

**Epping Developers Pty Ltd  
(In Liquidation)  
(the “Company”)****ACN 614 422 132  
ABN 38 614 422 132****File details**

Name of Liquidator:	Aaron Lucan
Date of Appointment:	24 October 2024
Trading Name:	N/A
Is the Company still trading?	No
Directors Names:	Muhammad Khurram Jawaid Wajahat Ali Khan Rana Kashif Aziz
File Contact:	Nisha Patel (02) 8844 1209 nisha.patel@worrells.net.au

**What should you do?**

You should now:

- Read my report and attached information.
- Submit your proof of debt if you have not already – using the online form on our website or by emailing the completed in Appendix C.
- Advise me if you are interested in providing indemnity funding.

**Will a dividend be paid to unsecured creditors?**

At this stage it is too early to determine if a dividend will be paid to unsecured creditors. Please refer to section 3 – Financial Position for more information about how this was determined.

If I need you to take any further action, I will write and ask you.

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### File information



Our [website](#) hosts up-to-the minute file information.

Enter: **EPPING DEVELOPERS PTY LTD**  
Password: **wp35389**

*An annual administration return was lodged with ASIC on 25 November 2024*

### Independence



We are independent and act in the interests of all creditors.

*Our declaration of independence, relevant relationships and indemnities (DIRRI) can be found in in our initial notice via the File Information page. There have been no changes to the DIRRI.*

### Proof of debt



Lodge your proof of debt online from the File Information page. You'll receive a confirmation email with a copy of your proof of debt.

### Email updates



Subscribe to email communication and regular updates via the File Information page. You can also ask file-specific questions within the File Information page.

*The Corporations Act 2001 allows us to email reports and notices to creditors where we have an email address. We must nominate a physical address when we send electronic communications. Our nominated address is the physical address of my office as noted on my firm letterhead.*

Please also notify us of any potential matters you believe we should investigate.

[ASIC](#) and [ARITA](#) have Guides to assist directors, shareholders, creditors, and employees of companies in external administration. We suggest creditors refer to these guides (and our factsheets) to understand more about insolvency processes and requirements and when considering resolutions for the approval of remuneration.

### Enquiries:

Nisha Patel

(02) 8844 1209

[nisha.patel@worrells.net.au](mailto:nisha.patel@worrells.net.au)

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## 1 Overview

This report to creditors concerns the Liquidation of Epping Developers Pty Ltd which commenced on 24 October 2024.

### 1.1 Background

I refer to my Initial Advice to Creditors provided to creditors on 21 November 2024 ('Initial Advice').

Qartaba Homes Group ('the Group')

I was also appointed liquidator of the following related parties in the Group:

COMPANY	ACN	Appointment
Qartaba Homes Pty Ltd (Receivers and Managers Appointed)	147 630 948	Administrator; Subsequently Liquidator
Epping Developers Pty Ltd	614 422 132	Administrator; Subsequently Liquidator
Hume Homes Pty Ltd (Controllers Appointed)	162 843 585	Liquidator
Kembla Homes Pty Ltd (Receiver and Manager Appointed)	606 850 444	Liquidator
Austral Developers Pty Ltd	614 196 593	Liquidator
Tarneit Developers Pty Ltd (Receivers and Manager Appointed)	614 421 322	Liquidator
Schofields Developers Pty Ltd (Receiver and Manager Appointed)	627 707 377	Liquidator
Hills District Developers Pty Ltd (Receivers and Managers Appointed)	628 710 092	Liquidator
Bligh Street Pty Ltd (Receivers and Managers Appointed)	613 948 084	Liquidator
Nepean Developers Pty Ltd	657 614 590	Liquidator
Qartaba Investment Holding Pty Ltd	624 734 890	Liquidator

The Group was founded in 2010 as a 'Halal-friendly' developer and became a well-known for offering interest-free land and land and building packages through an instalment plan model.

The Group purchased a range of development sites in New South Wales, Victoria and Queensland, with projects either operating on a purely commercial basis, or having a mix of commercial sites and instalment plan sites. The Group structured its instalment plan contracts on a cost basis, with purchasers paying a portion of the purchase price of the land and the development costs based on their blocks proportion of the total development. The intention was the other blocks in the development that were sold at commercial rates would subsidise the instalment purchasers and allow the Group to sustainably complete projects.

However, a number of factors caused the Group's developments to be less profitable than originally anticipated, including:

- Delays in projects due to slow approval processes.
- Delays in projects due to the impact of the COVID-19 pandemic and related restrictions.
- Initial budgets and costings based on overly optimistic timelines.
- Increases in costs as a result of the delays.
- Excessive borrowing, often at relatively high interest rates.
- The Group taking on too many projects at once.

As a result of these issues, the Group's was not sustainable and the Directors entered into a number of recurring loans to provide cashflow while the Group attempted to finish its numerous ongoing developments. Ultimately, the Group took on too much debt and was unable to complete projects with sufficient speed to avoid insolvency.

#### Enforcement by Secured Creditors

All of the Group's major assets are subject to at least one registered security interest and/or registered mortgage. With respect to each of the Group's major assets the first ranking secured creditor has appointed a Receiver, Controller, or the Mortgagee has entered into possession. As a result, I do not have control of the realisation process for the majority of the Group's assets.

I have been in contact with each of the secured creditors, and where relevant their appointees, to request information relating to their security, the debt owed, the status of their realisation program, and the likelihood of a surplus being available.

I have varying levels of cooperation from the various secured creditors and their appointees, with some providing full disclosure, and other providing only very limited information.

#### Assets and Liabilities of the Group

My investigations into the Group's assets and liabilities are ongoing. The Group has a complex structure with significant dealings between the related companies. The Group also has a number of secured creditors with facilities that are cross collateralised across some or all of the group companies.

As noted above, I have received varying level of information from the Group's secured creditors, and where relevant their appointees, accordingly, I do not currently have enough information to determine the financial position of each company in the Group.

I anticipate that it will take some time to complete my investigations and determine the final asset and liability position of each company in the Group.

#### Reasons for Insolvency

The Directors have not yet to complete a Report on Company Assets and Property (ROCAP), however, in interviews that have advised that the main reasons for the insolvency of the Group are:

- Delays in projects due slow approval processes.
- Delays in projects due to the impact of the COVID-19 pandemic and related restrictions.
- Increases in costs as a result of the delays.
- Inability to obtain further finance to allow the Group to complete existing projects.

My investigations indicate that while the reasons the Directors have cited contributed to the insolvency of the Group, there were other significant contributing factors, including:

- Poor budgeting and financial management.
- Excessive reliance on credit and overborrowing.
- A lack of accurate financial Information.
- The Group taking on too many projects at once.

#### Epping Developers Pty Ltd

The Company was incorporated on 24 August 2016 as a special purpose entity to purchase and develop land located at 120 Bodycoats Road Wollert VIC 3750 (the "**Property**"). I understand from discussions with the Directors that the Company had obtained planning approval for a 137 lot residential development, but substantive works on the site had not yet commenced at the time of my appointment.

The mortgagee took possession of the Property prior to my appointment. I understand that the Mortgagee is in the process of selling the Property.

### **1.2 Note to creditors whose debts are guaranteed by other parties**

If your debt is guaranteed by another party, and your guarantee contains a clause restricting that other party from proving their debt (if they have one) in this administration until your debt is paid, you must provide this office with a copy of that guarantee document before any meeting of creditors or payment of dividend.

### **1.3 Investigations**

A large part of my role is to conduct the investigations into various matters. This report is partly to advise creditors on whether there would be amounts recovered for Insolvent Trading and Preferential Payment should those actions be available.

	Yes	No
Have I established an initial date of insolvency?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Have I found any potential Void Transactions?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Have I found a potential Insolvent Trading claim?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Have I found any offence committed by the officers of the Company?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

I am also required to examine whether there were any offences committed by the directors of the Company and report our findings to the Australian Securities and Investments Commission (ASIC). The results of these examinations are also set out in this Report. To date no report has been issued to the ASIC.

**1.4 Inquiries undertaken to date, further enquiries to be made and possible recovery actions.**

Part of my role is conducting investigations into various matters and to advise creditors on whether there would be amounts recovered for any voidable transactions or insolvent trading.

I am also required to examine possible offences and report my findings to the Australian Securities and Investments Commission (ASIC).

Details of the inquiries undertaken to date, further enquiries to be made and possible recovery actions are set out in section 5.

## 2 Statutory and Appointment Information

Company Name:	Epping Developers Pty Ltd
ACN	614 422 132
ABN	38 614 422 132
Liquidators:	Aaron Lucan
Date of Appointment:	24 October 2024
Trading Name:	N/A
Directors Names:	Muhammad Khurram Jawaid Wajahat Ali Khan Rana Kashif Aziz
Secretary:	Wajahat Ali Khan Rana
Shareholders:	Muhammad Khurram Jawaid Wajahat Ali Khan Rana Kashif Aziz
Date of Incorporation:	24 August 2016
Registered Office:	149 Riverstone Road Riverstone NSW 2765
Principal Place of Business:	149 Riverstone Road Riverstone NSW 2765
Registered Security Interests:	Balanced Securities Ltd Sargon CT Pty Ltd ASCF Managed Investments Pty Ltd and Australian Secure Capital Fund Ltd Bizcap Au Pty Ltd
Acting as Trustee?	No
Related Parties:	See Section 1.1 of this report

### 3 Financial Position

#### Financial Position Summary

The following tables summarise the results of our preliminary investigations into the financial position of the Company. A potential dividend is set out at the end of the financial position statement table.

	Note	Books and Records	Low Estimate	High Estimate
<b>Tangible Assets</b>				
Interest in Land	1	5,726,043	0	TBD
Debtors	2	2,700,174	0	TBD
Cash at Bank	3	63	84	84
Plant and Equipment	4	0	0	0
Motor Vehicles (Equity)	5	0	0	0
Other Assets	6	0	0	0
<b>Total Tangible Assets</b>		<b>8,426,280</b>	<b>84</b>	<b>84</b>
Upfront Indemnity	7	N/A	0	10,000
Voidable Transactions	8	N/A	0	0
Insolvent Trading	9	N/A	0	TBD
<b>Total Resources Available</b>		<b>8,426,280</b>	<b>84</b>	<b>10,084</b>
<b>Priority Creditors</b>				
Wages and Superannuation (including SGC)			0	0
Annual Leave & Long Service Leave (LSL)			0	0
Redundancy & Pay in Lieu of Notice (PILN)			0	0
<b>Total Priority Creditors</b>	10	-	-	-
<b>Non Priority Creditors</b>				
Unsecured Creditors	11		23,257,110	23,257,110
Insolvent Transaction Claims	8	N/A	-	-
<b>Total Non Priority Creditors</b>		<b>-</b>	<b>23,257,110</b>	<b>23,257,110</b>
Secured Creditors	12		43,717,802	43,717,802
<b>Total Resources Available</b>			<b>84</b>	<b>10,084</b>
<b>Less</b>				
Appointee's expenses			950	950
Cost of Liquidation			65,000	65,000
<b>Available for Distribution</b>			<b>-</b>	<b>TBD</b>
<b>Available for Non Priority Creditors</b>			<b>-</b>	<b>TBD</b>
<b>Dividend to Non Priority Creditors</b>			<b>0 Cents/\$</b>	<b>TBD</b>



### 3.1 Financial Position Notes

#### 1. Interest in Land

The Company owns a land located at 120 Bodycoats Road Wollert VIC 3750 ("**Property**"). I have conducted land title searches in New South Wales and Victoria under the Company's name and confirm that the Company does not own any other real property.

I understand that the Company obtained a planning permit to build 137 residential lots but had not commenced any substantial development works.

ASCF Managed Investments Pty Ltd (the "**ASCF Managed Investments**") and Australian Secure Capital Fund Ltd (the "**ASCF**") hold a first mortgage on the Property. As at 15 November 2024, the balance owed to the ASCF Managed Investments and ASCF was approximately \$15,158,925.

ASCF Managed Investments and ASCF have taken possession of the Property, and they are undertaking a sale program.

Upon completion of the sale program, I will obtain records from the ASCF Managed Investments and ASCF so that I can determine that the sale process undertaken was appropriate and that the price obtained was the best reasonably possible in the circumstances.

A further update will be provided upon the conclusion of the sales campaign.

#### Registered Caveats

The Property has a caveat registered on title by Balanced Securities Limited with respect to guarantees provided by the Company to other companies in the Group.

I have not yet undertaken an assessment to determine whether the caveat is valid and enforceable. Further, as sale programs for the majority of the Groups assets are still ongoing, I am unable to determine if it is likely that this lender will suffer a shortfall from the sale of the primary security that will lead to them making a claim against the Company's Property.

#### Customer Instalment Contracts

The Company's financial accounts record payments totalling \$5,441,501 made to the Company from Customers under instalment contracts. These claims are potentially secured claims subject to a purchaser's lien and I note that a number of customers have lodged caveats against the Company's Property.

In the event that there is a recovery in this matter, I will obtain legal advice on this issue and, if appropriate pay creditors entitled to a lien in priority to other unsecured creditors.

#### 2. Debtors

##### Intercompany Loans

The Company's financials show intercompany loan as following:

Receivables	Owed to the Company (\$)	Owed by the Company (\$)
Tarneit	1,521	30,840
Qartaba Homes	9,124,104	16,182,955
Hume Estate Agent	20,877	0
Tarneit Developers	12,377	0
Austral Developer	59,602	14,000
Schofield Developer	6,900	0
SPIPL	1,027	527
Kembla Homes	457,500	236,550
Riverstone Cattle	5,177	0
Jade Homes	2,532,501	145,000
Hills District Developers	290	59,602
Box Hill District Developers	290	0
ISNW	142	134,800

<b>Total Receivables</b>	<b>12,222,308</b>	<b>16,804,274</b>
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The Company's MYOB records have not been fully reconciled, and as a result, I am unable to provide an accurate assessment of the balance of the intercompany loan accounts at this stage.

I note that the Company's records also show the Company as having debts owing to various other Group entities. It is likely that these amount would be eligible for set-off in the liquidation.

I have not yet determined the final asset and liability position for each of the Group Companies. Accordingly, at this stage the potential recovery from these loans is not known.

### **3. Cash at Bank**

The Director advised that the Company operates a bank account with CBA.

I have written to CBA requesting details of any account operated by the Company. CBA confirmed that the Company held accounts with them with a credit balance of \$84. I have requested that CBA transfer the balance to my liquidation bank account.

### **4. Plant and Equipment**

My investigations did not locate any Plant and Equipment owns by the Company.

### **5. Motor Vehicles (Equity)**

I have conducted a motor vehicle search through Transport for NSW to identify motor vehicles registered under the Company's name.

The search did not identify any motor vehicles registered under the Company's name.

### **6. Other Assets**

My searches and investigations have not identified any other assets owned by the Company.

These searches include:

- Title searches in New South Wales
- Motor vehicle searches
- ASIC searches
- Share registry searches
- Bank searches
- PPSR searches

### **7. Upfront Indemnity**

As disclosed in my Declaration of Independence, Relevant Relationships and Indemnities annexed to my Initial Advice dated 28 October 2024, the Directors agreed to provide an indemnity up to a cap of \$10,000 in the event that the assets of the Company are insufficient to pay my remuneration and expenses in full. To date I have not received any upfront indemnity paid into my nominated trust account.

### **8. Voidable Transactions**

The preliminary results of our investigations into voidable transactions are set out in section 4 of this report.

### **9. Insolvent Trading**

Details regarding our investigations into insolvent trading are set out in the section 4 of this report.

### **10. Priority Creditors**

The Company's records show that the Company never employed any employees.

The Australian Taxation Office will lodge a claim on behalf of employees for any outstanding superannuation, including the relevant superannuation guarantee and interest charges. Employees should refer to the Fair Entitlements Guarantee Section below with respect to any outstanding wages, leave and termination entitlements.

## 11. Other Non-Priority Creditors

The known unsecured creditor claim totalling \$23,257,110.

Annexure B contains a list of proofs of debt received to date. If you are not included list, please lodge your proof of debt via our website at [File Info: Epping Developers Pty Ltd - Customer Portal](#)

Should a password be required, please use the following: **wp35389**

## 12. Secured Creditors

A search of the Personal Property Securities Register (“PPSR”) to identify parties with registered security interests. I have written to the parties requesting details of their securities. The status of the security is as follows:

Secured Creditor	Status	Amount (\$)	Comments
<p>ASCF Managed Investments Pty Ltd (the “<b>ASCF Managed Investments</b>”)</p> <p>And</p> <p>Australian Secure Capital Fund Pty Ltd (the “<b>ASCF</b>”)</p>	Valid	15,158,925	<p>ASCF Managed Investments and ASCF held an ALLPAAP over the assets of the Company.</p> <p>ASCF Managed Investments and ASCF confirmed that the balance owed to the ASCF was approximately \$15,158,925.</p> <p>ASCF Managed Investments and ASCF have taken possession of the property, and a sale process has commenced.</p> <p>As such, a further update will be provided after the conclusion of the sales program.</p>
Sargon CT Pty Ltd (“ <b>Sargon CT</b> ”)	Unknown	Unknown	<p>Sargon CT Pty Ltd held an ALLPAAP over the assets of the company.</p> <p>I have requested the details of their security. I have not yet received a response.</p>
Bizcap Au Pty Ltd (“ <b>Bizcap</b> ”)	Valid	931,963	<p>Bizcap held an ALLPAAP over the assets of the company with respect to loan advance to the Company jointly with the related entities as below:</p> <ul style="list-style-type: none"> <li>• Hume Home Pty Ltd</li> <li>• Box Hill Developers Pty Ltd</li> <li>• Qartaba Investment Pty Ltd</li> <li>• Tarneit Developers Pty Ltd</li> </ul> <p>Bizcap confirmed that the balance owed to Bizcap was approximately \$931,963.</p>
Balanced Securities Ltd (the “ <b>Balance Securities</b> ”)	Valid	27,626,914	<p>Balance Securities held an ALLPAAP over the assets of the company.</p> <p>Balance Securities confirmed that the balance owed to them is \$27,626,914 with respect to the loan advance to the Company jointly with other related entities in the Group.</p>

			As such, a further update will be provided after the conclusion of the sales program.
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**Registered Security Interests (including Retention of Title claims)**

A creditor must have their interest validly registered against the Company on the national PPSR to enforce any security interest over Company's assets (for example: unpaid stock under a retention of title clause).

If the security interest has not been properly registered or registered in time, the relevant asset will not be available to the creditor but instead vest in the Company.

The registrations I have identified on the PPSR are listed in the Statutory Information table in section 2 of this report. I ask that any additional creditors claiming a security interest contact our office immediately with copies of their PPSR registration certificate, outstanding invoices, list of the goods supplied to the Company but not yet paid for and any credit application completed by the Company. No items will be returned to creditors until this office has verified the validity of any claims.

## 4 Investigations and Insolvent Transactions

### 4.1 Adequacy of Books and Records

I have made enquiries with the director s about the types of records kept by the Company and made a preliminary assessment of their adequacy.

	Yes	No
Adequate Trading Budgets and Cash Budgets	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Regular Internal Management Statements	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Preparation of Quarterly Financial Statements	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Last Year Tax Return Lodged	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Detail Aged Trade Debtors Ledger Maintained	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Detail Aged Trade Creditors Ledger Maintained	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Use of External Accountant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dedicated Internal Accountant	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Basic Source Documentation (i.e. Bank statements, invoices etc)	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Failure to maintain proper books and records in accordance with section 286 of the *Corporations Act 2001* provides a rebuttable presumption of insolvency. A Liquidator can rely upon this presumption in an application for compensation for insolvent trading.

	Yes	No
Do these records comply with Section 286 of the Act?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

### 4.2 Solvency Examination

#### *Corporations Act Section 95A*

Part of my role is to conduct an examination of the Company's solvency to determine when the Company first became insolvent. This examination is preliminary and based on the best information available at this time.

My assessment of the Company's financial position has been limited due to the lack of Company books and records. However, it appears that the Company become insolvent by at least October 2023 when it defaulted on its obligations under existing loan agreements.

To form a more conclusive opinion on the timing and causes of the Company's insolvency, it would be necessary to undertake the following investigations:

- Obtain as much evidence as possible in relation to the Company's financial position and performance as well as other qualitative indicators of insolvency, such as recovery action by creditors and arrears of taxation and other statutory liabilities. This would require me to source further books and records.
- Performing an analysis of the Company's financial position and performance to identify the point at which the Company could no longer pay its liabilities as and when they fell due for payment, as part of which it may be necessary to reconstruct and/or prepare financial accounts for the Company.
- Assessing the probative value of, and drawing conclusions from, any qualitative indicators of insolvency.

### 4.3 Offences, Recoverable transactions and Insolvent Trading

To reduce the amount of generic information provided in reports such as this, the ARITA has released an information sheet with explanations about voidable transactions, insolvent trading and offences. You should refer to the information sheet, included in the annexures, if you require additional explanation beyond what is included below.

#### **Voidable Transactions**

Voidable transactions are only available to a Liquidator. Voidable transactions include:

- Preferential payments
- Uncommercial transactions
- Creditor defeating dispositions

- Unreasonable director-related transactions
- Unfair loans
- Certain security interests

I have considered whether certain transactions made by the Company may be voidable. These views are preliminary, but we have to estimate a potential recovery using this information available to us for the purposes of this report.

The Company's MYOB records have not been fully reconciled, and as a result, I am unable to provide an accurate assessment of inter-company transaction.

I have considered whether certain transactions made by the Company may be voidable.

**a. Unfair Preference**

I have not identified any claims to date and will advise creditors if there is any change to this position.

**b. Uncommercial Transactions**

I have not identified any claims to date and will advise creditors if there is any change to this position.

**c. Unreasonable director-related transactions**

I have not identified any claims to date and will advise creditors if there is any change to this position.

**d. Creditor defeating dispositions**

I have not identified any claims to date and will advise creditors if there is any change to this position.

**e. Certain security interests**

I have not identified any claims to date and will advise creditors if there is any change to this position.

**Insolvent Trading**

***Corporations Act Section 588G***

Many creditors will be aware of the concept that directors may be held liable for Company debts incurred at a time when the directors should have known that the Company was insolvent. Under those circumstances, section 588M gives the Liquidator the right to recover compensation from directors for debts.

The initial part of my investigation lies with proving the date of insolvency. This has been set out in 4.2 earlier in this report. The second part of that preliminary assessment is to determine what unpaid debts were incurred after the date of insolvency.

Date of suspected insolvency – October 2023

Amount of unpaid debt incurred after the date of suspected insolvency – at least \$211,238

The following investigations are required to determine whether there is a claim against the directors for insolvent trading and, if there is, whether there is any merit in pursuing the claim:

- I need to conclusively determine when the Company first became insolvent, or in the alternate, I would need to confirm that the presumption of insolvency is available in this liquidation due to deficiencies in the books and records. As outlined in the section headed "Solvency", further investigations are required to form a view on these matters.
- It is necessary to quantify the unpaid debts of the Company which were incurred after the Company became insolvent (or was presumed to have been insolvent), which would determine the value of the claim for insolvent trading. I cannot complete this task until a conclusion has been reached on the Company's insolvency.
- To justify the considerable cost of pursuing an insolvent trading claim against the director (which is a completely separate from any action which ASIC can take for the offence of insolvent trading), I must be satisfied that the directors has the financial capacity to satisfy a claim. I understand the directors may not have capacity to cover any such claim if made against them.

- Lastly, I need to have regard to the possibility that, even if I have an insolvent trading claim against the directors, they may be entitled to invoke the defences in section 588H. This issue has yet to be considered.

### **Defences to Insolvent Trading**

There are defences available to insolvent trading, explained further in the ARITA information sheet. These include reasonable presumptions or steps taken, reliance on others or illness.

Safe harbour provisions may also be available where, prior to the appointment, there was a course of action being undertaken that was reasonably likely to lead to a better outcome for the Company. Strict conditions must be met for this to be available.

I am not aware of any defences available at this time.

### **Directors' Potential to satisfy Claim**

I have undertaken investigations into the Director's personal financial position and have formed the view that it is likely that the Directors have limited potential to satisfy an insolvent trading claim were one to be brought against them.

### **Other potential recoveries**

Matters discussed in this report may also constitute a breach of Director's Duties by the directors pursuant to the Act. The main Director's Duties include:

- Section 180 – Duty to exercise care and diligence.
- Section 181 – Duty to exercise powers and discharge duties in good faith.
- Section 182 – Duty to not improperly use their position.

If a breach of Director Duties is identified, then it can enliven a claim against the Director for compensation for the amount of loss suffered by the Company. For reasons outlined in this report, it is difficult to quantify the potential loss suffered by creditors. I consider that legal advice would be required in order to determine this position.

There are limited funds in the liquidation to indemnify me for the cost of conducting further detailed investigations into the above matters, seek legal advice and, if warranted, pursuing legal proceedings with respect to any potential claims identified. I refer creditors who would be willing to contribute to my costs to the request for funding in Section 5 of this report.

I have not identified any other potential recoveries in the liquidation.

If there is a particular matter you believe should be investigated, please contact my office and provide as much information as you can, including all known dates, amounts and parties involved.

### **Offences under the Corporations Act**

Under the provisions of the Corporations Act, I must investigate any potential offences and report those offences to the Australian Securities and Investments Commission for its consideration. my preliminary investigations have shown the following potential offences:

	<b>Yes</b>	<b>No</b>
Contravention of Care and Diligence (s180)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Contravention of Good Faith (s181)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Contravention of Use of Position (s182)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Contravention of Use of Information (s183)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Contravention of Good Faith, Use of Position and Information (s184)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Director Failure to submit ROCAP (s475)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Director Failure to Assist (s530A)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Insolvent Trading (s588G)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Creditor defeating disposition (s588GAB)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Non-Disclosure, misrepresentation on certain matters (s590(1))	<input type="checkbox"/>	<input checked="" type="checkbox"/>



Knowingly receiving property (s590(5))	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Frauds by Officers (s596)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Falsification of books (s1307)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
False or Misleading Statement (s1308)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
False information (s1309)	<input type="checkbox"/>	<input checked="" type="checkbox"/>

A report pursuant to 533 of the Act will be lodged with the ASIC. This report details my findings in my preliminary investigations regarding the above potential offences. This report is confidential between the Liquidator and ASIC and accordingly I have not discussed these issues in detail.

## 5 Request for Funding for Public Examination/Further Actions

A public examination is one method by which I can broadly investigate the Company's history and affairs in order to, amongst other things, identify any potential claims. A public examination is one of the most powerful investigatory tools available to a Liquidator as it requires the examinee to attend Court where they can be cross-examined on matters relating to the affairs of the Company. The examinee's evidence is given on oath and may be used in a subsequent legal proceeding. In this instance, a public examination of the director would enable me to gather information about a range of issues, including the nature of the Company's business, the timing and cause(s) of its failure, the nature and extent of its assets and whether the Company sold or otherwise disposed of any of its assets.

Unfortunately, there are insufficient funds in the Liquidation for the cost of conducting a public examination.

If any creditors are prepared to provide funding to meet the cost of a public examinations ("Indemnity Funding"), I request that they contact this office within 14 days of the date of this advice to discuss the purpose and extent of that funding. An estimate of my costs can be provided on request by any creditor that expresses a genuine interest in providing Indemnity Funding.

A creditor that has provided Indemnity Funding ("Indemnifying Creditor") can make an application to Court under section 564 of the Act for an order that it be repaid the Indemnity Funding and receive a dividend in priority to other creditors in consideration for the risk it has assumed. However, any return to an Indemnifying Creditor can only be from the funds in the Liquidation. Therefore, there is considerable risk that there will be no return to an Indemnifying Creditor whatsoever. For the avoidance of doubt, this means that the Indemnity Funding may not be repaid and will, in effect, be forfeited.

If creditors are not willing to contribute to my costs then I may undertake limited, or possibly no, further action in relation to the matters discussed in this advice and proceed to finalise the Liquidation without further notice. Alternatively, if I elect to investigate and pursue any meritorious claims, then I may, at my discretion, compromise the claims on such terms as I deem appropriate or abandon their pursuit altogether. Additionally, I may obtain financial accommodation from a litigation funder and/or engage a solicitor to act on a success basis if I deem it appropriate to engage in litigation to pursue a claim. If so, a litigation funder will levy a fee of up to 30 percent or more of the net proceeds of the proceeding and a solicitor may charge a premium on their professional fees. These additional costs would significantly erode the return from the proceeding.

## 6 Likelihood of a dividend

The likelihood of a dividend being paid to creditors will be affected by a number of factors including:

- The size and complexity of the Liquidation;
- The amount of assets realisable and the costs of realising those assets;
- The statutory priority of certain claims and costs;
- The value of various classes of claims including secured, priority and unsecured creditor claims; and
- The volume of enquiries by creditors and other stakeholders.

At this stage it is unknown if a dividend will be payable to creditors. Whether a dividend will be payable is dependant upon recovery of the surplus funds from the sale of the Company's property and recovery of its debtors. Details of how this amount is calculated are shown on the Financial Position Statement.

If a dividend is going to be paid, you will be contacted before that happens and, if you have not already done so, you will be asked to lodge a proof of debt. This formalises your claim in the Liquidation and is used to determine all claims against the Company.



## **7 Receipts and Payments to date**

To date, there were no receipts or payments made in this Liquidation.

## **8 What happens next?**

I will proceed with the Liquidation, including:

- Recover any further available property;
- Complete my investigations into the Company's affairs;
- Complete my reporting to the corporate insolvency regulator, ASIC; and
- If required, I will issue a further report to creditors on the results of investigations.

I may write to you again with further information on the progress of the Liquidation.

I expect to have completed this Liquidation within 24-36 months.

Please contact my office should you have any queries. Further information can also be found on my website.

Yours faithfully,



**Aaron Lucan**  
Liquidator

## **Annexures**

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B.	List of proofs of debt received .....	21
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## A. ARITA Voidable Transactions Information Sheet

# Creditor Information Sheet

## Offences, Recoverable Transactions and Insolvent Trading



### Offences

**A summary of offences under the Corporations Act that may be identified by the administrator:**

180	Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.
181	Failure to act in good faith.
182	Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of the officer's position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.
198G	Performing or exercising a function or power as an officer while a company is under administration.
206A	Contravening a court order against taking part in the management of a corporation.
206A, B	Taking part in the management of corporation while being an insolvent, for example, while bankrupt
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of an auditor.
314-7	Failure to comply with requirements for the preparation of financial statements.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4) / 453F / 475(9) / 497(4) / 530A – 530B	Failure by directors to assist, deliver records and provide information.
438C(5) / 477(3) / 530B	Failure to assist, deliver up books and records and provide information.
588G	Incurring liabilities while insolvent
588GAB	Officer's duty to prevent creditor-defeating disposition
588GAC	A person must not procure a company to make a creditor-defeating disposition
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.
596AB	Entering into an agreement or transaction to avoid employee entitlements.

### Recoverable Transactions

#### Preferences

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation, or three months if a simplified liquidation process is adopted. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference\*, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under the Corporations Act.

*\*Must be greater than \$30,000 for unrelated creditors in a simplified liquidation*

#### Creditor-defeating disposition

Creditor-defeating dispositions are the transfer of company assets for less than market value (or the best price reasonably obtainable) that prevents, hinders or significantly delay creditors' access to the company's assets in liquidation. Creditor-defeating dispositions are voidable by a liquidator.

### **Uncommercial Transaction**

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to the benefit or detriment to the company; the respective benefits to other parties; and any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

### **Unfair Loan**

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only must be entered into before the winding up began.

### **Arrangements to avoid employee entitlements**

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person or from members of a corporate group (Contribution Order).

### **Unreasonable payments to directors**

Liquidators have the power to reclaim '*unreasonable payments*' made to directors by companies prior to liquidation. The provision relates to payments made to or on behalf of a director or close associate of a director. The transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

### **Voidable charges**

Certain charges over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six months of its creation.

## **Insolvent trading**

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they did so expect;
- they did not take part in management for illness or some other good reason; or
- they took all reasonable steps to prevent the company incurring the debt.

The director may also be able to avail themselves of safe harbour, if they meet certain conditions.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

**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.

**Queries about the external administration should be directed to insolvency practitioner's office.**