

CIRCULAR TO CREDITORS

**BARRY SMITH GRAINS PTY LIMITED
(PROVISIONAL LIQUIDATOR APPOINTED)
ACN 003 151 166**

**BARRY SMITH FAMILY TRUST
(RECEIVER AND MANAGER APPOINTED)
ABN 76 872 775 831**

**BARRY SMITH FAMILY TRUST NO. 2
(RECEIVER AND MANAGER APPOINTED)
ABN 50 549 765 502**

I refer to my previous Circular to Creditors dated 27 September 2007. I report herein on the progress of these administrations and the results of my investigations to date.

1. STATUS OF THE ADMINISTRATIONS

On 26 September 2007 on the application of Barry Ronald Smith a director of Barry Smith Grains Pty Ltd ACN 003 151 166 ("the Company") the Supreme Court of New South Wales appointed Mr Peter William Marsden and I as Joint and Several Provisional Liquidators of the Company. The Court also appointed us Joint and Several Receivers and Managers of the property of the Barry Smith Family Trust and Joint and Several Receivers and Managers of the property of the Barry Smith Family Trust No 2 on the same day.

On 29 October 2007 the Supreme Court of New South Wales stood over the hearing of the application to wind up the Company for four weeks until 10 am, 26 November 2007. The parties were given liberty to apply on 7 days notice.

The Company remains subject to the control of the Provisional Liquidators until the hearing of the application to wind up the Company. Our preliminary investigations suggest that the Company is insolvent and accordingly, it is likely we will recommend to the Court that the Company be wound up. Upon the determination of the Court to wind up the Company the appointment of the Provisional Liquidators will be concluded and Liquidators are likely to be appointed to the Company.

No meetings of creditors will be held until the Company is ordered to be wound up by the Court. The Provisional Liquidators' appointment is an interim measure until the Court makes a final determination on the application to wind up the Company. At the present time it is expected that the Company will be ordered to be wound up on 26 November 2007.

2. THE STRUCTURE OF THE BUSINESS

The source of this information is primarily the affidavit of Barry Ronald Smith sworn on 25 September 2007.

The Company was incorporated as Buzovu Pty Ltd on 31 July 1986. On 13 November 1986 the Company changed its name to Barry Smith Grains Pty Ltd.

Barry Ronald Smith and his wife Gai Lynette Smith became Directors of the Company on 1 October 1986 after acquiring the Company as a shelf company through their advisers. The Company has issued and paid up capital of \$2.00. Barry and Gai Smith each hold one fully paid ordinary share in the company. I am advised that Barry and Gai acquired the Company to act as the trustee of a trading trust. The trading trust was settled on 1 October 1986 and is known as the Barry Smith Family Trust ("BSFT1"). The BSFT1 is a discretionary trust whose beneficiaries are Barry and Gai Smith and their four children.

The BSFT1 commenced trading as "Barry Smith Grains" in November 1986 operating as a grain trader located in Temora. From December 1995 to June 2006 the business name "Barry Smith Grains" was registered in the name of the Company. I am advised that the business name was inadvertently or erroneously transferred to Bagai Pty Ltd ACN 120 279 478 ATF Barry Smith Grains Trust in June 2006. I am advised the trust referred to was never settled and the transmission of the business was never implemented. The director has advised that internal accounts and tax returns have been prepared on the basis that the Temora business was conducted by the Company as trustee of the BSFT1.

A second Trust was established based on professional advice in 1992 initially for the purpose of operating a hotel in West Wyalong. The trust was settled on 18 May 1992 and is known as the Barry Smith Family Trust No 2 ("BSFT2"). The BSFT2 was also a discretionary trust with common beneficiaries with the BSFT1. The BSFT2 was also a trading trust. The Company is also the trustee of the BSFT2. The Hotel business was not successful and was sold. The BSFT2 remained dormant until the grain trading business was expanded in 2000 when the BSFT2 acquired a grain trading business in Echuca. The director has advised that this business also traded under the name "Barry Smith Grains". The BSFT2 opened an office in Moree in 2002 and traded under the registered business name "Barry Smith Grains Moree". The business name search reveals that this name is registered in the name of the Company. The Director has advised that the Company operated the Moree business and held the business name as trustee of the BSFT2. The director has advised that internal accounts and tax returns have been prepared on the basis that the Moree and Echuca businesses were conducted by the Company as trustee of the BSFT2.

In summary the structure of the organisation at the time of the appointment of the Provisional Liquidators was:

- The Company in its capacity as Trustee of the BSFT1 conducted the business of "Barry Smith Grains" at Temora. The BSFT1 has its own Australian Business Number ("ABN") and used this ABN in its business dealings.
- The Company in its capacity as the Trustee of the BSFT2 conducted the business of "Barry Smith Grains Moree" and "Barry Smith Grains" at Echuca. The BSFT2 has its own Australian Business Number ("ABN") and used this ABN in its business dealings.

3. IMPACT OF THE STRUCTURE OF THE BUSINESS

Because a trust is not a legal entity, a person (including a company) who acts as its trustee is personally liable for all debts and liabilities incurred in conducting a business on behalf of the trust. The trust property, or property subject of the trust is not property of the trustee. Equitable

legal principles give the trustee a right to have the trust assets applied to satisfy these obligations. The trustee's right against the trust property is referred to as a right of indemnity against the trust property.

The application of these principles to the Company's circumstances has the following results:

- The Company is liable for the debts and liabilities properly incurred in the conduct of the Barry Smith Grains Temora business in its capacity as trustee of the BSFT1.
- The property of the BSFT1 is not property of the Company.
- The Company has a right of indemnity from the property of BSFT1 for the debts and liabilities properly incurred in the conduct of the "Barry Smith Grains" Temora business in its capacity as trustee of the BSFT1.
- The Company is liable for the debts and liabilities properly incurred in the conduct of the "Barry Smith Grains", Echuca business and the "Barry Smith Grains Moree" business in its capacity as trustee of the BSFT2.
- The property of the BSFT2 is not property of the Company.
- The Company has a right of indemnity from the property of BSFT2 for the debts and liabilities properly incurred in the conduct of the "Barry Smith Grains" Echuca business and the "Barry Smith Grains Moree" business in its capacity as trustee of the BSFT2.

The practical implication of these principles on the winding up of the company and the trusts is:

- The Receivers and Managers of the BSFT1 and BSFT2 will realise the property of the two trusts and ultimately remit to the Company (or its liquidator if one is appointed) the proceeds of the trust property (if any) in accordance with the Company's right of indemnity from property of the respective trusts.
- The liquidators of the Company, if appointed, will deal with claims of creditors against the Company and will utilise the proceeds of the property of the trusts remitted by the Receivers and Managers to pay a dividend to creditors

Creditors have been requested to submit proofs of debt detailing the trust with which they were trading.

The trading structure of the business will also likely have an impact on set-off claims by debtors and creditors as it relates to the respective trusts for the repayment of outstanding debts against the person's claim against the Company.

4. SECURED CREDITOR

The Company in its capacity as trustee of the BSFT1 and in its capacity as trustee of the BSFT2 entered into "Receivables Finance Facility" agreements with the Commonwealth Bank of Australia. Certain debtors of the respective trusts, at the time of the appointment of the Receivers and Managers to the property of the respective trusts, had been assigned to the CBA pursuant to the terms of these agreements.

Although the agreements operated as non-disclosure agreements, the effect is that CBA are the owners of those specifically approved debtors and are entitled to be paid directly from the proceeds of collection of those debts. We have been assisting the CBA in the collection of those debtors in order to maximise the recovery for the benefit of creditors.

The CBA were also granted registered fixed and floating charges over the property of the Company and charges over the property of the BSFT1 and BSFT2 by the Company in its capacity as Trustee of the respective trusts.

At the date of our appointment the CBA was owed \$1,357,513.55 resulting from the advance of funds to the Company in return for the assignment of the debtors of the respective Trusts.

Funds advanced to the Company as trustee of:

BSFT1	\$830,776.56
BSFT2	<u>\$526,736.99</u>
Total Advanced by CBA	<u><u>\$1,357,513.55</u></u>

The CBA had been assigned book debts pursuant to the Receivables Finance facility by the Company in its capacity as trustee of the respective trusts. The total book debts assigned by the respective trusts to the CBA at the time of out appointment were:

Debtors assigned to CBA

BSFT1	\$1,570,196.87
BSFT2	<u>\$785,070.85</u>
Total of Debtors assigned to CBA	<u><u>\$2,355,267.72</u></u>

5. ACTIVITIES SINCE APPOINTMENT

5.1 Closure of the Temora Office

Upon our appointment my staff and I attended on the Temora Office of the Company and met with the Company's director, Mr Barry Smith. Mr Smith advised that the Company's operations had been wound back over the past weeks and that the Company had effectively closed the Company's offices in Moree and Echuca.

At the time of our appointment there were eight (8) staff including the Company's directors, Mr Barry Smith and Mrs Gai Smith, still employed by the Company. The employees were advised of the appointment of the Provisional Liquidators to the Company and the Receivers and Managers to the property of the Trusts and the implications of these appointments on their continuing employment by the Company. The employees were also informed of the priority afforded to them in regard to their wages and entitlements and continuing to provide services to the Company during the tenure of the Provisional Liquidators. The Company's employees assisted the staff of the Provisional Liquidators in updating the Company's books and records including the recording of payments received by the Company to the date of the appointment and the production of month end invoices and statements for despatch to debtors.

Staff also assisted in compiling supporting documentation to assist in the recovery of the Company's book debts and documentation to support prices used to close out contracts in accordance with the NACMA Rules.

Staff also assisted in collecting Company assets from the Echuca and Moree premises of the Company. The final staff member left the employment of the Company on Friday 12 October 2007. All employees have been paid their wages in regard to the period of time they remained with the Company following the appointment of the Provisional Liquidators and Receivers and Managers.

5.2 Close out of open contracts

In accordance with Rule 17.6 of the NACMA Trade Rules counterparties to open contracts were notified of the occurrence of an "Insolvency Event" on 27 September 2007. In accordance with rule 17.6 of the NACMA Trade Rules any contracts between the parties shall be closed out at Fair Market Price on the business day following the giving of the notice.

The Provisional Liquidators and Receivers and Managers in conjunction with the Company's director, Mr Barry Smith, and the Company's Chief Executive Officer, Mr David Hanrahan, set about establishing the fair market value to utilise in closing out the open contracts. Markets sometimes cease to operate in their normal manner when the market becomes aware of the failure or pending failure of a trader for a variety of reasons. Establishing fair market value in these circumstances can sometimes be problematic. Accordingly we sought the assistance of persons with relevant expertise. Both Mr Smith and Mr Hanrahan are experienced grain traders who were able to assist us in establishing the required fair market values for the open contracts through established industry practice. As a result of these efforts notices have been sent out informing the counterparties to the open contracts of the close out of the contract, the fair market value utilised and the origin of the fair market value utilised. This approach was adopted in the hope of minimising disputation regarding the fair market value used to close out contracts in accordance with Rule 17.6 of the NACMA Trade Rules. Regrettably disputes will result in additional costs being incurred in the respective administrations which will reduce any dividend ultimately paid to creditors.

5.3 Fixed Assets

The fixed assets of the Company have been collected by my Auctioneers, DMS Davlan. The fixed assets are subject to a fixed charge in favour of CBA. I am awaiting a proposal from DMS Davlan for the sale of those assets in order for me to obtain the consent of the secured creditor to the method of disposal proposed.

5.4 Statutory Obligations

On 28 September 2007 a letter was forwarded to both directors of the Company requesting they complete a Report as to Affairs (RATA) pursuant to section 475(2) of the Corporations Act 2001. A RATA is a statement by the Directors of a company as to its financial position at the date of appointment of an insolvency practitioner. To enable the completion of the RATA, the Company's records were updated to reflect the position of the Company as the date of appointment of Provisional Liquidators. The RATA was completed on 12 October 2007 and was subsequently lodged with the Australian Securities and Investments Commission.

5.5 Assets and Liabilities

The Director has prepared a consolidated RATA for the Company and the respective trusts. The RATA does not reflect the legal structure of the Business. The assets disclosed as assets of the Company are assets of either the BSFT1 or the BSFT2. Each of the trusts have a liability representing their equitable obligation to make contribution to the Company in accordance with the Company's right of indemnity against the property of the trusts for liabilities incurred in its capacity as trustee of the respective trusts. The Company's principle asset is its right of indemnity against the property of the respective trusts.

A detailed report on the financial position of the BSFT1, BSFT2 and the Company at the date of our appointment will be presented to creditors at the meeting of creditors which will be convened when the Company is wound up. At this time due to the complexities of

these administrations it is not possible to provide Creditors with any indication of the likelihood of a dividend to unsecured creditors or the quantum of any such dividend.

Should you have any questions regarding the content of this report or concerning the various administrations do not hesitate to contact either Gavin Hart or Bradley Ristivojevic of this office.

Dated this 12th Day of November 2007

A handwritten signature in black ink, appearing to read 'David J Kerr', with a long horizontal stroke extending to the right.

DAVID J KERR
Joint Provisional Liquidator
Joint Receiver and Manager