work in progress written off is unlikely to only relate to the year ended 30 June 2008. Enquiries suggest that approximately one third (1/3) of the \$3.236 million write-off, being \$1.079 million, may relate to the year ended 30 June 2007.
- 8.6. Set out below as Table 4 is a Revised Statement of Trading Performance for Industries for the years ended 30 June 2007 and 30 June 2008 reflecting the anomalies noted above in paragraphs 8.4 and 8.5. The adjustments result in an estimated loss of \$831,982 in the year ended 30 June 2007 and an estimated loss of \$2,149,375 in the year ended 30 June 2008.

|   | Year ended<br>30 June<br>2007<br>\$ | Year ended<br>30 June<br>2008<br>\$ |
|---|-------------------------------------|-------------------------------------|
| Profit / (Loss) per financial statements                          | 247,018                             | (3,228,375)                         |
| Less:   |                                     |                                     |
| Adjustment to reflect overstatement of work in progress           | (1,079,000)                         |                                     |
| Adjustment to reflect overstatement of work in progress write-off |                                     | 1,079,000                           |
| <b>Adjusted Profit (Loss)</b>                                     | <b>(\$831,982)</b>                  | <b>(\$2,149,375)</b>                |

**Table 4: Revised Statement of Trading Performance for Industries**

- 8.7. Accordingly, the profit for Industries for the year ended 30 June 2007 may have been overstated by approximately \$1.079 million, and the loss for Industries for the year ended 30 June 2008 may have been overstated by approximately \$1.079 million.
- 8.8. On this basis, trading losses totalling \$3,163,128 have been incurred since July 2006.

## 9. Report as to Affairs

- 9.1. A Report as to Affair (“RATA”) is a statutory form to be completed by directors, detailing the assets and liabilities of a company as at the date of our appointment.
- 9.2. Notices were issued to the relevant directors, requesting that they submit a RATA for Industries and Administration as at 7 August 2008.
- 9.3. RATA’s were received from Mr Edwards on 22 August 2008 on behalf of the directors in respect of both Industries and Administration.
- 9.4. Our comments and analysis in respect to each of the Company’s RATAs are as follows:

### Industries

- 9.5. Set out below in Table 5 is a summary of the RATA and our own estimate of Industries financial position as at 7 August 2007.

|  | Paragraph Reference | RATA               |                            | Pronto                          | Administrator’s ERV at 7-Aug-08 |
|--|---------------------|--------------------|----------------------------|---------------------------------|---------------------------------|
|  |                     | Book value         | Estimated Realisable Value | Management Accounts at 7-Aug-08 |                                 |
| <b><u>Assets not specifically charged</u></b>                  |                     | \$                 | \$                         | \$                              | \$                              |
| Sundry debtors   | 9.7 – 9.18          | 1,878,540          | 1,574,453                  | 1,874,713                       | unknown                         |
| Cash at bank and on hand                                       |                     | -                  | -                          | 402                             | 0                               |
| GST clearing   | 9.19 – 9.20         | -                  | -                          | 119,453                         | unknown                         |
| Work in Progress   | 9.21 – 9.23         | 350,015            | -                          | -                               | unknown                         |
| <b>Sub Total</b>   |                     | <b>2,228,555</b>   | <b>1,574,453</b>           | <b>1,994,568</b>                | <b>unknown</b>                  |
| <b><u>Assets subject to specific charges</u></b>               |                     |                    |                            |                                 |                                 |
| Other assets   | 9.29 – 9.30         | -                  | -                          | -                               | 0                               |
| <b>Total Assets</b>  |                     | <b>2,228,555</b>   | <b>1,574,453</b>           | <b>1,994,568</b>                | <b>unknown</b>                  |
| Less: Owing to ANZ - overdraft / bank guarantee                | 9.34 – 9.37         | (2,250,000)        | (2,258,797)                | (2,131,085)                     | (2,258,797)                     |
| <b>Assets available for non-priority creditors</b>             |                     | <b>(21,445)</b>    | <b>(684,344)</b>           | <b>(136,517)</b>                | <b>Unknown</b>                  |
| Add: Inter-company loan (Diamond Administration)               | 9.24 – 9.28         | -                  | -                          | 4,943,534                       | 0                               |
| Less: Inter-company loan (Edwards Property Trust)              |                     | -                  | -                          | (4,200,086)                     | 0                               |
| Add: Inter-company loan (Industries - Hong Kong)               |                     | -                  | -                          | 1,209                           | 0                               |
| Less: Unsecured creditors                                      | 9.44 – 9.46         | (2,871,500)        | (2,871,500)                | (2,918,146)                     | (4,671,142)                     |
| Add: Contingent assets   | 9.31 – 9.33         | 800,000            | 300,000                    | -                               | Unknown                         |
| Less: Contingent liabilities                                   | 9.47 – 9.48         | (4,941,866)        | (750,000)                  | -                               | -                               |
| <b>Estimated Deficiency Subject to costs of administration</b> |                     | <b>(7,034,811)</b> | <b>(4,005,894)</b>         | <b>(2,310,006)</b>              | <b>unknown</b>                  |

Table 5: RATA and Estimated Financial Position as at 7 August 2008

- 9.6. We now address each of the asset and liabilities classifications for Industries.

*Debtors*

9.7. Set out below in Table 6 are the details of sundry debtors as outlined in the RATA.

|                                | <b>Paragraph Reference</b> | <b>RATA Estimated Realisable Value \$</b> | <b>Administrators' Estimated Realisable Value \$</b> |
|--------------------------------|----------------------------|---|--|
| Trade Debtors - Construction   | 9.8 – 9.13                 | 1,429,330                                 | unknown  |
| Trade Debtors - Service        | 9.14 – 9.15                | 90,163                                    | unknown  |
| Cash Retentions - Construction | 9.16 – 9.18                | 52,197                                    | unknown  |
| Cash retentions - Service      | 9.16 – 9.18                | 2,763                                     | unknown  |
| <b>Total</b>                   |                            | <b>\$1,574,453</b>                        | <b>unknown</b>                                       |

**Table 6: Summary of Debtors as at 7 August 2008**

- 9.8. Since our appointment, we have been in contact with the major Construction debtors detailed in the company records, in particular those parties with whom current contracts were held.
- 9.9. The largest construction debtor was Doric Constructions (“Doric”), with whom Industries held two contracts in respect of works at Lakeside Joondalup and CSIRO Waterford. The outstanding invoiced value of these debts totalled \$821,491, equating to approximately 57% of the Construction trade debtors and including disputed amounts.
- 9.10. We met with representatives of Doric on Friday 15 August 2008, together with our legal representative. Prior to our meeting, Doric had engaged an independent quantity surveyor to assess the level of work completed at the Lakeside Joondalup site and provided us with an assessment that indicated Industries had significantly over-claimed work completed by approximately \$1.2 million.
- 9.11. With the support of a legal opinion as to the commercial merits and aspects of the respective claims, we negotiated a commercial settlement with Doric whereby pay \$195,000. These funds have been received.
- 9.12. The majority of the remaining Construction debts have been disputed, where either the debtor has indicated the debts are overstated or that future work is required to complete the contractual obligations and the cost of such work will need to be determined prior to any monies being paid to Industries.
- 9.13. Accordingly, whilst we consider there will be recoveries in respect of these debts, the timing or amount of likely recoveries is unknown.
- 9.14. In respect to the Service debtors, we have to date recovered the sum of \$54,005.
- 9.15. We expect that the majority of the service debtors will be collected as most debts are current and for specific works completed. It is possible that a portion of the remaining debts will be disputed where the debts relates to maintenance contracts for which Industries is unable to complete its contractual obligations.

- 9.16. In respect of the cash retentions, an amount of \$19,019 relates to warranty periods that have expired and therefore should be collected.
- 9.17. The balance of the cash retentions, totalling \$35,941, are subject to the expiry of twelve (12) month warranty periods that expire at various times in the next year. The collectability of these amounts will depend on the level, if any, of warranty work required on the individual projects.
- 9.18. Accordingly, we are unable to estimate the total amount of the balance of cash retentions that will be recoverable at this time.

*GST Receivable*

- 9.19. The records indicate a GST refund of \$119,453 may be due.
- 9.20. Subject to set-off of any debt owed to the Australia Taxation Office this asset may be realisable.

*Work in Progress*

- 9.21. During our assessment of the Service contracts, we determined that work had been completed or substantially completed in respect of three (3) assignments.
- 9.22. Invoices have now been raised and issued in respect of these assignments for the total value of \$72,750, as detailed below:
  - 9.22.1. Department of Health for \$30,173;
  - 9.22.2. Citigate Perth Pty Ltd for \$26,279; and
  - 9.22.3. P & O Maritime Services for \$16,298.
- 9.23. The Department of Health is disputing a significant portion of the account, whilst we expect full payment in respect of the remaining two (2) invoices.

*Inter-company loans*

- 9.24. Only preliminary investigations have been undertaken into the inter-company loans between Industries, Administration and Property which comprise numerous transactions and cash transfers. The transactions also include journal entries to evidence the charging of administration costs by Administration to Industries. For the year ended 30 June 2008 this amounted to \$3.89 million.
- 9.25. The RATA did not refer to any inter-company loans as an asset or liability.
- 9.26. The management accounts set-off the various inter-company loan accounts such that the accounts record a net asset of \$743,448, being the amount owed by Administration less the amount owed to Property. For the sake of clarity we have detailed these loans separately in Table 5.
- 9.27. Administration is shown as owing Industries \$4.943 million. Given the financial position of Administration no recovery is expected.
- 9.28. Property is recorded as being owed \$4.2 million by Industries. Further investigation will be required to determine if Property is a creditor of Industries.

### *Other Assets*

- 9.29. It is possible that intangible assets such as domain names and the trading name may have some value, notwithstanding these assets were not disclosed in the director's RATA. However, for the purposes of this report no value has been ascribed to those assets.
- 9.30. Limited stock, mainly consisting of partially used stock from completed works, was collected from the Bentley Property by our auctioneers. Given the small value attributed to the stock and the costs associated with collecting and realising, for the purposes of this report no value has been ascribed to this asset.

### *Contingent Assets*

- 9.31. This potential asset relates to a potential legal claim against Decmil Australia in respect of contract works carried out between March 2007 and November 2007.
- 9.32. The director has indicated verbally that this matter has been arbitrated and lawyers would have been engaged to aggressively pursue this claim if Industries financial position had allowed.
- 9.33. We have made no assessment of the merits of this potential claim, and as are unable to comment on the potential for any recovery, other than to note that the parties have been in dispute for a significant period of time. The matter will be considered further by any future liquidator.

### *Secured Creditor*

- 9.34. The ANZ Bank holds a first ranking fixed and floating charge over Industries assets to secure its obligations as principal borrower in respect of facilities totalling \$2,258,797.
- 9.35. Industries has a contingent liability to the secured creditor totalling \$3,865,945 and comprising:-
- 9.35.1. \$3,865,000 pursuant to an unlimited Corporate Guarantee of Indemnity, whereby Industries secured the borrowings of Property; and
- 9.35.2. \$945 as guarantor for the overdraft facility of Administration.
- 9.36. Set out below in Table 7 is a summary of the secured creditor claim against Industries as at 7 August 2008.

|                      | <b>Paragraph Reference</b> | <b>\$</b>                      |
|----------------------|----------------------------|--------------------------------|
| Overdraft            |                            | 2,142,197                      |
| Indemnity Guarantee  |                            | 116,600                        |
|                      | 9.34                       | <hr/> 2,258,797                |
| Contingent Liability | 9.35                       | 3,865,945                      |
| <b>Total</b>         |                            | <hr/> <b>\$6,124,742</b> <hr/> |

**Table 7: Summary of Secured Creditor Claims as at 7 August 2008**

9.37. We believe the secured creditor may be paid in full from the realisation of real property securities provided by Property and the personal residence of the director.

*Employee Entitlements*

9.38. Employee entitlements are afforded a priority pursuant to Section 556 of the Act and include entitlements for wages, superannuation, annual leave and long service leave.

9.39. As noted at paragraph 2.3, Administration is understood to be the sole employer of the employees in the Group and as such the director has not disclosed any employee entitlements.

9.40. We are aware of one former employee who claims to be an employee of Industries. This employee has provided an employment contract in the name of Industries.

9.41. The director has been contacted in respect of this employee and maintains that all employees were engaged via Administration.

9.42. Our preliminary investigations indicate that all employees were paid by Administration.

9.43. Further investigations will be undertaken to determine where employee liabilities lay, however for the purposes of this report we accept the veracity of the Group’s records that show employee entitlements as a liability of Administration.

*Unsecured Creditors*

9.44. Set out below in Table 8 is a summary of the unsecured creditors disclosed in the RATA.

|                               | <b>Paragraph Reference</b> | <b>RATA Estimated Value</b><br>\$ | <b>Administrators’ Estimated Value</b><br>\$ |
|-------------------------------|----------------------------|-----------------------------------|--|
| Trade Creditors / Others      |                            | 2,871,550                         | 3,596,369                                    |
| AP Surety                     | 9.46                       | 750,000                           | 1,074,773                                    |
| Inter-company loan - Property |                            | nil                               | unknown                                      |
| <b>Total</b>                  |                            | <b>\$3,621,550</b>                | <b>\$4,671,142</b>                           |

**Table 8: Summary of Unsecured Creditors as at 7 August 2008**

9.45. As noted above, we believe unsecured creditor claims may total \$4,671,142.

9.46. The debt to AP Surety relates to the value of insurance bonds provided by AP Surety in respect of various contract works. The RATA refers to an amount of \$750,000 as a contingent liability. We have included the amount of \$1,074,773 in the value of unsecured creditors, given we are aware that a number of surety bonds have already been called upon.

*Contingent Liabilities*

9.47. Contingent liabilities of \$3,865,945 exist with the ANZ Bank as noted at paragraph 9.35.

9.48. Our preliminary investigations indicate that these contingent liabilities are unlikely to eventuate as it is our understanding that the value of the properties securing these debts exceeds the value of the contingent debt.

**Administration**

9.49. Set out below in Table 9 is a summary of the RATA and our own estimate of Administration's financial position as at 7 August 2008.

|  | Paragraph Reference | RATA               |                            | Pronto                          | Administrators' ERV at 7-Aug-08 |
|--|---------------------|--------------------|----------------------------|---------------------------------|---------------------------------|
|  |                     | Book value         | Estimated Realisable Value | Management Accounts at 7-Aug-08 |                                 |
|  |                     | \$                 | \$                         | \$                              | \$                              |
| <b><u>Assets not specifically charged</u></b>                              |                     |                    |                            |                                 |                                 |
| Sundry debtors   |                     | -                  | -                          | 17,815                          | 0                               |
| Cash on hand   |                     | -                  | -                          | 1                               | 0                               |
| Plant and equipment  | 9.51 – 9.56         | 399,196            | 232,000                    | 399,197                         | 74,765                          |
| Other assets (Leasehold improvements)                                      | 9.51 – 9.56         | 1,148,947          | -                          | 1,029,544                       | 79,245                          |
| <b>Sub Total</b>   |                     | <b>1,548,143</b>   | <b>232,000</b>             | <b>1,446,557</b>                | <b>154,010</b>                  |
| <b><u>Assets subject to specific charges</u></b>                           |                     |                    |                            |                                 |                                 |
| Motor vehicles and other assets  | 9.57 – 9.59         | 238,996            | 140,645                    | 213,833                         | 495,800                         |
| Less: Amount owing to specific charged creditors                           |                     | (139,938)          | (139,938)                  | (139,938)                       | (804,725)                       |
| <b>Total Assets</b>  |                     | <b>1,647,201</b>   | <b>232,707</b>             | <b>1,520,452</b>                | <b>(154,915)</b>                |
| Less: Amounts owing for employee entitlements                              | 9.63 – 9.67         | (439,968)          | (439,968)                  | (131,171)                       | (472,757)                       |
| Less: Amounts owing to debenture holder - overdraft                        | 9.60 – 9.62         | (945)              | (945)                      | (40,691)                        | (945)                           |
| <b>Assets available for non-priority creditors</b>                         |                     | <b>1,206,288</b>   | <b>(208,206)</b>           | <b>1,348,590</b>                | <b>(628,617)</b>                |
| Add: Inter-company loan (Edwards Property Trust)                           | 9.68 – 9.72         | -                  | -                          | 3,894,537                       | 0                               |
| Less: Inter-company loan (Diamond Industries)                              |                     | -                  | -                          | (4,943,535)                     | 0                               |
| Less: Unsecured creditors  | 9.73                | (97,401)           | (97,401)                   | (235,244)                       | (137,170)                       |
| Add: Contingent assets   |                     | -                  | -                          | -                               | 0                               |
| Less: Contingent liabilities   | 9.74 – 9.77         | (4,929,773)        | (750,000)                  | -                               | (1,074,773)                     |
| <b>Estimated Surplus / (Deficiency) Subject to costs of Administration</b> |                     | <b>(3,820,886)</b> | <b>(1,055,607)</b>         | <b>64,348</b>                   | <b>(1,840,560)</b>              |

**Table 9: RATA and Estimated Financial Position as at 7 August 2008**

9.50. We now address each of the asset and liabilities classifications for Administration.

*Plant & Equipment / Leasehold Improvements*

- 9.51. Upon our appointment we obtained valuations of the assets located at the Bentley Property including all leased / hire purchase assets (motor vehicles), items classified as leasehold improvements and other assets owned by Administration.
- 9.52. The estimated value of those assets identified at the Bentley Property was split as follows:
- 9.52.1. \$495,800 – leased assets;
- 9.52.2. \$79,245 – leasehold improvements; and
- 9.52.3. \$74,765 – all other plant and equipment.
- 9.53. Realisation of those assets will be subject to realisation costs including auctioneers and valuers.
- 9.54. The records show a substantial investment in leasehold improvements of \$1.03 million. These improvements relate primarily to the fit-out of the Bentley Property owned by Property. The vast majority of this investment is attached to and forms part of the building. Accordingly, only assets with a value of \$79,245 are moveable and realisable by Administration. These assets will remain in the Bentley Property to facilitate a sale of those premises for the benefit of the secured creditor.
- 9.55. We have and continue to liaise with the secured creditor regarding the sale and the realisation of the moveable leasehold improvements for the benefit of Administration.
- 9.56. Other than the leasehold improvements, we have arranged for the remaining plant and equipment to be removed from the Bentley Property. Those assets have either been returned to the lessor, or are being held by our valuer pending an auction which is anticipated to be held some time in October 2008.

*Motor Vehicles & Other Assets*

- 9.57. There were 27 motor vehicles and other assets of a minor electrical nature noted as being owned or controlled by Administration. The motor vehicles included both operating and finance leased vehicles.
- 9.58. An assessment was undertaken to obtain pay out figures for the motor vehicles in order to identify whether any of them held equity in the leases. As a result of the terms in the head leases, any equity in some vehicles was more than offset by the deficiency in the others. A summary of the position is detailed below at Table 10:

| <b>Lessor</b>         | <b>Value</b>   | <b>Payout</b>    | <b>Net surplus / (deficiency)</b> |
|-----------------------|----------------|------------------|-----------------------------------|
|                       | <b>\$</b>      | <b>\$</b>        | <b>\$</b>                         |
| Macquarie Leasing     | 57,500         | (74,38.)         | (16,882)                          |
| Suncorp Metway        | 28,300         | (49,156)         | (20,856)                          |
| Esanda                | 33,000         | (24,023)         | 8,976                             |
| Esanda Fleet Partners | 377,000        | (657,162)        | (280,162)                         |
| <b>Total</b>          | <b>495,800</b> | <b>(804,725)</b> | <b>(308,925)</b>                  |

**Table 10: Leased asset assessment as at 7 August 2008**

9.59. Therefore, the only possible recovery from leased assets appears to be a potential recovery of \$8,976 in equity that may be available after sale of the vehicle by Esanda.

*Secured Creditors*

9.60. The ANZ Bank holds a charge over Administration assets to secure its obligations as principal borrower in respect of facilities totalling \$945.

9.61. As with Industries and noted above at paragraph 9.35, Administration has a contingent liability pursuant to an unlimited Corporate Guarantee of Indemnity in respect of the borrowings of Property totalling \$3,865,000 and of Industries totalling \$2,258,797.

9.62. Set out below in Table 11 is a summary of the secured creditor claims against Administration as at 7 August 2008.

|                                   | \$                        |
|-----------------------------------|---------------------------|
| ANZ - overdraft                   | 945                       |
| Contingent Liability - Industries | 2,258,797                 |
| Contingent Liability - Property   | 3,865,000                 |
| <b>Total</b>                      | <b><u>\$6,124,742</u></b> |

**Table 11: Summary of Secured Creditor Claims as at 7 August 2008**

*Employee Entitlements*

9.63. Employee entitlements are afforded a priority pursuant to Section 556 of the Act and include entitlements for wages, superannuation, annual leave and long service leave.

9.64. As disclosed at paragraph 2.3, Administration was the employer entity of the Group and as such the director has disclosed employee entitlements totalling \$439,968.

9.65. Set out in Table 12 below is a summary of employee entitlements detailed in the RATA and our current estimate of possible claims.

|                    | RATA<br>\$              | Administrators'<br>Estimate<br>\$ |
|--------------------|-------------------------|-----------------------------------|
| Retrenchment       | 172,232                 | 178,802                           |
| Wages              | 78,840                  | 81,359                            |
| Annual Leave       | 73,410                  | 88,885                            |
| Superannuation     | 49,662                  | 55,386                            |
| Bonuses            | 62,500                  | 65,000                            |
| Petty cash claims  | 2,871                   | 2,871                             |
| Long Service Leave | 453                     | 453                               |
| <b>Total</b>       | <b><u>\$439,968</u></b> | <b><u>\$472,756</u></b>           |

**Table 12: Summary of Employee Entitlements as at 7 August 2008**

9.66. Our estimate of employee entitlements has been derived from a review of the company's records and notification of claims. We envisage that should Administration be liquidated, employee claims would be satisfied in the first instance by claims being made under General Employee Entitlements & Redundancy Scheme ("GEERS").

- 9.67. Under GEERS, which is funded by the Commonwealth Government, employees are able to make a claim for their outstanding entitlements once a company is in liquidation. Where the claims are accepted, GEERS will, through the liquidator, pay the relevant employee claims and assume priority right to claim for the debt in the liquidation.

*Inter-company loans*

- 9.68. Only preliminary investigations have been undertaken into the inter-company loans between Industries, Administration and Property which comprise numerous transactions and cash transfers. The transactions also include journal entries to evidence the charging of administration costs by Administration to Industries. For the year ended 30 June 2008 this amounted to \$3.89 million.
- 9.69. The RATA did not refer to any inter-company loans as an asset or liability.
- 9.70. The management accounts set-off the various inter-company loan accounts such that the accounts record a net liability of \$1,048,997, being the amount owed to Industries less the amount owed by Property. For the sake of clarity we have detailed these loans separately in Table 9.
- 9.71. Property is shown as owing Administration \$3.895 million. Given the possible financial position of Property, no recovery is expected.
- 9.72. Industries is recorded as being owed \$4.943 million by Administration. Further investigation will be required to determine if Industries is a creditor of Administration.

*Unsecured Creditors*

- 9.73. Set out below as Table 13 is a summary of unsecured creditor claims as detailed in the RATA and our current estimate of possible claims.

|                            | <b>RATA<br/>Book Value<br/>\$</b> | <b>Administrators'<br/>Estimated<br/>Realisable Value<br/>\$</b> |
|----------------------------|-----------------------------------|--|
| Trade Creditors            | 97,401                            | 97,923   |
| Australian Taxation Office | -                                 | 39,247   |
| <b>Total</b>               | <b>\$97,401</b>                   | <b>\$137,170</b>   |

**Table 13: Summary of unsecured creditors as at 7 August 2008**

*Contingent Liabilities*

- 9.74. Contingent liabilities of \$6,123,797 exist with the ANZ Bank as noted at 9.61.
- 9.75. Our preliminary investigations reveal that the contingent liability in respect of Property, totalling \$3,865,000, is unlikely to eventuate, as it is our understanding that the value of the properties securing these debts exceeds the value of the contingent debt.
- 9.76. It is possible that a portion of the contingent liability in respect of Industries, totalling \$2,258,797, may crystallise, however we are unable to determine a definitive position at this time.

- 9.77. The liability of \$1,074,773, with AP Surety, as detailed at paragraph 9.46 has been guaranteed by Administration. This debt is likely to crystallise as a number of the surety bonds have already been called upon.

## **10. Voidable Transactions**

- 10.1. In accordance with Regulation 5.3A.02 of the Act, an Administrator is required to specify in this report whether there are any transactions that appear, at first instance, to be voidable and thereby result in the recovery by a liquidator, of property and other benefits. Such transactions are not recoverable by an Administrator or an Administrator of a Deed of Company Arrangement but can only be pursued by a Liquidator upon the winding up of a company.
- 10.2. An Administrator is also required to form a view as to whether and from what point in time the directors allowed a company to trade whilst insolvent.
- 10.3. In determining whether there are possible voidable transactions available for recovery by a future Liquidator and/or claims arising from insolvent trading, consideration has been given to the following provisions of the Act:-
- 10.3.1. Unfair preferences (Section 588FA) – these are transactions between the company and the creditor resulting in the creditor receiving more than the creditor would receive if the transaction were set aside and the creditor claimed for this amount in a liquidation. Any such voidable transactions must arise during the relation back period, being six (6) months prior to the commencement of the Voluntary Administration. For the purposes of the Companies, the relation back period commences on 7 February 2008;
- 10.3.2. Uncommercial transactions (Section 588FB) – these are transactions entered into that a “reasonable person” would not have entered into taking into account the benefit to the company, the detriment to the company and the benefit to the other parties involved in the transaction. It is not necessary that a creditor be a party to a transaction. Such transactions are only voidable where the company was insolvent at the time of the transaction;
- 10.3.3. Insolvent transactions (Section 588FC) – these transactions are unfair preferences or uncommercial transactions (refer above) entered into when the company was insolvent or became insolvent as a result of entering into the transaction. Only unfair preferences, which have occurred within six (6) months of the commencement of the Voluntary Administration and uncommercial transactions, which have occurred within two (2) years of the commencement of the Voluntary Administration, can be recovered;
- 10.3.4. Unfair Loans to a Company (Section 588FD) – representing loans made to the company where interest or other charges on the loan were extortionate. These transactions can be recovered regardless of when they were entered into;
- 10.3.5. Unreasonable Director-Related Transactions (Section 588FDA) – representing a transaction of a company including a payment by the company or a conveyance, transfer or other disposition by the company of property of the company to a director of the company or a close associate of a director of the company and where it may be expected that a reasonable person in the company’s circumstances would not have entered into the transaction. This provision does not require the transaction to be an insolvent transaction and

may be voidable pursuant to Section 588FE(6A) if the transaction was entered into during the four (4) years ending on the relation back day;

- 10.3.6. Related Party transactions (Section 588FE (4)) – representing insolvent transactions (that is unfair preferences or uncommercial transactions) with a related party within four (4) years prior to the commencement of the Voluntary Administration. For this purpose a related party would include a party related to a director or deemed director; and
- 10.3.7. Transactions entered into for the purposes of defeating creditors (Section 588FE(5)) – represented by insolvent transactions (unfair preferences or uncommercial transactions) entered into for the purpose of defeating, delaying or interfering with the rights of creditors which were entered into within a period of ten (10) years prior to the commencement of the Voluntary Administration.

### Unfair Preferences

- 10.4. We have conducted a review of the Group’s available books and records, including bank statements, cheque books and creditor invoices, for the six (6) months prior to 7 August 2008 in an attempt to identify any payments to creditors which may be recoverable by a Liquidator as an unfair preference.
- 10.5. Set out below in Table 14 is a summary of payments by each of the Company’s which may be recoverable by a future liquidator:

|                | \$             |
|----------------|----------------|
| Industries     | 47,500         |
| Administration | 447,317        |
| <b>Total</b>   | <b>494,817</b> |

**Table 14: Summary of Possible Unfair Preference Claims**

- 10.6. The \$447,317 identified as being a potential claim in Administration is against the Australian Taxation Office (“ATO”) and represents the numerous payments to the ATO in the relation back period.
- 10.7. Should the Companies be liquidated, further investigations will be made into possible unfair preferences and information gathered to determine if commercially recoverable claims actually exist.
- 10.8. A Liquidator cannot recover pursuant to Section 588FG of the Act funds paid to a creditor where it is established the creditor:
  - 10.8.1. Received the payment in good faith; and
  - 10.8.2. Had no reasonable ground for suspecting the company was insolvent at the time of the payment.

### Uncommercial and Related Party Transactions

- 10.9. Our preliminary investigations have identified a small number of transactions which may be of an uncommercial nature, primarily with related parties.

- 10.10. It is our preliminary view that these transactions may be Unreasonable Director-Related Transactions and include payments made by Administration.
- 10.11. A summary of possible voidable transactions identified from our preliminary investigation is detailed below.

*Related Parties including Property & Edwards Superannuation Fund*

- 10.12. We have identified a payment to the Edwards Superannuation Fund in the sum of \$115,500 on 15 July 2008. The payment allegedly relates to repayment of a deposit paid in respect of the purchase of the Burswood Property and at the request of the ATO.
- 10.13. Should Administration be liquidated more detailed enquiries will be made to determine the recoverability of this payment.
- 10.14. The director has advised that a further sum of \$74,500 was paid from either Industries or Administration in or around May 2006 as part of the deposit for the purchase of the Burswood Property. Whilst we consider this transaction may represent a loan to Property, it is unlikely that a commercial recovery will be made given the suspected financial position of Property.

## **11. Insolvent Trading**

- 11.1. A company is insolvent when it is unable to meet its debts as and when they fall due.
- 11.2. The determination of insolvency is a question of fact, at a particular point in time, to be assessed by considering the tests of insolvency known as the “cash flow test” and the “balance sheet test”. Other factors of a commercial and financial nature will also be considered by the Courts. Common law precedents have determined the “cash flow test” as being the more relevant test.
- 11.3. Pursuant to Section 588G of the Act, a director of a company has a duty to prevent a company from incurring a debt when a company is insolvent or there are reasonable grounds to suspect a company is or would become insolvent.
- 11.4. Pursuant to Section 588M of the Act, a liquidator (and in some circumstances a creditor) may recover from a director, losses suffered by creditors from transactions entered into at a time when a company was insolvent.
- 11.5. Section 588H of the Act provides a number of defences for directors in respect of actions under Section 588G and 588M of the Act.
- 11.6. In order to establish a case for insolvent trading against a director, a liquidator must establish that a director or a reasonable person in the director’s position ought to have been aware that the company was insolvent at a particular time. Furthermore, the liquidator ought to investigate the financial position of the director in question, prior to pursuing any claim for insolvent trading to establish whether the potential litigation is commercially viable.
- 11.7. We have undertaken only preliminary investigations into the issue of insolvent trading. Any future liquidator would be required to undertake further investigations, subject to suitable and adequate funding. In this regard a detailed cash flow analysis has not been undertaken.

- 11.8. We now provide details of our investigations and conclusions as to solvency issues.
- 11.9. As discussed previously, Administration was merely a service provider to Industries and received payment from Industries for the services rendered. We believe it would be reasonable to conclude that Administration would be insolvent upon Industries being insolvent. Accordingly, please note that our analysis and assessment of solvency detailed below is focused solely on Industries.

### Aged Creditor Analysis

- 11.10. An analysis of the aging of the creditors' ledgers provides an insight into the question of solvency.
- 11.11. We detail below in Table 15 a summary of Aged Creditors balances (trade and expense creditors) at key dates for Industries. An aged analysis as at 30 June 2008 cannot be extracted from the records.

| Date      | Total   | Current | 30 days | 60 days | 90 days |
|-----------|---------|---------|---------|---------|---------|
| 30-Jun-06 | 100.00% | 24.30%  | 72.61%  | 2.74%   | 0.34%   |
| 30-Jun-07 | 100.00% | 39.16%  | 50.97%  | 4.21%   | 5.66%   |
| 07-Aug-08 | 100.00% | 0.08%   | 29.44%  | 24.29%  | 46.19%  |

Table 15: Aged Creditor analysis for Industries

- 11.12. Set out below in Table 16 is a summary of the average creditor days. Average creditor days is the average amount of days in which a creditor is paid.

|               | Unaudited at<br>30 June 2006 | Unaudited at<br>30 June 2007 | Pronto<br>Accounts at<br>30 June 2008 | Pronto<br>Accounts at<br>7 August 2008 |
|---------------|------------------------------|------------------------------|---------------------------------------|--|
| Creditor days | 42.8                         | 60.1                         | 44.8                                  | 86.0                                   |

Table 16: Summary of Average Creditor Days as at various dates

- 11.13. A significant increase in creditor days is shown after 30 June 2008. This further indicates symptoms of cash flow insolvency, albeit recently before our appointment.

### Aged Debtor Analysis

- 11.14. We detail below in Table 17 an analysis of Aged Debtors at key dates for Industries:

| Date      | Total   | Retentions | Current | 30<br>days | 60<br>days | 90<br>days |
|-----------|---------|------------|---------|------------|------------|------------|
| 30-Jun-06 | 100.00% | 16.95%     | 74.72%  | 7.42%      | 0.36%      | 0.55%      |
| 30-Jun-07 | 100.00% | 6.93%      | 69.35%  | 16.79%     | -1.32%     | 8.24%      |
| 07-Aug-08 | 100.00% | 2.20%      | 0.08%   | 54.72%     | 10.61%     | 32.39%     |

Table 17: Aged Debtor analysis for Industries

- 11.15. Set out below is in Table 18 is a summary of the average debtor days, representing the average days for debts to be collected.

|             | Unaudited at<br>30 June 2006 | Unaudited at<br>30 June 2007 | Pronto<br>Accounts at<br>30 June 2008 | Pronto Accounts<br>at<br>7 August 2008 |
|-------------|------------------------------|------------------------------|---------------------------------------|--|
| Debtor days | 37.0                         | 68.1                         | 54.3                                  | 54.7                                   |

**Table 18: Summary of Debtor Days**

11.16. We note that debtor days has declined in 2007/2008, suggesting Industries was actively pursuing debtor collections to assist cash-flow.

### **Balance Sheet Analysis**

11.17. A detailed historical summary of the Companies' Statement of Assets and Liabilities Position as at 30 June 2004, 2005, 2006, 2007, 2008 and as at 7 August 2008 as per the unaudited financial statements and the Companies' Pronto management account records, are attached as Annexures C & D.

11.18. Set out below in Table 19 is a summary of the net assets or liabilities of Industries as at 30 June 2006, 2007, 2008 and as at 7 August 2008.

|                            | Unaudited at<br>30 June 2006<br>\$ | Unaudited at<br>30 June 2007<br>\$ | Pronto<br>Accounts at<br>30 June 2008<br>\$ | Pronto<br>Accounts at<br>7 August 2008<br>\$ |
|----------------------------|------------------------------------|------------------------------------|---|--|
| Net assets / (liabilities) | 1,286,067                          | 1,533,086                          | (1,756,737)                                 | (2,310,005)                                  |

**Table 19: Summary of Net Assets (Liabilities)**

11.19. The financial accounts reflect that Industries was Balance Sheet solvent up to 30 June 2007.

11.20. It is likely that the Balance Sheet at 30 June 2007 was significantly overstated in respect of the WIP reserve as discussed previously. If an adjustment was made for a notional overstatement of \$1.079 million, Industries would have remained Balance Sheet solvent having adjusted net assets of \$454,086.

11.21. However, the Industries Balance Sheet as at 30 June 2007 included a loan owing by Administration of \$1,228,736. We believe a prudent assessment of Administration's financial position as at 30 June 2007 would result in the provisioning for the non recovery of this loan creating a net deficiency in assets to liabilities of \$774,650.

11.22. On this basis it is possible that Industries was Balance Sheet insolvent as at 30 June 2007.

### **ANZ funding application and approval**

11.23. In or around March 2008 Industries sought additional finance from the ANZ in the sum of \$750,000 to address cash flow inadequacies.

11.24. As part of its funding application, a cash flow forecast was presented to the ANZ. This forecast relied heavily on the release of surplus funds from the sale of the Burswood Property and the commencement of future contract work to achieve the projected cash-flows. As it transpired, these events did not occur.

- 11.25. The ANZ granted an increase in the overdraft facility of \$750,000 on 15 May 2008.
- 11.26. These funds were utilized immediately to discharge only a portion of Industries liabilities. Therefore, we believe it is reasonable to conclude that the director was aware that Industries had cash flow concerns from the time at which the application for additional finance was made.

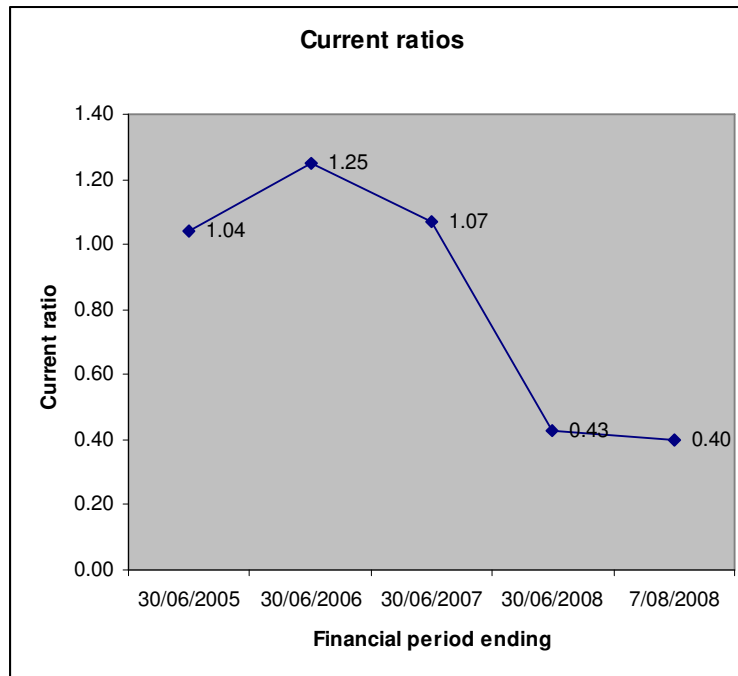
### Working Capital

- 11.27. Working capital is representative of a company's capacity to meet its current liabilities by the application of its current assets. A shortfall in current assets to meet current liabilities is an indicator of cash flow insolvency. A working capital ratio or current ratio of less than 1 indicates a working capital deficiency and is an indication of insolvency.
- 11.28. Given the business nature of the Group, a working capital deficiency should be a significant concern to the financial health of the Group, and a significant concern to the directors and officers of the Companies.
- 11.29. A decline in the working capital position is often a pre-cursor to insolvency.
- 11.30. As noted above at paragraphs 8.4 to 8.7, Industries wrote off work-in-progress totalling \$3.236 million in the management accounts for the year ending 30 June 2008. This write-off related, in part, to work undertaken and recorded in the 30 June 2007 unaudited financial statements.
- 11.31. Our analysis has been undertaken without any adjustments being made to the work-in-progress contained in the 30 June 2007 financial statements and as shown in Table 4.
- 11.32. Therefore, our preliminary review of the company records indicates that Industries maintained a working capital surplus as at 30 June 2005, 2006 and 2007, and a deficiency as at 30 June 2008 and 7 August 2008.
- 11.33. Set out in Table 20 below is a summary of the working capital position of Industries.

|                       | Unaudited at<br>30 June 2006<br>\$ | Unaudited at<br>30 June 2007<br>\$ | Pronto<br>Accounts at<br>30 June 2008<br>\$ | Pronto<br>Accounts at<br>7 August 2008<br>\$ |
|-----------------------|------------------------------------|------------------------------------|---|--|
| Working capital       | 466,954                            | 304,241                            | (2,530,455)                                 | (3,054,633)                                  |
| Working capital ratio | 1.25                               | 1.07                               | 0.43  | 0.40   |

**Table 20: Summary of Working Capital Position**

- 11.34. Set out below as Diagram 1 is a graphical representation of Industries' historical working capital position per unaudited and management accounts and highlights a significantly declining working capital position after 30 June 2007.



**Diagram 1: Movement in Working Capital Ratio for Industries**

- 11.35. We believe Industries failed to be sufficiently profitable in the period after 1 July 2007, and whilst it obtained some additional debt funding after 30 June 2007, those sources of funding were inadequate to accommodate the working capital deficiency and the ongoing working capital needs of the Group.
- 11.36. Indeed, the additional debt funding received in May 2008 was insufficient to accommodate the existing deficiency and the on going working capital requirements of the business at that time.
- 11.37. The declining working capital position is also evidenced by the batch of cheques raised, but unissued, at the date of our appointment and totalling \$1,125,085.

### **Possible Time of Insolvency**

#### *Industries*

- 11.38. The above analysis indicates that Industries experienced a declining working capital and cash-flow position commencing in the 2007/08 financial year. Industries appears to have become cash-flow insolvent during the 2007/08 financial year.
- 11.39. On analysis of the above we consider that Industries was cash flow insolvent and Balance Sheet insolvent from at least 1 June 2008. This conclusion is evidenced by the fact that:
- 11.39.1. Industries had gained the maximum extra finance that its banker was prepared to release, and had seemingly exhausted its financing options;
- 11.39.2. An equity injection, let alone of an adequate amount was unlikely;

11.39.3. Industries' working capital ratios were deficient, with the current ratio below 0.5 and creditor days increasing; and

11.39.4. Industries was unable to pay its debts as and when they fell due, as evidenced by the cheques drawn but not issued.

11.40. It is possible that Industries was cash flow insolvent and Balance Sheet insolvent well prior to 1 June 2008.

#### *Administration*

11.41. The solvency of Administration was significantly affected by the ability of Industries to pay for the services provided to it.

11.42. We note that Administration and Industries have the same director, being Mr Jon Edwards. Accordingly, Administration, via its directors would have been aware of the financial circumstances of Industries.

11.43. Given the relationship between Administration and Industries it is reasonable to conclude that the Administration was insolvent from the date at which Industries was unable to pay its debts.

## **12. Insolvent Trading Claims / Quantification**

12.1. On the basis of our preliminary investigations, it is our opinion that the Companies have traded whilst insolvent, giving rise to a claim pursuant to Section 588G of the Act against the Mr Edwards as director of Industries and Mr and Mrs Edwards as directors of Administration.

12.2. Further details are provided below as to the possible capacity of these parties to settle claims and / or judgements against them.

### **Industries**

12.3. As at 7 August 2008, being the date of appointment of the Administrators, creditors totaled \$2,871,549 and comprised the following:

|                      | \$               |
|----------------------|------------------|
| Current (August '08) | 2,348            |
| 30 days (July '08)   | 845,339          |
| 60 days (June '08)   | 697,501          |
| <b>Subtotal</b>      | <b>1,545,188</b> |
| 90+ days             | 1,326,362        |
| <b>Total</b>         | <b>2,871,550</b> |

**Table 21: Aged Creditors as at 7 August 2008**

12.4. Assuming that the date of insolvency is on or around 1 June 2008, a claim for insolvent trading would include all creditors incurred but not paid since 1 June 2008.

12.5. On this basis the potential level of an insolvent trading claim against the director would be at least \$1,545,188.

## Administration

- 12.6. As at 7 August 2008, being the date of appointment of the Administrators, creditors were owed \$97,001.24 and comprised the following:

|                      |               |
|----------------------|---------------|
| Current (August '08) | \$            |
|                      | 0             |
| 30 days (July '08)   | 53,235        |
| 60 days (June '08)   | 16,557        |
| <b>Subtotal</b>      | <b>69,792</b> |
| 90+ days             | 27,209        |
| <b>Total</b>         | <b>97,001</b> |

Table 22: Aged Creditors as at 7 August 2008

- 12.7. In addition, employee liabilities for current wages and superannuation entitlements incurred but unpaid since 1 June 2008 total \$175,069.
- 12.8. Assuming that the date of insolvency is on or around 1 June 2008, a claim for insolvent trading would include all creditors incurred but not paid since 1 June 2008.
- 12.9. On this basis the potential level of an insolvent trading claim against the Directors would be at least \$244,861.
- 12.10. We note that significant additional costs, estimated to be no less than \$100,000, in respect of legal and accounting costs would be required to be incurred to successfully pursue and prosecute any insolvent trading actions.
- 12.11. In order to pursue any such actions, funding would be required from either creditors and / or an independent litigation funding provider.
- 12.12. However, it is unlikely that funding would be provided in the event that the directors do not have the capacity to meet any successfully prosecuted recovery action. In this regard, we refer you to our comments at paragraphs 12.21 to 12.25 below.

## Defences available to the Directors

- 12.13. The defences available to directors for insolvent trading, are:
- 12.13.1. When the debt was incurred the director had reasonable grounds to expect that the company was solvent and would remain solvent;
- 12.13.2. When the debt was incurred the director had reasonable grounds to believe, and did believe that a subordinate was competent, reliable and responsible for providing adequate information about the company's solvency;
- 12.13.3. When the debt was incurred the director, because of illness or for some other good reason, did not take part in the management of the company; or
- 12.13.4. The director took all reasonable steps to stop the company from incurring the debt.

- 12.14. Mr Edwards has indicated that he actively sought additional cash positive contract work which, if granted and commenced, when combined with the expected sale of the Burswood Property and release of surplus funds, may have enabled the Group to satisfy its current debts.
- 12.15. Furthermore, during July 2008 the directors sought equity funding and entered into discussions with Investec Bank (Australia) Limited. These discussions were ultimately unsuccessful.
- 12.16. During July and August 2008 the directors sought an extension of the Companies financing facilities with the ANZ. This request also proved unsuccessful.
- 12.17. The timing of the equity and debt funding applications, given the existing financial circumstances of the Companies, indicates that these endeavors were unlikely to be successful.
- 12.18. Our preliminary analysis of these matters indicates that for Industries may have been able to pay its debts as and when they fell due if all projected events giving rise to a possible cash injection occurred as planned. This required the Burswood Property to be sold for a maximum value and have a short settlement period, existing tenders to be won and commence on time and to achieve the estimated level of profits.
- 12.19. It is our opinion that, on balance, these expectations were unrealistic.
- 12.20. The timing of the equity injection negotiations and debt funding application, given the existing financial circumstances of the Companies, indicates that these endeavors were unlikely to be successful.

#### **Capacity of the Directors to meet possible claims**

- 12.21. Our preliminary investigations reveal that the directors' personal assets are likely to be utilised to satisfy monies owed to the ANZ Bank.
- 12.22. The directors' principal asset, being their private residence, is mortgaged to the ANZ Bank as collateral security to guarantee the Group's financing facilities.
- 12.23. We are aware that the private residence is currently for sale, and that the sale proceeds will likely be taken by the ANZ Bank and applied to partially satisfy the Group's debt.
- 12.24. If creditors were inclined to fund further investigations into claims against the directors, additional enquiries would need to be undertaken in respect of their personal financial position, and that of entities in which they have an interest, such known entities being Property and the Edwards Superannuation Fund.
- 12.25. Accordingly, subject to further investigations revealing additional director assets, it is unlikely that the directors will have the financial capacity to satisfy any successful recovery action that may be taken by a future liquidator.

### **13. Duties of Officers**

- 13.1. In the course of our preliminary investigations, we have considered whether there have been any breaches by the directors and/or officers in the conduct of their duties pursuant to the Act.
- 13.2. Pursuant to Section 9 of the Act, an officer is defined to include a director, secretary or a person participating in decision making that affects the whole or a substantial part of the business of the corporation or a person in accordance with whose instructions or wishes the directors of the corporation are accustomed to act.
- 13.3. Pursuant to Part 2D.1 of the Act, officers of a company have duties to ensure that:-
  - 13.3.1. Section 180 – They exercise their powers and discharge their duties with due care and diligence;
  - 13.3.2. Section 181 – They act in good faith;
  - 13.3.3. Section 182 – They do not use their position to gain an advantage; and
  - 13.3.4. Section 183 – They do not misuse company information to gain an advantage.
- 13.4. Our preliminary investigations have identified possible breaches by the directors of their duties, primarily as we believe the directors have allowed the Companies to trade whilst insolvent.
- 13.5. We believe directors and officers may have breached their duties in relation to the following:-
  - 13.5.1. Section 180 – whereby they have failed, in the exercise of their powers and discharge of their duties, to exercise due care and diligence; and
  - 13.5.2. Section 181 – whereby they have failed to act in good faith.
- 13.6. Our preliminary investigations indicate that the directors have minimal capacity to meet any successful claims against them. In this regard, we refer you to our comments above in respect to our preliminary assessment of the financial capacity of the directors

### **14. Report to ASIC**

- 14.1. Section 438D of the Act requires an Administrator to issue a report to the ASIC as soon as practicable where the Administrator is of the opinion that:-
  - 14.1.1. A past or present officer or employee, or a member, of the company may have been guilty of an offence in relation to the company; or
  - 14.1.2. A person who has taken part in the formation, promotion, administration, management or winding up of the company:-
    - 14.1.2.1. May have misapplied or attained, or may have become liable or accountable for, money or property (in Australia or elsewhere) of the company; or

14.1.2.2. May have been guilty of negligence, default, breach of duty or breach of trust in relation to the company.

14.2. We confirm that, given the findings of our preliminary investigations, a report will be submitted to the ASIC in accordance with Section 438D of the Act prior to the second meeting of creditors to be held on 11 September 2008.

## **15. Dividend Estimate**

15.1. Given the ongoing realisation of assets, primarily the realisation of disputed debtor amounts of Industries, we are unable to provide a breakdown of the amounts that may be collectable.

15.2. We are able to provide creditors with a maximum and minimum dividend range, based on the information currently available.

15.3. We estimate that the dividend for the ordinary unsecured creditors of Industries will range between 12 cents in the dollar and 0 cents in the dollar.

15.4. We estimate that the dividend for the ordinary unsecured creditors of Administration will range between 24 cents in the dollar and 0 cents in the dollar.

15.5. Should the Companies be liquidated, employees will be entitled to claim against the Federal Government's GEERS Scheme. Employees should make direct contact with GEERS.

15.6. Please note that the maximum dividend to unsecured creditors may only arise where the claims identified above are successfully pursued and judgement monies received from defending parties, and then possibly subject to any funding arrangements and orders of the Court.

15.7. Please find attached as Annexure E a table detailing our dividend estimate for the Companies.

## **16. Administrators' Opinion**

16.1. At the forthcoming meeting the creditors of each company may resolve in respect of each company:

16.1.1. That the company be wound up; or

16.1.2. That the administration end; or

16.1.3. That the company execute a Deed of Company Arrangement; or

16.1.4. That the meeting be adjourned for up to 60 days.

16.2. As required by the Act, we hereby provide our opinion as to what we believe would be in the best interests of creditors.

16.3. Please note the opinions provided below are in respect of both Industries and Administration.

*Should the Company Enter a Deed of Company Arrangement*

- 16.4. A DOCA proposal has not been forthcoming from the directors or any other parties.
- 16.5. In any case, without a detailed DOCA proposal to consider, we are unable to recommend such a course.
- 16.6. Accordingly, in our opinion, it would not be in the creditors' interests at this time and under these circumstances for either of the Companies to enter into a DOCA.

*Should the Administration End*

- 16.7. Should creditors resolve that the Administration end, control of the Companies would revert to the directors without any resolution of creditor claims. As Administrators, we are not empowered to make a distribution to any creditor, subject to secured claims, of any existing debt as at the date of our appointment. The Companies have substantial asset deficiencies and in the absence of any arrangements with creditors, the Companies are unable to pay their debts as and when they fall due.
- 16.8. Accordingly, in our opinion, it would not be in the creditors' interests for the Administration of either of the Companies to end.

*Should the Company be Wound Up*

- 16.9. In our opinion, it would be in the creditors' interests for each of the Companies to be wound up for the reasons that under a liquidation scenario, and in the absence of a detailed DOCA proposal:-
  - 16.9.1. Creditors will have the prospect of a dividend should claims be successfully pursued and recovered; and
  - 16.9.2. Former employees will be able to immediately proceed with a claim against GEERS.

**17. Remuneration**

- 17.1. In accordance with Section 449E of the Act, we are entitled to such remuneration as is fixed by resolution of the creditors of each Company at the second meeting. Our remuneration (including our staff) has been calculated on a time basis using the hourly rates set by RSM Bird Cameron Partners from time to time and in accordance with the Insolvency Practitioners' Association of Australia "Statement of Best Practice - Remuneration".
- 17.2. In this regard please find enclosed an ASIC guideline for creditors titled "Approving Fees".
- 17.3. Resolutions to be considered by creditors will be in respect of each Company and the various scenarios that may arise.

**Administrators' Remuneration from 7 August 2008 to 29 August 2008**

- 17.4. Creditors will be asked to consider and if thought appropriate, resolve:-
  - 17.4.1. In respect of Industries:

“That the remuneration of the Administrators incurred from 7 August 2008 to 29 August 2008 be hereby affixed on a time basis in accordance with the hourly rates set by RSM Bird Cameron Partners from time to time, in the amount of \$104,562 plus GST be approved and paid”;

17.4.2. In respect of Administration:

“That the remuneration of the Administrators incurred from 7 August 2008 to 29 August 2008 be hereby affixed on a time basis in accordance with the hourly rates set by RSM Bird Cameron Partners from time to time, in the amount of \$57,481 plus GST be approved and paid”;

- 17.5. Attached as Annexures F and H are schedules in support of the remuneration claimed in respect of Industries and Administration detailing the name and position of employee, hourly rate and hours worked.
- 17.6. Also attached as Annexures G and I, are further summaries of the remuneration claimed detailing, by company, the work undertaken and summarised by task category by employee, and including a description of the relevant task category.
- 17.7. Detailed descriptions of all work undertaken during the period of the administration are available for inspection by creditors at our Perth office at a mutually agreeable time.

**Administrators’ Remuneration from 30 August 2008 to 11 September 2008**

- 17.8. During the above period, additional work will be undertaken in respect of the tasks detailed in Annexures F, G, H and I respectively.
- 17.9. Tasks to be addressed in this period will include finalisation of investigations and compilation of this Section 439A report to creditors, negotiations and collections of various debtors, addressing employee and unsecured creditor queries and claims and preparing and holding the concurrent second meetings of creditors.
- 17.10. We have estimated our time charges in respect of these matters. The estimates are a maximum amount and where our costs are less than the amount approved we are entitled only to be remunerated for the time value of the work completed.
- 17.11. Creditors will be asked to consider and if thought appropriate, resolve:-

17.11.1. In respect of Industries:

“That the remuneration of the Administrators incurred from 30 August 2008 to 11 September 2008 be hereby affixed on a time basis in accordance with the hourly rates set by RSM Bird Cameron Partners from time to time, limited to the amount of \$32,000 plus GST, and that the Administrators be authorised to make payments on account of such approved remuneration”;

17.11.2. In respect of Administration:

“That the remuneration of the Administrators incurred from 30 August 2008 to 11 September 2008 be hereby affixed on a time basis in accordance with the hourly rates set by RSM Bird Cameron Partners from time to time, limited to the amount of \$20,000 plus GST, and that the Administrators be authorised to make payments on account of such approved remuneration”;

## **Liquidators' Remuneration**

17.12. Should creditors resolve that either company be wound up at the forthcoming meeting, creditors will be asked to consider and, if thought appropriate, resolve:-

17.12.1. In respect of Industries:

“That the remuneration of the Liquidators be hereby affixed on a time basis in accordance with the hourly rates set from time to time by RSM Bird Cameron Partners, subject to an initial limit of \$100,000 plus GST, beyond which the liquidators may seek further approval, and that the liquidators be authorised to make periodic payments on accounts of such accruing remuneration”.

17.12.2. In respect of Administration:

“That the remuneration of the Liquidators be hereby affixed on a time basis in accordance with the hourly rates set from time to time by RSM Bird Cameron Partners, subject to an initial limit of \$75,000 plus GST, beyond which the liquidators may seek further approval, and that the liquidators be authorised to make periodic payments on accounts of such accruing remuneration”.

## **18. Administrators' Statement of Receipts and Payments**

18.1. An account of the receipts and payments during the administration period 7 August 2008 to 29 August 2008 is attached for Industries and Administration as Annexures J & K respectively.

## **19. Liquidation – Committee of Inspection**

19.1. In the event that creditors resolve to wind up the Companies, creditors shall have the opportunity to appoint a Committee of Inspection for the liquidation. The purpose of a Committee of Inspection is to assist the liquidator in the efficient conduct of the liquidation.

19.2. At the forthcoming second meeting of creditors, creditors may propose a resolution forming a Committee of Inspection and the members of that Committee. A Committee of Inspection can comprise both creditors and shareholders.

19.3. A person will be eligible to be appointed a member of a Committee of Inspection if, and only if, in the case of an appointment by creditors the person is:-

19.3.1. A creditor of the company; or

19.3.2. The attorney of a creditor of the company by virtue of a general Power of Attorney given by the creditor; or

19.3.3. A person authorised in writing by a creditor of the Company to be a member of the Committee of Inspection.

19.4. We hereby invite creditors to contact Mr Greg Dudley or Mr Gary O'Brien of our office by no later than 5.00pm (WST) on 10 September 2008 should you wish to be a member of a Committee of Inspection.

## 20. Destruction of Books and Records

20.1. Should creditors resolve that either company be wound up at the forthcoming meeting, creditors will be asked to consider and, if thought appropriate, resolve:-

20.1.1. In respect of Industries:

“That subject to obtaining the approval of the Australian Securities and Investments Commission pursuant to section 542(4) of the Corporations Act, the books and records of the company and of the Liquidator, be destroyed by the Liquidator three months after the dissolution of the Company.”

20.1.2. In respect of Administration:

“That subject to obtaining the approval of the Australian Securities and Investments Commission pursuant to section 542(4) of the Corporations Act, the books and records of the company and of the Liquidator, be destroyed by the Liquidator three months after the dissolution of the Company.”

Should you have any queries regarding the contents of this report please do not hesitate to contact the undersigned or Mr Greg Dudley of this office.

Dated this 3rd day of September 2008

Yours faithfully



NEIL CRABB  
Joint and Several Administrator

**Diamond Industries Pty Ltd (Administrators Appointed)**

ACN: 099 362 955

**Comparative Statement of Income and Expenditure**

|  | Signed financials |                  |                  |                  | Management a/c's   |                    |
|--|-------------------|------------------|------------------|------------------|--------------------|--------------------|
|  | 30-Jun-04         | 30-Jun-05        | 30-Jun-06        | 30-Jun-07        | 30-Jun-08          | 07-Aug-08          |
|  | \$                | \$               | \$               | \$               | \$                 | \$                 |
| Sales                                  | 5,097,909         | 9,687,471        | 15,813,041       | 17,520,462       | 21,759,046         | 1,308,091          |
| Less: Cost of goods sold               | (4,027,816)       | (7,285,214)      | (12,321,302)     | (13,520,169)     | (21,031,634)       | (1,159,455)        |
| <b>Gross profit from trading</b>       | <b>1,070,093</b>  | <b>2,402,257</b> | <b>3,491,739</b> | <b>4,000,293</b> | <b>727,412</b>     | <b>148,636</b>     |
| Bank charges                           | -                 | -                | (6,287)          | -                | -                  | -                  |
| Depreciation                           | (98,154)          | (31)             | -                | -                | -                  | -                  |
| Fringe Benefits Tax                    | (28,787)          | (46,787)         | (92,845)         | (60,384)         | (58,439)           | -                  |
| Interest paid                          | -                 | (12,231)         | (46,013)         | -                | -                  | -                  |
| Service charges                        | (436,279)         | (1,882,000)      | (2,806,064)      | (3,776,300)      | (3,890,000)        | (329,351)          |
| Wages                                  | (255,094)         | -                | -                | -                | -                  | -                  |
| Other expenditure                      | (193,497)         | -                | -                | -                | (7,348)            | (1,056)            |
| <b>Net profit / (loss)</b>             | <b>58,282</b>     | <b>461,208</b>   | <b>540,530</b>   | <b>163,609</b>   | <b>(3,228,375)</b> | <b>(181,771)</b>   |
| Interest received                      | 3,993             | 14,962           | 75,122           | 83,409           | -                  | -                  |
| Distributions from Trusts              | 35,532            | -                | 103,018          | -                | -                  | -                  |
| Profit / (loss) on sale of NCA         | -                 | 6,583            | (805)            | -                | -                  | -                  |
| <b>Net profit / (loss) before I.T.</b> | <b>97,807</b>     | <b>482,753</b>   | <b>717,865</b>   | <b>247,018</b>   | <b>(3,228,375)</b> | <b>(181,771)</b>   |
| Income Tax                             | (33,760)          | -                | -                | -                | -                  | -                  |
| <b>Net profit / (loss) after I.T.</b>  | <b>64,047</b>     | <b>482,753</b>   | <b>717,865</b>   | <b>247,018</b>   | <b>(3,228,375)</b> | <b>(181,771)</b>   |
| Retained profits b/f                   | 21,400            | 85,447           | 568,200          | 1,286,065        | 1,533,083          | (1,695,292)        |
| <b>Retained profits c/f</b>            | <b>85,447</b>     | <b>568,200</b>   | <b>1,286,065</b> | <b>1,533,083</b> | <b>(1,695,292)</b> | <b>(1,877,063)</b> |

**Diamond Administration Pty Ltd (Administrators Appointed)**

ACN: 108 278 397

As Trustee For The Diamond Administration Unit Trust

**Comparative Statement of Income and Expenditure**

|                                      | Signed financials |                    |                    |                    | Management a/c's   |                  |
|--------------------------------------|-------------------|--------------------|--------------------|--------------------|--------------------|------------------|
|                                      | 30-Jun-04         | 30-Jun-05          | 30-Jun-06          | 30-Jun-07          | 30-Jun-08          | 07-Aug-08        |
|                                      | \$                | \$                 | \$                 | \$                 | \$                 | \$               |
| <b><u>Income</u></b>                 |                   |                    |                    |                    |                    |                  |
| Service fee income                   | 436,279           | 1,882,000          | 2,806,064          | 3,776,300          | 3,890,000          | 329,352          |
| <b><u>Expenditure</u></b>            |                   |                    |                    |                    |                    |                  |
| Depreciation                         | (12,103)          | (201,692)          | (136,193)          | (125,667)          | (114,298)          | (15,827)         |
| Insurance                            | (4,330)           | (68,763)           | (78,169)           | (111,982)          | (101,871)          | (11,618)         |
| Interest paid                        | -                 | (43,875)           | (136,451)          | (175,337)          | (109,014)          | (16,376)         |
| Leasing charges                      | -                 | (7,716)            | (134,666)          | (160,815)          | (230,254)          | (36,322)         |
| Motor vehicle expenses               | (14,333)          | (85,491)           | (101,123)          | (170,429)          | (196,992)          | (6,913)          |
| Rent                                 | (2,590)           | (101,741)          | (163,721)          | (205,500)          | (210,000)          | (18)             |
| Superannuation contributions         | (14,511)          | (84,090)           | (117,985)          | (197,527)          | (222,015)          | (38,052)         |
| Wages                                | (229,493)         | (980,093)          | (1,465,847)        | (2,092,159)        | (1,775,717)        | (185,886)        |
| Other expenditure                    | (66,576)          | (236,458)          | (420,419)          | (567,590)          | (929,839)          | (18,340)         |
|                                      | <u>(343,936)</u>  | <u>(1,809,919)</u> | <u>(2,754,574)</u> | <u>(3,807,006)</u> | <u>(3,890,000)</u> | <u>(329,352)</u> |
| <b>Gross profit / (loss)</b>         | <b>92,343</b>     | <b>72,081</b>      | <b>51,490</b>      | <b>(30,706)</b>    | -                  | -                |
| Interest received                    | 226               | 1,425              | 433                | 995                | -                  | -                |
| Profit on sale of NCA                | -                 | 705                | -                  | -                  | -                  | -                |
| <b>Net profit / (loss)</b>           | <b>92,569</b>     | <b>74,211</b>      | <b>51,923</b>      | <b>(29,711)</b>    | -                  | -                |
| Distribution to beneficiaries        | (92,569)          | (74,211)           | (51,923)           | -                  | -                  | -                |
| <b>Accumulated income / (losses)</b> | <b>-</b>          | <b>-</b>           | <b>-</b>           | <b>(29,711)</b>    | -                  | -                |

**Comparative Statement of Assets and Liabilities**

|  | Signed financials |                    |                    |                    | Management a/c's   |                    |
|--|-------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
|  | 30-Jun-04         | 30-Jun-05          | 30-Jun-06          | 30-Jun-07          | 30-Jun-08          | 07-Aug-08          |
|  | \$                | \$                 | \$                 | \$                 | \$                 | \$                 |
| <b>Current Assets</b>                  |                   |                    |                    |                    |                    |                    |
| Cash at bank and on hand               | 402               | 391,337            | 355,333            | 402                | 402                | 402                |
| Trade debtors                          | 123,027           | 1,254,410          | 1,953,808          | 4,579,597          | 1,889,949          | 1,874,713          |
| Inventories (work-in-progress)         | -                 | -                  | -                  | 14,928             | -                  | -                  |
| GST clearing account                   | -                 | -                  | -                  | -                  | 3,793              | 119,453            |
| <b>Total Current Assets</b>            | <b>123,429</b>    | <b>1,645,747</b>   | <b>2,309,141</b>   | <b>4,594,927</b>   | <b>1,894,144</b>   | <b>1,994,568</b>   |
| <b>Non-Current Assets</b>              |                   |                    |                    |                    |                    |                    |
| Loan to Diamond Administration         | 212,234           | 848,629            | 1,103,777          | 1,228,736          | 1,083,100          | 1,053,535          |
| Loan to Edwards Property Trust         | 35,532            | -                  | -                  | -                  | -                  | -                  |
| Investments                            | -                 | -                  | 1,209              | 1,209              | 1,209              | 1,209              |
| Motor vehicles (net)                   | 347,528           | 25,962             | -                  | -                  | -                  | -                  |
| <b>Total Non-Current Assets</b>        | <b>595,294</b>    | <b>874,591</b>     | <b>1,104,986</b>   | <b>1,229,945</b>   | <b>1,084,309</b>   | <b>1,054,744</b>   |
| <b>TOTAL ASSETS</b>                    | <b>718,723</b>    | <b>2,520,338</b>   | <b>3,414,127</b>   | <b>5,824,872</b>   | <b>2,978,453</b>   | <b>3,049,312</b>   |
| <b>Current Liabilities</b>             |                   |                    |                    |                    |                    |                    |
| Cash at bank (overdrawn)               | (246,802)         | (46,452)           | -                  | (1,218,961)        | (2,065,320)        | (2,131,085)        |
| Trade creditors                        | (326,675)         | (1,247,941)        | (1,639,155)        | (2,814,425)        | (2,343,962)        | (2,903,146)        |
| Factoring account                      | -                 | (148,404)          | -                  | -                  | -                  | -                  |
| GST clearing account                   | (23,760)          | (119,330)          | (161,021)          | (243,800)          | -                  | -                  |
| Provisions                             | (21,793)          | -                  | (24,060)           | -                  | (317)              | -                  |
| Accrued FBT                            | (14,244)          | (23,756)           | (17,951)           | (13,500)           | (15,000)           | (15,000)           |
|  | (386,472)         | (1,539,431)        | (1,842,187)        | (3,071,725)        | (2,359,279)        | (2,918,146)        |
| <b>Total Current Liabilities</b>       | <b>(633,274)</b>  | <b>(1,585,883)</b> | <b>(1,842,187)</b> | <b>(4,290,686)</b> | <b>(4,424,599)</b> | <b>(5,049,231)</b> |
| <b>Non-Current Liabilities</b>         |                   |                    |                    |                    |                    |                    |
| Loan from Edwards Property Trust       | -                 | (366,253)          | (285,873)          | (1,100)            | (310,591)          | (310,086)          |
| <b>Total Non-Current Liabilities</b>   | <b>-</b>          | <b>(366,253)</b>   | <b>(285,873)</b>   | <b>(1,100)</b>     | <b>(310,591)</b>   | <b>(310,086)</b>   |
| <b>TOTAL LIABILITIES</b>               | <b>(633,274)</b>  | <b>(1,952,136)</b> | <b>(2,128,060)</b> | <b>(4,291,786)</b> | <b>(4,735,190)</b> | <b>(5,359,317)</b> |
| <b>NET ASSETS / (LIABILITIES)</b>      | <b>85,449</b>     | <b>568,202</b>     | <b>1,286,067</b>   | <b>1,533,086</b>   | <b>(1,756,737)</b> | <b>(2,310,005)</b> |
| <b>Trust Funds:</b>                    |                   |                    |                    |                    |                    |                    |
| Issued units                           | 2                 | 2                  | 2                  | 2                  | 2                  | 2                  |
| Retained earnings / (losses) b/f       | 21,400            | 85,447             | 568,200            | 1,286,065          | 1,471,636          | (2,128,236)        |
| Retained earnings / (losses) - current | 64,047            | 482,753            | 717,865            | 247,018            | (3,228,375)        | (181,771)          |
| <b>TOTAL TRUST FUNDS</b>               | <b>85,449</b>     | <b>568,202</b>     | <b>1,286,067</b>   | <b>1,533,085</b>   | <b>(1,756,737)</b> | <b>(2,310,005)</b> |

**Comparative Statement of Assets and Liabilities**

|                                      | Signed financials |                    |                    |                    | Management a/c's   |                    |
|--------------------------------------|-------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
|                                      | 30-Jun-04         | 30-Jun-05          | 30-Jun-06          | 30-Jun-07          | 30-Jun-08          | 07-Aug-08          |
|                                      | \$                | \$                 | \$                 | \$                 | \$                 | \$                 |
| <b>Current Assets</b>                |                   |                    |                    |                    |                    |                    |
| Cash                                 | 51                | 24,143             | 34,372             | 7,052              | -                  | -                  |
| Prepayments                          | 20,625            | 15,529             | 35,512             | 28,870             | 17,815             | 17,815             |
| Other current assets                 | -                 | 6,175              | 57,492             | -                  | 505                | -                  |
| <b>Total Current Assets</b>          | <b>20,676</b>     | <b>45,847</b>      | <b>127,376</b>     | <b>35,922</b>      | <b>18,320</b>      | <b>17,815</b>      |
| <b>Non-Current Assets</b>            |                   |                    |                    |                    |                    |                    |
| Plant & equipment (net)              | 164,621           | 336,021            | 382,897            | 389,444            | 357,576            | 348,899            |
| Furniture & fittings (net)           | 20,484            | 51,163             | 53,483             | 57,980             | 50,819             | 50,298             |
|                                      | 185,105           | 387,184            | 436,380            | 447,424            | 408,395            | 399,197            |
| Leasehold improvements (net)         | 80,941            | 1,077,639          | 1,041,398          | 1,049,688          | 1,032,375          | 1,029,544          |
| Motor vehicles (net)                 | -                 | 173,190            | 244,666            | 233,172            | 217,634            | 213,833            |
| Loan to Edwards Property Trust       | 139,219           | 238,024            | 336,772            | -                  | 422,813            | 586,859            |
| <b>Total Non-Current Assets</b>      | <b>405,265</b>    | <b>1,876,037</b>   | <b>2,059,216</b>   | <b>1,730,284</b>   | <b>2,081,217</b>   | <b>2,229,433</b>   |
| <b>TOTAL ASSETS</b>                  | <b>425,941</b>    | <b>1,921,884</b>   | <b>2,186,592</b>   | <b>1,766,206</b>   | <b>2,099,537</b>   | <b>2,247,248</b>   |
| <b>Current Liabilities</b>           |                   |                    |                    |                    |                    |                    |
| Superannuation payable               | (16,162)          | (21,987)           | (36,831)           | (52,511)           | (56,200)           | (54,511)           |
| Annual leave - provision             | (24,103)          | -                  | -                  | -                  | -                  | (74,410)           |
| LSL Board - provision                | (729)             | -                  | -                  | -                  | -                  | (2,250)            |
|                                      | (40,994)          | (21,987)           | (36,831)           | (52,511)           | (56,200)           | (131,171)          |
| Trade creditors                      | (80,966)          | (68,420)           | (15,347)           | (64,492)           | (42,528)           | (97,400)           |
| PAYG payable                         | (32,644)          | (62,000)           | (34,895)           | (49,264)           | (97,622)           | (112,067)          |
| Tax provisions (Payroll, FBT)        | (9,101)           | (24,785)           | (55,191)           | (90,803)           | (12,645)           | (26,176)           |
|                                      | (122,711)         | (155,205)          | (105,433)          | (204,559)          | (152,795)          | (235,643)          |
| Overdraft                            | (50,001)          | -                  | -                  | -                  | (13,020)           | (40,691)           |
| <b>Total Current Liabilities</b>     | <b>(213,706)</b>  | <b>(177,192)</b>   | <b>(142,264)</b>   | <b>(257,070)</b>   | <b>(222,015)</b>   | <b>(407,505)</b>   |
| <b>Non-Current Liabilities</b>       |                   |                    |                    |                    |                    |                    |
| Loan from Diamond Industries         | (212,234)         | (848,629)          | (1,103,777)        | (1,228,736)        | (1,083,100)        | (1,053,535)        |
| Chattel mortgages                    | -                 | (496,062)          | (458,470)          | (310,110)          | (147,751)          | (139,938)          |
| Loan from Citibank                   | -                 | (400,000)          | (482,080)          | -                  | -                  | -                  |
| <b>Total Non-Current Liabilities</b> | <b>(212,234)</b>  | <b>(1,744,691)</b> | <b>(2,044,327)</b> | <b>(1,538,846)</b> | <b>(1,230,851)</b> | <b>(1,193,473)</b> |
| <b>TOTAL LIABILITIES</b>             | <b>(425,940)</b>  | <b>(1,921,883)</b> | <b>(2,186,591)</b> | <b>(1,795,916)</b> | <b>(1,452,866)</b> | <b>(1,600,978)</b> |
| <b>NET ASSETS / (LIABILITIES)</b>    | <b>1</b>          | <b>1</b>           | <b>1</b>           | <b>(29,710)</b>    | <b>646,671</b>     | <b>646,270</b>     |
| <b>Trust Funds:</b>                  |                   |                    |                    |                    |                    |                    |
| Issued units                         | 1                 | 1                  | 1                  | 1                  | 1                  | 1                  |
| Accumulated income / (losses)        | -                 | -                  | -                  | (29,711)           | 64,348             | 64,348             |
| <b>TOTAL TRUST FUNDS</b>             | <b>1</b>          | <b>1</b>           | <b>1</b>           | <b>(29,710)</b>    | <b>64,349</b>      | <b>64,349</b>      |

**Dividend Estimate**

**INDUSTRIES  
LIQUIDATION**

**ADMINISTRATION  
LIQUIDATION**

|   | Estimated<br>Dividend in<br>Liquidation<br>(Maximum) | Estimated<br>Dividend in<br>Liquidation<br>(Minimum) | Estimated<br>Dividend in<br>Liquidation<br>(Maximum) | Estimated<br>Dividend in<br>Liquidation<br>(Minimum) |
|---|--|--|--|--|
|   | \$   | \$   | \$   | \$   |
| <b><u>Assets</u></b>  |  |  |  |  |
| Cash at bank  | -  | -  | -  | -  |
| Debtors   | 1,005,138  | 252,176  | -  | -  |
| GST Clearing  | 119,453  | -  | -  | -  |
| Work in Progress  | 72,750   | -  | -  | -  |
| Plant & Equipment   | -  | -  | 74,765   | 74,765   |
| Motor Vehicles (Net)  | -  | -  | 8,976  | -  |
| Fixtures and Fittings   | -  | -  | 79,245   | 79,245   |
| Contingent Asset - Legal claim                                  | 300,000  | -  | -  | -  |
| Inter-company loan  | -  | -  | -  | -  |
| Subtotal  | <u>1,497,341</u>                                     | <u>252,176</u>                                       | <u>162,986</u>                                       | <u>154,010</u>                                       |
| Voidable Recoveries:  |  |  |  |  |
| - Insolvent Trading Claim                                       | 1,545,188  | -  | 244,861  | -  |
| - Uncommercial Transaction                                      | -  | -  | 190,000  | -  |
| - Unfair Preference Claim                                       | 47,500   | -  | 447,317  | -  |
| Less: Estimated, additional Liquidators' Costs                  | <u>(75,000)</u>                                      | <u>(10,000)</u>                                      | <u>(75,000)</u>                                      | <u>(10,000)</u>                                      |
| Voidable Recoveries (net)                                       | <u>1,517,688</u>                                     | <u>(10,000)</u>                                      | <u>807,178</u>                                       | <u>(10,000)</u>                                      |
| <b>Total Assets Available for Distribution</b>                  | <b><u>3,015,029</u></b>                              | <b><u>242,176</u></b>                                | <b><u>970,164</u></b>                                | <b><u>144,010</u></b>                                |
| <b><u>Distribution per s556(1) of Corporations Act 2001</u></b> |  |  |  |  |
| Costs, Charges & Expenses of Administrators                     |  |  |  |  |
| - Legal Fees and Administration Costs                           | (20,000)   | (20,000)   | -  | -  |
| - Fees & Disbursements to 29 August 2008                        | (105,270)  | (105,270)  | (57,729)   | (57,729)   |
| - Future Fees & Disb for Admin and Liq                          | <u>(125,000)</u>                                     | <u>(200,000)</u>                                     | <u>(100,000)</u>                                     | <u>(150,000)</u>                                     |
| Total Estimated Costs   | <u>(250,270)</u>                                     | <u>(325,270)</u>                                     | <u>(157,729)</u>                                     | <u>(207,729)</u>                                     |
| Employee Entitlements   | -  | -  | (439,968)  | (472,756)  |
| Secured Creditor  | (2,258,797)  | (2,500,000)  | (945)  | (2,500,000)  |
| <b>Payments before Distribution to Unsecured Creditors</b>      | <b><u>(2,509,067)</u></b>                            | <b><u>(2,825,270)</u></b>                            | <b><u>(598,642)</u></b>                              | <b><u>(3,180,485)</u></b>                            |
| Amount Available for Unsecured Creditors                        | <u>505,962</u>                                       | <u>Nil</u>   | <u>371,522</u>                                       | <u>Nil</u>   |
| <b><u>Creditor Summary</u></b>                                  |  |  |  |  |
| Unsecured Creditors   | 4,231,895  | 4,671,142  | 137,170  | 137,170  |
| Lease shortfalls (net)  | -  | -  | 308,925  | 308,925  |
| Contingent Liability - AP Surety                                | -  | -  | 1,074,773  | 1,074,773  |
| Total Claims subject to dividend                                | <u>4,231,895</u>                                     | <u>4,671,142</u>                                     | <u>1,520,868</u>                                     | <u>1,520,868</u>                                     |
| Estimated Return to Unsecured Creditors (cents/\$)              | 11.96  | Nil  | 24.43  | Nil  |

**Diamond Industries Pty Ltd (Administrators Appointed)**  
**ACN: 099 362 955**

**Remuneration Summary for the period 7 August 2008 to 29 August 2008**

| Employee                     | Position          | \$ / hour<br>(ex GST) | Total<br>actual | Total (\$)        | Task Area        |                  |               |                 |                  |                  |
|------------------------------|-------------------|-----------------------|-----------------|-------------------|------------------|------------------|---------------|-----------------|------------------|------------------|
|                              |                   |                       |                 |                   | Assets           | Creditors        | Employees     | Trade on        | Investigation    | Administration   |
|                              |                   |                       |                 |                   | \$               | \$               | \$            | \$              | \$               | \$               |
| Neil Cribb                   | Partner           | 495.00                | 42.40           | 20,988.00         | 14,503.50        | 1,831.50         | 247.50        | 1,138.50        | 1,138.50         | 2,128.50         |
| Mark Conlan                  | Partner           | 495.00                | 1.70            | 841.50            |                  | 742.50           |               |                 | 99.00            |                  |
| Greg Dudley                  | Principal         | 430.00                | 108.60          | 46,698.00         | 29,842.00        | 7,353.00         |               | 602.00          | 5,590.00         | 3,311.00         |
| Gary O'Brien                 | Assistant Manager | 240.00                | 60.20           | 14,448.00         | 2,280.00         | 3,888.00         |               | 1,200.00        | 5,424.00         | 1,656.00         |
| Geoffrey Lasscock            | Supervisor        | 200.00                | 0.80            | 160.00            |                  | 160.00           |               |                 |                  |                  |
| Lalitha Samykanno            | Supervisor        | 200.00                | 2.00            | 400.00            | 200.00           |                  |               |                 | 60.00            | 140.00           |
| Benjamin Ward                | Senior (I)        | 175.00                | 32.00           | 5,600.00          | 507.50           | 2,415.00         | 122.50        |                 | 262.50           | 2,292.50         |
| Shara Billing                | Senior (I)        | 175.00                | 0.70            | 122.50            |                  | 122.50           |               |                 |                  |                  |
| Nikhil Gohil                 | Intermediate (I)  | 150.00                | 48.80           | 7,320.00          | 1,410.00         | 1,530.00         |               |                 | 825.00           | 3,555.00         |
| Nicole Reichert              | Intermediate (I)  | 150.00                | 23.50           | 3,525.00          | 45.00            | 1,530.00         | 15.00         |                 |                  | 1,935.00         |
| Nicholas Dorkham             | Intermediate (II) | 120.00                | 3.00            | 360.00            |                  |                  |               |                 | 360.00           |                  |
| Hayley Forshaw               | Secretary         | 110.00                | 10.50           | 1,155.00          | 121.00           | 495.00           |               |                 |                  | 539.00           |
| Corey Turner                 | Junior            | 60.00                 | 2.20            | 132.00            |                  |                  |               |                 |                  | 132.00           |
| Bryan Taylor                 | IT                | 190.00                | 14.80           | 2,812.00          | 2,812.00         |                  |               |                 |                  |                  |
| <b>TOTAL (excluding GST)</b> |                   |                       | <b>351.20</b>   | <b>104,562.00</b> | <b>51,721.00</b> | <b>20,067.50</b> | <b>385.00</b> | <b>2,940.50</b> | <b>13,759.00</b> | <b>15,689.00</b> |
| GST                          |                   |                       |                 | 10,456.20         |                  |                  |               |                 |                  |                  |
| <b>TOTAL (including GST)</b> |                   |                       |                 | <b>115,018.20</b> |                  |                  |               |                 |                  |                  |
| Average hourly rate          |                   |                       |                 | <b>297.73</b>     |                  |                  |               |                 |                  |                  |

**General Description of Work Completed for the period 7 August 2008 to 29 August 2008**

(detailed time sheets are available for inspection at a mutually convenient time)

| Task Area                       | General Description                        | Includes  |
|---------------------------------|--|---|
| Assets<br>[\$57,721.00]         | Sale of Business as a                      | <ul style="list-style-type: none"> <li>Assessment of profitability of contracts and work to be completed</li> </ul>   |
|                                 | Plant and Equipment                        | <ul style="list-style-type: none"> <li>Liaising with valuers, auctioneers and interested parties</li> <li>Reviewing asset listings and comparing to valuation</li> </ul>  |
|                                 | Sale of Real Property                      | <ul style="list-style-type: none"> <li>Liaising with valuers and agents</li> </ul>  |
|                                 | Assets subject to specific charges         | <ul style="list-style-type: none"> <li>All tasks associated with realising a charged asset</li> </ul>   |
|                                 | Debtors                                    | <ul style="list-style-type: none"> <li>Meetings with company staff to understand individual debtor balances and associated issues / collectibility</li> <li>Correspondence with debtors</li> <li>Reviewing and assessing debtors ledgers</li> </ul>   |
|                                 | Other Assets                               | <ul style="list-style-type: none"> <li>Tasks associated with assessing other assets</li> </ul>  |
|                                 | Leasing                                    | <ul style="list-style-type: none"> <li>Reviewing leasing documents</li> <li>Liaising with owners/lessors</li> <li>Tasks associated with disclaiming leases</li> </ul>   |
| Creditors<br>[\$20,067.50]      | Creditor Enquiries                         | <ul style="list-style-type: none"> <li>Receive and follow up creditor enquiries via telephone, email and post</li> <li>Maintaining creditor enquiry register</li> <li>Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> </ul>   |
|                                 | Retention of Title Claims                  | <ul style="list-style-type: none"> <li>Receive initial notification of creditor's intention to claim</li> <li>Assess claims and determine if assets available</li> <li>Notify creditors of position</li> </ul>  |
|                                 | Secured creditor reporting                 | <ul style="list-style-type: none"> <li>Liaising with and responding to secured creditor's queries</li> </ul>  |
|                                 | Creditor reports                           | <ul style="list-style-type: none"> <li>Preparing 439A, investigation, meeting and general reports to creditors</li> </ul>   |
|                                 | Dealing with proofs of debt                | <ul style="list-style-type: none"> <li>Receipting and filing POD's when not related to a dividend</li> </ul>  |
| Employees<br>[\$385.00]         | Meeting of Creditors                       | <ul style="list-style-type: none"> <li>Preparation meeting notices, proxies and advertisements</li> <li>Forward notice of meeting to all known creditors</li> <li>Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement</li> </ul>             |
|                                 | Employees enquiry                          | <ul style="list-style-type: none"> <li>Receive and follow up potential employee enquiries</li> </ul>  |
| Trade On<br>[\$2,940.50]        | Other employee issues                      | <ul style="list-style-type: none"> <li>Correspondence with Child Support</li> <li>Correspondence with Apprenticeship Board</li> </ul>   |
|                                 | Trade On Management                        | <ul style="list-style-type: none"> <li>Liaising with suppliers</li> <li>Liaising with management and staff</li> <li>Attendance on site</li> </ul>   |
|                                 | Processing receipts and payments           | <ul style="list-style-type: none"> <li>Entering receipt and payments into accounting system</li> </ul>  |
| Investigation<br>[\$13,759.00]  | Budgeting & financial reporting            | <ul style="list-style-type: none"> <li>Reviewing company's budgets and financial statements</li> <li>Meetings to discuss trading position</li> </ul>  |
|                                 | Conducting investigation                   | <ul style="list-style-type: none"> <li>Collection of company books and records</li> <li>Meetings and discussions with company staff to obtain reports and other relevant information</li> <li>Reviewing company's books and records</li> <li>Review and preparation of company nature and history</li> <li>Conducting and summar</li> </ul> |
| Administration<br>[\$15,689.00] | Litigation / Recoveries                    | <ul style="list-style-type: none"> <li>Internal meetings to discuss status of litigation</li> <li>Preparing brief to solicitors</li> <li>Liaising with solicitors regarding recovery actions</li> <li>Attending to negotiations</li> <li>Attending to settlement matters</li> </ul>   |
|                                 | Correspondence                             | <ul style="list-style-type: none"> <li>General</li> </ul>   |
|                                 | Document maintenance/file review/checklist | <ul style="list-style-type: none"> <li>Updating and maintaining information in IPS</li> <li>Filing of documents</li> <li>File reviews</li> <li>Updating checklists</li> </ul>   |
|                                 | Insurance                                  | <ul style="list-style-type: none"> <li>Identification of potential issues requiring attention of insurance specialists</li> <li>Correspondence with Willis regarding initial and ongoing insurance requirements</li> </ul>  |
|                                 | Bank account administration                | <ul style="list-style-type: none"> <li>Preparing correspondence opening and closing accounts</li> <li>Requesting bank statements</li> <li>Bank account reconciliations</li> <li>Correspondence with bank regarding specific transfers</li> </ul>  |
|                                 | ASIC Form 524 and other forms              | <ul style="list-style-type: none"> <li>Preparing and lodging ASIC forms including 505</li> </ul>  |
|                                 | ATO & other statutory reporting            | <ul style="list-style-type: none"> <li>Notification of appointment</li> </ul>   |
|                                 | Planning / Review                          | <ul style="list-style-type: none"> <li>Discussions regarding status of administration</li> </ul>  |
|                                 | Books and records / storage                | <ul style="list-style-type: none"> <li>Listing and boxing company books and records</li> </ul>  |

**Diamond Administration Pty Ltd (Administrators Appointed)**

**ACN: 108 278 397**

**As Trustee For Diamond Administration Unit Trust**

**Remuneration Summary for the period 7 August 2008 to 29 August 2008**

| Employee                     | Position          | \$ / hour<br>(ex GST) | Total<br>actual | Total (\$)       | Task Area        |                  |                 |               |                 |                  |
|------------------------------|-------------------|-----------------------|-----------------|------------------|------------------|------------------|-----------------|---------------|-----------------|------------------|
|                              |                   |                       |                 |                  | Assets           | Creditors        | Employees       | Trade on      | Investigation   | Administration   |
|                              |                   |                       |                 |                  | \$               | \$               | \$              | \$            | \$              | \$               |
| Neil Cribb                   | Partner           | 495.00                | 18.90           | 9,355.50         | 4,306.50         | 841.50           | 1,782.00        | 49.50         | 742.50          | 1,633.50         |
| Mark Conlan                  | Partner           | 495.00                | 0.50            | 247.50           |                  | 148.50           |                 |               | 99.00           |                  |
| Greg Dudley                  | Principal         | 430.00                | 27.90           | 11,997.00        | 3,612.00         | 2,752.00         | 1,935.00        | 258.00        | 2,537.00        | 903.00           |
| Gary O'Brien                 | Assistant Manager | 240.00                | 73.40           | 17,616.00        | 5,088.00         | 2,808.00         | 2,808.00        | 432.00        | 4,392.00        | 2,088.00         |
| Lalitha Samykanno            | Supervisor        | 200.00                | 2.20            | 440.00           |                  |                  |                 |               |                 | 2.20             |
| Benjamin Ward                | Senior (I)        | 175.00                | 30.60           | 5,355.00         | 1,522.50         | 2,327.50         | 245.00          | 52.50         | 490.00          | 717.50           |
| Shara Billing                | Senior (I)        | 175.00                | 0.80            | 140.00           |                  | 140.00           |                 |               |                 |                  |
| Nikhil Gohil                 | Intermediate (I)  | 150.00                | 61.40           | 9,210.00         | 1,080.00         | 1,545.00         | 1,395.00        |               | 210.00          | 4,980.00         |
| Nicole Reichert              | Intermediate (I)  | 150.00                | 8.60            | 1,290.00         |                  | 0.40             |                 |               |                 | 8.20             |
| Nicholas Dorkham             | Intermediate (II) | 120.00                | 3.50            | 420.00           |                  |                  |                 |               | 420.00          |                  |
| Terri Hoy                    | Secretary/PA      | 160.00                | 0.30            | 48.00            |                  | 48.00            |                 |               |                 |                  |
| Hayley Forshaw               | Secretary         | 110.00                | 9.00            | 990.00           | 308.00           | 88.00            | 242.00          |               |                 | 352.00           |
| Corey Turner                 | Junior            | 60.00                 | 6.20            | 372.00           |                  |                  |                 |               |                 | 372.00           |
| <b>TOTAL (excluding GST)</b> |                   |                       | <b>243.30</b>   | <b>57,481.00</b> | <b>15,917.00</b> | <b>10,698.90</b> | <b>8,407.00</b> | <b>792.00</b> | <b>8,890.50</b> | <b>11,056.40</b> |
| GST                          |                   |                       |                 | 5,743.30         |                  |                  |                 |               |                 |                  |
| <b>TOTAL (including GST)</b> |                   |                       |                 | <b>63,176.30</b> |                  |                  |                 |               |                 |                  |
| Average hourly rate          |                   |                       |                 | <b>236.26</b>    |                  |                  |                 |               |                 |                  |

**Diamond Administration Pty Ltd (Administrators Appointed)**

ACN: 108 278 397

**As Trustee For Diamond Administration Unit Trust****General Description of Work Completed for the period 7 August 2008 to 29 August 2008**

(detailed time sheets are available for inspection at a mutually convenient time)

| Task Area                       | General                                    | Includes  |
|---------------------------------|--|---|
| Assets<br>[\$15,917.00]         | Sale of Business as a Going Concern        | <ul style="list-style-type: none"> <li>Drafting confidentiality agreements and maintaining schedule of interested parties</li> <li>Preparing an information memorandum</li> <li>Liaising with potential purchasers including site visits</li> <li>Internal meetings to discuss/review offers received</li> </ul>  |
|                                 | Plant and Equipment                        | <ul style="list-style-type: none"> <li>Liaising with valuers, auctioneers and interested parties</li> <li>Reviewing asset listings and comparing to valuation</li> </ul>  |
|                                 | Sale of Real Property                      | <ul style="list-style-type: none"> <li>Liaising with valuers and agents</li> </ul>  |
|                                 | Assets subject to specific charges         | <ul style="list-style-type: none"> <li>All tasks associated with realising a charged asset</li> </ul>   |
|                                 | Leasing                                    | <ul style="list-style-type: none"> <li>Reviewing leasing documents</li> <li>Liaising with owners/lessors</li> <li>Maintaining schedule of leased assets - payouts, returned items, details</li> <li>Tasks associated with disclaiming leases</li> </ul>   |
| Creditors<br>[\$10,698.80]      | Creditor Enquiries                         | <ul style="list-style-type: none"> <li>Receive and follow up creditor enquiries via telephone, email and post</li> <li>Maintaining creditor enquiry register</li> <li>Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> </ul>   |
|                                 | Secured creditor reporting                 | <ul style="list-style-type: none"> <li>Liaising with and responding to secured creditor's queries</li> </ul>  |
|                                 | Creditor reports                           | <ul style="list-style-type: none"> <li>Preparing 439A, investigation, meeting and general reports to creditors</li> </ul>   |
|                                 | Dealing with proofs of debt                | <ul style="list-style-type: none"> <li>Receipting and filing POD's when not related to a dividend</li> <li>Preparation meeting notices, proxies and advertisements</li> <li>Forward notice of meeting to all known creditors</li> <li>Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertise</li> </ul> |
|                                 | Meeting of Creditors                       | <ul style="list-style-type: none"> <li>Receive and follow up employee enquiries</li> <li>Meetings with employees to advise status of company</li> <li>Maintain employee enquiry register</li> <li>Review and prepare correspondence to creditors via facsimile, email and post</li> <li>Preparation of letters to employees advi</li> </ul>   |
| Employees<br>[\$8,407.00]       | Employees enquiry                          | <ul style="list-style-type: none"> <li>Receive and follow up employee enquiries</li> <li>Meetings with employees to advise status of company</li> <li>Maintain employee enquiry register</li> <li>Review and prepare correspondence to creditors via facsimile, email and post</li> <li>Preparation of letters to employees advi</li> </ul>   |
|                                 | GEERS                                      | <ul style="list-style-type: none"> <li>Preparing spreadsheet of potential GEERS claims</li> </ul>   |
|                                 | Calculation of entitlements                | <ul style="list-style-type: none"> <li>Calculating employee entitlements</li> <li>Reviewing employee files and company's books and records</li> <li>Reconciling superannuation accounts</li> </ul>  |
|                                 | Employee                                   | <ul style="list-style-type: none"> <li>Correspondence with employees regarding dividend</li> </ul>  |
|                                 | Other employee issues                      | <ul style="list-style-type: none"> <li>Correspondence with Child Support</li> <li>Correspondence with Apprenticeship Board</li> </ul>   |
| Trade On<br>[\$792.00]          | Trade On Management                        | <ul style="list-style-type: none"> <li>Liaising with suppliers</li> <li>Liaising with management and staff</li> <li>Attendance on site</li> </ul>   |
|                                 | Processing receipts and payments           | <ul style="list-style-type: none"> <li>Entering receipt and payments into accounting system</li> </ul>  |
|                                 | Budgeting & financial reporting            | <ul style="list-style-type: none"> <li>Reviewing company's budgets and financial statements</li> <li>Meetings to discuss trading position</li> </ul>  |
| Investigation<br>[\$8,890.50]   | Conducting investigation                   | <ul style="list-style-type: none"> <li>Collection of company books and records</li> <li>Meetings and discussions with company staff to obtain reports and other relevant information</li> <li>Reviewing company's books and records</li> <li>Review and preparation of company nature and history</li> <li>Conducting and summar</li> </ul>   |
| Administration<br>[\$11,056.40] | Correspondence                             | <ul style="list-style-type: none"> <li>General</li> </ul>   |
|                                 | Document maintenance/file review/checklist | <ul style="list-style-type: none"> <li>Updating and maintaining information for IPS</li> <li>Filing of documents</li> <li>File reviews</li> <li>Updating checklists</li> </ul>  |
|                                 | Insurance                                  | <ul style="list-style-type: none"> <li>Identification of potential issues requiring attention of insurance specialists</li> <li>Correspondence with Willis regarding initial and ongoing insurance requirements</li> </ul>  |
|                                 | Bank account administration                | <ul style="list-style-type: none"> <li>Preparing correspondence opening and closing accounts</li> <li>Requesting bank statements</li> <li>Bank account reconciliations</li> <li>Correspondence with bank regarding specific transfers</li> </ul>  |
|                                 | ASIC Form 524 and other forms              | <ul style="list-style-type: none"> <li>Preparing and lodging ASIC forms including 505</li> </ul>  |
|                                 | ATO & other statutory                      | <ul style="list-style-type: none"> <li>Notification of appointment</li> </ul>   |
|                                 | Planning /                                 | <ul style="list-style-type: none"> <li>Discussions regarding status of administration</li> </ul>  |
|                                 | Books and records / storage                | <ul style="list-style-type: none"> <li>Listing and boxing books and records</li> </ul>  |

**Diamond Industries Pty Ltd (Administrators Appointed)**  
**ACN 099 362 955**

**Summary of Receipts and Payments**  
**For the Period 7 August 2008 to 29 August 2008**

| <b>RECEIPTS</b>  | <b>Total (AUD)</b> |
|--|--------------------|
|  | \$                 |
| Sundry Debtors   | 252,176.17         |
|  | <u>252,176.17</u>  |
| <b>PAYMENTS</b>  |                    |
| Transfer to Administration for Employee Salaries/Wages | 20,000.00          |
|  | <u>20,000.00</u>   |
| <b>Net Receipts/(Payments)</b>                         | <u>232,176.17</u>  |
| <b>Cash on Hand</b>                                    | <u>232,176.17</u>  |

**Diamond Administration Pty Ltd (Administrators Appointed)  
As Trustee for Diamond Administration Unit Trust  
ACN 108 278 397**

**Summary of Receipts and Payments  
For the Period 7 August 2008 to 29 August 2008**

| <b>RECEIPTS</b>                                      | <b>Total (AUD)</b>      |
|--|-------------------------|
|  | <b>\$</b>               |
| Transfer from Industries for Employee Salaries/Wages | 20,000.00               |
|  | <u><b>20,000.00</b></u> |
| <br>   |                         |
| <b>PAYMENTS</b>                                      |                         |
| Employee Salaries / Wages                            | 10,818.90               |
|  | <u><b>10,818.90</b></u> |
| <br>   |                         |
| <b>Net Receipts/(Payments)</b>                       | <u><b>9,181.10</b></u>  |
| <b>Cash on Hand</b>                                  | <u><b>9,181.10</b></u>  |



**ASIC**

Australian Securities & Investments Commission

## INFORMATION SHEET 85

# Approving fees: a guide for creditors

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

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

## Entitlement to fees and costs

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

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

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

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

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

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

- legal fees

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

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

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

## Who may approve fees

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

**Table 1: Who may approve fees**

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

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

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

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

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

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

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

### Creditors' committee approval

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

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

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

### Creditors' approval

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

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

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

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

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

### Calculation of fees

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

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

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

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

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

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

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

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

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

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

## Report on proposed fees

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

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

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

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

## Deciding if fees are reasonable

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

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

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

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

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

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

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

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

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

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

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

## Queries and complaints

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

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

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

### To find out more

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

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

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

INFORMAL PROOF OF DEBT FORM

Regulation 5.6.47

DIAMOND ADMINISTRATION PTY LTD  
(ADMINISTRATORS APPOINTED)  
ACN 108 278 397 ("the Company")  
AS TRUSTEE FOR DIAMOND ADMINISTRATION UNIT TRUST

Name of creditor: .....

Address of creditor: .....

.....

ABN: .....

Telephone number: .....

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

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)

**Notes:**

Under the Corporations Regulations, a creditor is not entitled to vote at a meeting unless (Regulation 5.6.23):

- a. his or her claim has been admitted, wholly or in part, by the Administrator; or
- b. he or she has lodged with the Administrator 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.

Proxies must be made available to the Administrator.

