

## ANNUAL REPORT TO CREDITORS AND NOTEHOLDERS

31 October 2016

Dear Sir/Madam

### **Babcock & Brown Limited (In Liquidation)** **ACN 108 614 955 ("BBL")**

### **Report pursuant to Section 508(1)(b)(ii) of the Corporations Act 2001 ("the Act")**

I refer to my appointment as Liquidator of BBL on 24 August 2009.

I confirm that I will not be convening a meeting of creditors pursuant to Section 508(1)(b)(i) of the Act, and instead, have prepared this report in accordance with Section 508(3) of the Act, to update creditors on the progress of the liquidation and to describe our acts and dealings and the general conduct of the winding up for the period 24 August 2015 to 23 August 2016 (**the Period**). This report should be read in conjunction with our report dated 10 November 2015.

A copy of this report has been lodged with the Australian Securities and Investments Commission pursuant to Section 508(4) of the Act.

In this Report, "**Subordinated Noteholders**" means registered holders of subordinated notes issued by BBL pursuant to prospectuses issued in Australia dated 9 November 2005 (supplementary prospectus dated 21 November 2005), 9 May 2006, 12 October 2006 and investment statements issued in New Zealand dated 9 May 2006, 12 October 2006.

## **1. LIQUIDATOR'S ACTS AND DEALINGS FOR THE PERIOD**

### **i. Delay to the declaration and payment of dividend to unsecured creditors**

As advised in my previous Annual Report dated 10 November 2015, four sets of legal proceedings were commenced in the Federal Court of Australia (Sydney) against BBL, on behalf of 1,299 shareholders (**Applicants**), with claims to the value of \$145.4 million. The proceedings were commenced under section 1321 of the Act as a result of my decision as Liquidator to reject each of the Applicants' proofs of debt.

The details of these proceedings are summarised below (with updated claim amounts and claimants as advised by the plaintiffs in each matter):

<b>Proceeding Number</b>	<b>Applicants</b>	<b>Value of Claim (est.)</b>	<b>Reference</b>
NSD 2070/2012	78	\$12.90m	"Grant Taylor Proceedings"
NSD 2525/2013	19	\$3.15m	"Masters Proceedings"
NSD 947/2014	124	\$15.52m	"Broome Proceedings"
NSD 501/2015	208	\$2.80m	"Wilhelm Proceedings"
<b>Total</b>	<b>429</b>	<b>\$34.37m</b>	

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As previously advised, the Liquidator successfully defended all arguments raised by shareholders in the first instance of the Grant Taylor Proceedings; however the plaintiffs subsequently filed an appeal in the Full Federal Court of Australia and judgement was handed down on 21 April 2016, with the Full Federal Court unanimously dismissing the shareholders' appeal and ordering the plaintiffs to pay BBL's costs. Further, the Plaintiffs filed an application for special leave to appeal to the High Court, and on 12 October 2016, the High Court dismissed the plaintiffs' application for special leave awarding BBL costs. In this instance, we have instructed our lawyers to commence recovery of these costs.

The remaining Broome, Masters and Wilhelm proceedings were heard before the Federal Court of Australia between 10 October 2016 and 13 October 2016 and judgement is currently reserved. It is not known when judgement will be received, however we understand it is unlikely to be received before mid-2017.

**Unfortunately, due to the above mentioned three legal proceedings, I remain unable to comment on the value of any surplus funds that will be available for distribution to Subordinated Noteholders. I am required to finalise the above legal proceedings prior to quantifying what funds might be available for distribution to Subordinated Noteholders.**

As previously advised, pursuant to Regulation 5.6.65 of the *Corporations Regulations 2001*, I am required to re-advertise my intention to declare a dividend to ordinary unsecured creditors not more than two months before the intended date of payment. I hope to issue this notice as soon as practicable following the resolution of the abovementioned proceedings.

All future updates in relation to the proceedings and subsequent dividend process will be made available on our website at [www.deloitte.com/au/babcockandbrown](http://www.deloitte.com/au/babcockandbrown). All statutory notices will continue to be issued in accordance with the Act.

Once all appeals have been resolved, I will post a further update on our website providing guidance as to the timing and quantum of the first dividend payment to unsecured creditors.

## **ii. Tax Declaration to Noteholders**

As any future dividends to noteholders are contingent upon the outcome of the litigation described above, I am unable to issue a notice declaring that BBL subordinated notes have no value. I will be in a position to issue a tax declaration in relation to the subordinated notes pursuant to the Income Tax Assessment Act after the outcome of the current court proceedings and the distribution of net recovery proceeds to unsecured creditors.

## **2. ONLINE UPDATES**

Please note that previous reports and circulars, as well as additional updates to creditors may be found on our website at the following address: [www.deloitte.com/au/babcockandbrown](http://www.deloitte.com/au/babcockandbrown)

I suggest that all creditors and Subordinated Noteholders visit the website in order to remain updated on the progress of the Liquidation.

## **3. RECEIPTS AND PAYMENTS**

A summary of BBL's receipts and payments for the period 24 August 2015 to 23 August 2016 are attached as **Annexure A**.

A summary of the Voluntary Administrators' and Liquidators' remuneration is provided and attached as **Annexure B**.

#### 4. ESTIMATED TIMEFRAME FOR COMPLETION OF LIQUIDATION

An indicative timeline for payment of the dividend to creditors is outlined below. Please note that the timetable is only our current estimate, and that our estimates are dependent on the resolution of the legal proceedings described above.

<b>Nov 2016 – June 2017</b>	Resolution and receipt of judgement regarding the Masters, Broome and Wilhelm proceedings described above
<b>July 2017</b>	Liquidator to advertise notice of intention to declare dividend to unsecured creditors  Collate, record and adjudicate any further Formal Proof of Debts received
<b>August 2017</b>	Declaration and payment of dividend to unsecured creditors  Post an update on our website regarding the outcome of the above process  If sufficient funds for a distribution to Subordinated Noteholders, Liquidator to advertise notice of intention to declare dividend to Subordinated Noteholders
<b>December 2017</b>	Declaration and payment of dividend to Subordinated Noteholders

Please note the above is an estimate and the Liquidator will endeavour to complete the various steps as soon as possible after the resolution of the shareholder proceedings.

Should you have any queries regarding the contents of this report, you may contact this office on +61 2 8260 4390 and ask for Andrew Whittingham or email at [bandbltd@deloitte.com.au](mailto:bandbltd@deloitte.com.au).

Yours faithfully,



**D J F Lombe**  
Liquidator

Encl.

## Annexure A

<b>Babcock &amp; Brown Limited (In Liquidation)</b>	
<b>Summary of Receipts and Payments for the period 24 August 2015 to 23 August 2016</b>	
<b>Opening Cash at Bank</b>	<b>24,668,368.37</b>
Receipts	
Interest	705,574.71
<b>Total Receipts</b>	<b>705,574.71</b>
Payments	
Legal Fees	(630,989.54)
Legal Disbursements (including Counsel Fees)	(197,553.73)
Liquidator's Remuneration	(378,380.50)
Liquidator's Expenses	(18,700.39)
Storage Costs	(1,309.11)
Stationery and Printing	(18,869.82)
<b>Total Payments</b>	<b>(1,245,803.09)</b>
<b>Net Receipts / (Payments)</b>	<b>(540,228.38)</b>
Net GST Receipts / (Payments)	(23,242.01)
<b>Closing Cash at Bank as at 23 August 2016</b>	<b>24,104,897.98</b>

## **Annexure B**

A summary of remuneration of Voluntary Administrators and Liquidators, paid as at 24 August 2016, is provided below. Appropriate information outlining the nature of the remuneration sought was provided to the Committee of Inspection on each occasion when approval was sought.

**Voluntary Administration: 13 March 2009 to 23 August 2009**  
**Liquidation: 24 August 2009 to 31 July 2016**

Period		Total Fees (excl GST) (\$)	Fee approval received / Date of resolution
13-Mar-09	to 22-May-09	858,700.50	09-Jun-09
23-May-09	to 31-Jul-09	595,604.00	07-Aug-09
01-Aug-09	to 23-Aug-09	300,000.00	07-Aug-09
<b>Voluntary Administrator</b>		<b>1,754,304.50</b>	
24-Aug-09	to 16-Apr-10	658,542.00	21-May-10
17-Apr-10	to 19-Nov-10	614,083.00	15-Dec-10
20-Nov-10	to 19-Feb-11	112,461.00	28-Feb-11
20-Feb-11	to 31-May-11	60,779.00	29-Aug-11
01-Jun-11	to 25-Nov-11	211,564.50	20-Dec-11
26-Nov-11	to 17-Feb-12	97,347.50	20-Dec-11
17-Feb-11	to 30-Apr-12	97,194.50	20-Dec-11
01-May-12	to 31-Aug-12	325,966.50	27-Sep-12
21-Aug-12	to 30-Apr-12	21,112.00	27-Sep-12
01-Sep-12	to 30-Nov-12	158,540.00	27-Sep-12
01-Dec-12	to 31-Jan-13	58,843.00	28-Feb-13
01-Feb-13	to 31-Mar-13	70,574.50	28-Feb-13
01-Apr-13	to 30-Apr-13	28,968.50	28-Feb-13
01-May-13	to 30-Jun-13	61,355.50	22-Jul-13
01-Jul-13	to 31-Jul-13	44,104.00	22-Jul-13
01-Aug-13	to 19-Sep-13	51,867.50	22-Jul-13
20-Sep-13	to 31-Oct-13	17,566.00	10-Dec-13
01-Nov-13	to 30-Nov-13	28,091.00	10-Dec-13
01-Dec-13	to 31-Jan-14	52,434.00	10-Dec-13
01-Dec-13	to 31-Jan-14	458.00	02-Apr-14
01-Feb-14	to 28-Feb-14	80,855.50	02-Apr-14
01-Mar-14	to 31-Mar-14	23,260.00	02-Apr-14
01-Apr-14	to 30-Apr-14	72,995.00	02-Apr-14
01-Apr-14	to 30-Apr-14	16,116.50	28-Jul-14
01-May-14	to 30-Jun-14	49,532.50	28-Jul-14
01-Jul-14	to 31-Aug-14	109,565.00	28-Jul-14
01-Jul-14	to 31-Aug-14	8,498.00	29-Oct-14
01-Sep-14	to 30-Sep-14	40,693.00	29-Oct-14
01-Oct-14	to 30-Nov-14	72,054.00	29-Oct-14
01-Dec-14	to 31-Dec-14	27,148.50	18-Dec-15
01-Jan-15	to 31-Jan-15	15,033.00	18-Dec-15
01-Feb-15	to 28-Feb-15	37,148.00	18-Dec-15
01-Mar-15	to 20-Mar-15	25,261.00	01-Apr-15
21-Mar-15	to 30-Jun-15	78,193.50	01-Apr-15
01-Jul-15	to 11-Sep-15	39,635.00	30-Sep-15
12-Sep-15	to 31-Dec-15	69,750.00	30-Sep-15
21-Nov-15	to 31-Dec-15	403.50	17-Feb-16
01-Jan-16	to 31-Jan-16	75,179.00	17-Feb-16
01-Feb-16	to 30-Apr-16	104,555.00	17-Feb-16
01-Feb-16	to 08-Apr-16	4,160.50	02-Jun-16
09-Apr-16	to 13-May-16	14,732.50	02-Jun-16
14-May-16	to 31-Jul-16	69,965.00	02-Jun-16
<b>Liquidator</b>		<b>3,806,586.00</b>	