

RSM Bird Cameron Partners

Chartered Accountants

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17 July 2009

Report to the Creditors of:

Diamond Industries Pty Ltd (In Liquidation) ACN 099 362 955

1. INTRODUCTION

- 1.1. We refer to our previous Report to Creditors of Diamond Industries Pty Ltd (“the Company”) during the voluntary administration dated 3 September 2008 and correspondence to creditors dated 12 September 2008.
- 1.2. Whilst the Corporations Act 2001 (“the Act”) requires an Annual Meeting of Creditors and Members (“the Annual Meeting”) to be convened by no later than 11 December 2009, we believe it is appropriate and necessary to provide creditors with an update as to a dividend estimate and provide a replacement Declaration of Independence, Relevant Relationships and Indemnities (“DIRRI”).
- 1.3. A further and more detailed report will issue prior to the Annual Meeting.

2. DIVIDEND ESTIMATE

- 2.1. As noted in our Report to Creditors dated 3 September 2008, a distribution to unsecured creditors was dependent upon numerous factors including:-
 - 2.1.1. The ultimate debt to be claimed by the secured creditor upon the realisation of third party securities;
 - 2.1.2. The realisable value of debtors and retentions which were subject to dispute; and
 - 2.1.3. Other recovery avenues including voidable transactions.

Secured Creditor Position

- 2.2. In late June 2009, the secured creditor advised that it had realised all three (3) properties the subject of its security provided by the Directors and the Edwards Property Trust, being the Company’s premises in the Curtin Technology Park, an investment property in Burswood and the Director’s residence.

Document3

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accounting and consulting firms.

- 2.3. Whilst the secured creditor is yet to submit a Formal Proof of Debt, we are advised that the secured claim now remaining against the Company is approximately \$2.085 million.

Debtors and Retentions

- 2.4. We have continued to seek to recover debtor and retention monies however, as has previously been experienced, many claims are disputed and / or subject to counter claims.

Debtors

- 2.5. While some claims have been settled on a commercial basis, there remains approximately \$723,000 of debtor claims yet to be collected and / or resolved. Accordingly, the ultimate estimated realisable value remains unknown.

Retentions

- 2.6. While some retention monies have been collected, there remains approximately \$31,000 in retention monies that are not yet due and payable or are subject to rectification claims that are under consideration. Accordingly, the ultimate estimated realisable value remains unknown.

Motor Vehicle

- 2.7. During the course of our investigations we identified a payment acquiring a motor vehicle that had not been disclosed on the Company's asset register or the Director's RATA.
- 2.8. The vehicle had been provided as a gift to third party and subsequently registered in the name of the third party.
- 2.9. The vehicle has recently been returned to our control and will be realised in the near future.

Voidable Transactions

- 2.10. Given the lack of available funds that exist in the liquidation, we have not actively pursued the recovery of voidable transactions at this time. We hope to report further to you on such matters in our report to be issued prior to the Annual General Meeting.
- 2.11. However, any claim against the director for insolvency trading and / or breach of duties is not considered to be commercially recoverable and is effectively of no value to secured or unsecured creditors.

Summary of Dividend Estimate

- 2.12. We believe a distribution to the secured creditor may be possible, however the quantum is yet to be determined and is subject to future recoveries.
- 2.13. However, a distribution to unsecured creditors is unlikely to arise.
- 2.14. A summary of the estimated dividend position is summarised below in Table 1.

	Book Value as at 14 July 2009 \$'000	Liquidators' Estimated Realisable Value as at 14 July 2009 \$'000
Cash at Bank	108	108
Debtors	723	Unknown
Retentions	31	Unknown
Motor Vehicle	-	Unknown
Other possible recoveries –		
Voidable transactions	-	Unknown
Insolvent Trading Claim	-	-
	\$882	\$Unknown
Outstanding Costs –		
Liquidation	21	21
Estimated Future Fees and Costs	150	150
	\$171	\$171
Available for Creditors	\$711	Unknown
Creditor Claims –		
Secured Creditor	\$2,085	\$2,085
Available for Unsecured Creditors	NIL	NIL

Table 1: Summary of Dividend Estimate

3. DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES (“DIRRI”)

- 3.1. In accordance with Section 436DA(5)(b)(ii) please find attached a replacement DIRRI.
- 3.2. In accordance with Section 436DA(6)(b) a copy of the replacement DIRRI will be tabled at the Annual Meeting.
- 3.3. To assist creditors with the consideration of the replacement DIRRI, we provide the following further information.

Negotiated Settlement

- 3.4. As conveyed in our Report to Creditors dated 3 September 2008, the settlement with Doric Constructions Pt Ltd (“Doric”) was concluded on 15 August 2008 in respect of claims against Doric by the Company and claims by Doric against the Company.
- 3.5. Some creditors have queried the merits of the settlement and to seek to allay any concerns, we provide the following information.

- 3.6. At the date of our appointment, Company records showed debtors (including retentions) with a book value of \$1.879 million which included amounts owed by Doric totalling \$845,317.86 as detailed below in Table 2.

	<u>\$</u>
Debtors	841,077.22
Retention	4,240.64
	<u>\$845,317.86</u>

Table 2: Summary of Debt Owed by Doric per Company Records

- 3.7. The settlement made with Doric was in relation to the debtor amount only.
- 3.8. A summary of the debtor amounts as at 7 August 2008 is summarised below in Table 3.

Debtor Age	Lakeside Joondalup \$	Waterford \$	Total \$
Current (Invoiced 25/7/09)	745,043.69	19,582.96	764,626.65
Old & Disputed Invoices from February, March, April & May 2009	-	76,447.57	76,447.57
	<u>\$745,043.69</u>	<u>\$96,033.53</u>	<u>\$841,077.22</u>

Table 3: Summary of Debtor Recorded by Company as owed by Doric by Contract

- 3.9. The claims against Doric were settled in the amount of \$195,000 as summarised below in Table 4.

	<u>\$</u>
Waterford	120,000
Lakeside Joondalup	75,000
	<u>\$195,000</u>

Table 4: Allocation of Settlement Sum

- 3.10. We remain of the view that the settlement with Doric was a fair and reasonable commercial settlement.
- 3.11. Our legal advisor who has experience in the construction industry and participated in the settlement negotiations, confirmed in correspondence dated 15 August 2008 that he believed the settlement was a fair and reasonable commercial settlement, which if anything, favours the creditors of the Company as against Doric given the facts and circumstances noted below in paragraphs 3.12 to 3.13.
- 3.12. We now outline below some matters relevant to our negotiations and ultimate commercial settlement.

Lakeside Joondalup

- 3.13. Background and issues of relevance to settlement of the Lakeside Joondalup claim are outlined below:-
- 3.13.1. As a matter of law Doric would, in any event and in due course, be able to set off against the Company's debtor claims (totalling \$745,043.69 in relation to Lakeside), any damages that it suffers as a consequence of the Company not being able to complete the contracts.
 - 3.13.2. In addition to those claims, Doric asserted that the Company had overclaimed and had been paid \$1,176,549.34 for work that had not been done. Doric presented a reconciliation of these amounts based on a quantity survey conducted by Mr Steve Bowins of BCA Consultants Pty Ltd after the date of our appointment.
 - 3.13.3. On this basis there was a differential of \$1,921,593.03 between the amount claimed by the Company of \$745,043.69 and the Doric claim of \$1,176,549.34.
 - 3.13.4. Further, Doric indicated that some of the amounts claimed by the Company in its most recent invoice would be disputed including unconfirmed or unresolved variations.
 - 3.13.5. In commercial terms, it is arguable that there was no incentive for Doric to settle considering:
 - 3.13.5.1. The projects were not complete;
 - 3.13.5.2. The Company was unable to complete contracted works;
 - 3.13.5.3. Guarantees were available to Doric in respect of each project including Lakeside as performance and maintenance bonds;
 - 3.13.5.4. The administration was effectively without funds to legally pursue any claim; and
 - 3.13.5.5. Given the significant differential between the Company's claim and the assertions of Doric, any litigation would have been very expensive and most uncertain in terms of its outcome and longevity.

Waterford

- 3.14. Background and issues of relevance to settlement of the Waterford claim are outlined below:-
- 3.14.1. Disputes existed prior to our appointment over the old invoices to a value of approximately \$76,000;
 - 3.14.2. We were astutely aware of Doric's need for a flume cabinet to be delivered to enable their program of works to continue on a timely basis. During the very early stages of the administration we used our best endeavours to ensure the flume cabinet was delivered to the Company's premises and under our control. We are aware Doric also used their best endeavours to have the flume cabinet delivered to site. Ultimately, the flume cabinet was delivered to our control;

- 3.14.3. The provision of the flume cabinet at an additional value of \$28,000 facilitated the resolution of any disputes that may have existed on previous invoices;
- 3.14.4. Accordingly, the settlement of \$120,000 was in respect of invoices of approximately \$124,000.

Dividend Estimate

- 3.15. As noted above, a dividend to unsecured creditors will not arise in this liquidation.
- 3.16. This position would exist even if it was assumed that the book value of all debtors recorded at the date of our appointment and amounting to \$1,878,540, including the debt shown as owed by Doric in the amount of \$841,077.22, was recovered in full.

Please contact me directly on (08) 9261 9342 should you have any queries.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Neil Crabb', written over a horizontal line.

NEIL CRABB
Joint and Several Liquidator

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Declaration of Independence, Relevant Relationships and Indemnities

This is a replacement Declaration of Independence, Relevant Relationships and Indemnities (“DIRRI”) in accordance with Section 436DA(5)(b)(ii) of the Corporations Act 2001 (“the Act”).

In accordance with Section 436DA(6)(b) of the Corporations Act, a copy of this replacement DIRRI will be tabled at the next meeting of creditors.

Independence

We, Neil Raymond Cribb and Mark Anthony Conlan, of RSM Bird Cameron Partners undertook a proper assessment of the risks to our independence prior to accepting the appointment as administrators of Diamond Industries Pty Ltd by ascertaining whether anyone within our firm had prior dealings or relationships with the Company and/or its directors. This was done by way of:-

1. An email circular to all RSM Bird Cameron Partners and RSM Bird Cameron staff throughout our 28 offices in Australia; and
2. Review of our Perth office client database.

This assessment identified no real or potential risks to our independence.

We were not aware of any reasons that would have prevented us from accepting the appointment.

We remain firmly of the view, for the reasons noted below, that none of the relationships referred to below, cause any impediment or conflict that would bring into question our integrity, objectivity and impartiality in acting for the best interest of creditors.

Relevant Relationships

Our first and only meeting with the directors prior to our appointment was on 6 August 2008. Upon being requested to act as administrators of the Company, we undertook the independence checks noted above.

Accordingly, we consented to act as administrators.

The following relevant relationships are now advised.

Document5

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Name	Nature of relationship	Reasons why not an Impediment or Conflict
<p>ANZ Banking Group Limited (“the Bank”)</p>	<p>The Bank is the primary banker of the national RSM Bird Cameron Group and has been for many years.</p> <p>The Appointees and their insolvency practitioner partners operating in other states of Australia have previously acted for and may currently act for and / or have been appointed by the Bank in respect of insolvency and asset recovery engagements in capacities as Receiver and Managers, Agents for the Mortgagee in Possession, Administrators and Investigating Accountants.</p> <p>The Bank is also one of the primary bankers for at least one of the Appointees.</p>	<p>For the reasons noted below, we do not believe the relationship causes any impediment or conflict that would bring it to question our integrity, objectivity and impartiality in acting for the best interest of creditors.</p> <p>The RSM Bird Cameron Group is a business with more than 70 partners/directors and 800 staff in 28 offices throughout Australia. Accordingly, the RSM Bird Cameron Group has numerous policies, systems and processes in place to maintain client confidentiality and servicing integrity.</p> <p>The RSM Bird Cameron Group comprises numerous entities, operational groups and structures, and specialist service lines including Turnaround and Insolvency, Assurance and Advisory, Business Advisory, Risk Management and Tax Consulting.</p> <p>The operational groups and service lines are led by partners / directors or senior executives within those groups.</p> <p>Accordingly, the relationship between RSM Bird Cameron Group and the Bank as our primary lender is conducted through the National Chairman, Chief Operating Officer and National Group Accounting function.</p> <p>The ongoing ability for the Appointees to be engaged by the Bank on insolvency and asset recovery matters is dependent upon many factors outside the control of the Appointees, but also our ongoing ability to undertake engagements in an independent and professional manner and in a manner that is for the best interests of creditors.</p> <p>Indeed, endeavours to achieve the best asset realisation values will not only benefit the secured creditor but ultimately all other creditors after the secured creditor’s debt has been extinguished.</p> <p>The Bank’s position with the Company was outlined in our Report to Creditors dated 3 September 2008 and updated in the Report dated 17 July 2009 which confirms that the Bank is owed approximately \$2.085 million after realisation of third party securities.</p>

<p>Decmil Australia Pty Ltd (“Decmil”)</p>	<p>RSM Bird Cameron Partners is the statutory company auditor of Decmil and its holding company Decmil Group Limited (previously known as Paladio Limited).</p> <p>The Assurance and Advisory division of RSM Bird Cameron Partners has undertaken the audit of Decmil and its predecessors for more than two years and continues in this capacity.</p> <p>The Appointees are partners of RSM Bird Cameron Partners</p>	<p>For the reasons noted below, we do not believe the relationship causes any impediment or conflict that would bring into question our integrity, objectivity and impartiality in acting for the best interest of creditors.</p> <p>The RSM Bird Cameron Group is a business with more than 70 partners/directors and 800 staff in 28 offices throughout Australia. Accordingly, the RSM Bird Cameron Group has numerous policies, systems and processes in place to maintain client confidentiality and servicing integrity.</p> <p>The RSM Bird Cameron Group comprises numerous entities, operational groups and structures, and specialist service lines including Turnaround and Insolvency, Assurance and Advisory, Business Advisory, Risk Management and Tax Consulting.</p> <p>The operational groups and service lines are led by partners / directors or senior executives within those groups.</p> <p>Accordingly, the Appointees partners conducting the audit do not involve themselves with the day to day operations of the Turnaround and Insolvency group of RSM Bird Cameron Partners.</p> <p>Further, the Appointees do not have any direct relationship, business or otherwise, with the directors and / or senior executives of Decmil Group Limited and/or its subsidiaries.</p> <p>At the date of our appointment, the records of the Company showed Decmil as owing the Company an amount of \$9,350 being a cash retention due for release on 1 September 2008 and relating to a contract located in Newman the North West of Western Australia. We are currently seeking to validate the costs claimed by Decmil against the retention monies. Accordingly, the matter is yet to be resolved.</p> <p>The Report As To Affairs prepared by the director also identified a contingent asset being a potential legal claim against Decmil in respect of contract work carried out between March 2007 and November 2007. The director’s estimated realisable value as noted in the RATA was \$300,000.</p>
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		<p>Enquiries are yet to be concluded in relation to this potential claim but full details will be provided in a report to creditors prior to the annual meeting to be convened prior to December 2009.</p>
<p>Doric Construction Pty Ltd (“Doric”)</p>	<p>The Business Advisory division of RSM Bird Cameron undertakes tax compliance work for Doric and a minority shareholder.</p> <p>The Appointees are directors of Birdanco Nominees Pty Ltd as trustee for the Birdanco Practice Trust trading as RSM Bird Cameron.</p> <p>RSM Bird Cameron Partners were previously the auditor of Doric, the last audit being for the year ended 30 June 2007.</p> <p>The Appointees are partners of RSM Bird Cameron Partners.</p>	<p>For the reasons noted below, we do not believe the relationship causes any impediment or conflict that would bring into question our integrity, objectivity and impartiality in acting for the best interest of creditors.</p> <p>The RSM Bird Cameron Group is a business with more than 70 partners/directors and 800 staff in 28 offices throughout Australia. Accordingly, the RSM Bird Cameron Group has numerous policies, systems and processes in place to maintain client confidentiality and servicing integrity.</p> <p>The RSM Bird Cameron Group comprises numerous entities, operational groups and structures, and specialist service lines including Turnaround and Insolvency, Assurance and Advisory, Business Advisory, Risk Management and Tax Consulting.</p> <p>The operational groups and service lines are led by partners / directors or senior executives within those groups.</p> <p>Accordingly, the directors of RSM Bird Cameron conducting the tax compliance work and the partners of RSM Bird Cameron Partners previously conducting the audit, do not involve themselves with the day to day operations of the Turnaround and Insolvency group of RSM Bird Cameron Partners.</p> <p>Further, the Appointees do not have any direct relationship, business or otherwise, with the directors and / or senior executives of Doric.</p> <p>Details regarding Doric’s relationship with the Company are referred to in detail in the Circular to Creditors dated 17 July 2009.</p>

Non Precluded Relationships

The above noted relationships are not considered by either the Act or the Insolvency Practitioners Association of Australia's Code of Professional Practice "(the Code)" as relationships that would have precluded acceptance of the appointment as administrators and/or liquidators provided:

1. The requirements of the Code are followed; and
2. The practitioner and the practitioner's firm has adequate policies, systems and processes; and
3. The situation was a result of inadvertence; and
4. It was not reasonable to know or anticipate the situation at the time of accepting the appointment.

We are not aware of any other prior professional or personal relationships that should be disclosed.

Prior Engagements with the Insolvent

Neither of us, nor our firm, has undertaken any prior engagements for Diamond Industries Pty Ltd or the directors.

We are not aware of any other prior professional or personal relationships that should be disclosed.

Indemnities

We have not been indemnified in relation to the administration or liquidation, other than any indemnities that we may be entitled to understand.

This does not include statutory indemnities.

Dated this 17th day of July 2009



NEIL CRABB
Joint and Several Liquidator