

20 March 2012

**UPDATE TO ALL CREDITORS AND NOTEHOLDERS  
of BABCOCK & BROWN LIMITED  
ACN 108 614 955 (IN LIQUIDATION) (“BBL”)**

Dear Sir / Madam,

I refer to my appointment as Liquidator of BBL on 24 August 2009 and all previous correspondence. Please find below an update to the Liquidation.

**1) The Liquidator’s Funding Proposal and the outcome of the s564 Application to Court.**

We successfully raised c.\$557k from contributing creditors and noteholders (“Contributing Creditors”) following our initial funding proposal, dated 12 August 2009 (“Funding Proposal”). The Funding Proposal sought contributions in the order of AU\$400 (though some Contributing Creditors contributed more, some less). The contributions were used to fund the Liquidator’s investigations into the affairs of BBL, which led to the Liquidator’s successful settlement of causes of action against several of the Company’s former directors and officers, and its former auditor. As previously advised, it is a term of the settlement agreement entered into by the Liquidator that the settlement sum is strictly confidential.

As outlined in the funding proposal sent to all creditors, the Liquidator undertook to apply to the Court, pursuant to section 564 of the *Corporations Act 2001* (Cth) (the “Application”), for an order entitling Contributing Creditors to obtain a preferential return out of recoveries over and above those creditors and noteholders who elected not to participate in the Funding Proposal.

I am pleased to advise that the Application was heard by Justice Emmett of the Federal Court of Australia on 3 February 2012, and that on that occasion the Court made the orders sought by the Liquidator.

I advised the Court of the following key arguments, amongst various considerations, in support of the Application:

- The Liquidator would not have been equipped to pursue BBL’s claims against its former directors and auditor without the funds raised from Contributing Creditors.
- The creditors of BBL as a whole, not just the Contributing Creditors, have substantially benefited from the Liquidator’s successful recovery action.
- The Contributing Creditors, in providing the funding, accepted a real risk that they would not recover their individual contributions.

On 3 February 2012, the Court ordered that Contributing Creditors are to receive payment in priority to the claims of all other ordinary unsecured or subordinated creditors of the Company, in respect of their contribution and specifically, the following amounts:

- i. Repayment of the amount of their individual contribution to the fighting fund (“Reimbursement”) **AND**
- ii. Payment of an additional amount, being **ten times the amount of their individual contribution** to the fighting fund (“Uplift”)

By way of example; a Contributing Creditor who contributed AU\$400 towards the funding proposal will receive a total repayment of AU\$4,400, comprised of AU\$400 Reimbursement and \$4,000 Uplift.

The order includes a limitation whereby no contributing creditor can receive more, by way of Reimbursement and Uplift, than the value of their original claim against BBL.

**Please note, the Court's decision does not affect the priority of a creditor's original claim against BBL.**

Please contact my office if you are a Contributing Creditor and have not been contacted to confirm your payment details.

## **2) Further update on the Liquidation of BBL**

I previously disclosed in my Annual Report to Creditors and Noteholders dated 26 October 2011, that I had estimated a declaration and payment of dividend to unsecured creditors to occur on or about March 2012.

I advise that this timeframe will now be delayed due to the emergence of shareholder claims received by my office in late 2011 and early 2012. Shareholders have submitted formal proof of debt forms in relation to claims for alleged misleading and deceptive conduct by BBL in relation to the purchase by those shareholders of shares in BBL. Shareholder claims received to date total approximately \$15.0m.

I am currently seeking legal advice in relation to the shareholder claims, and will be better placed to provide further guidance as to the timing and quantum of the dividend payment to unsecured creditors and noteholders in due course.

Should you have any queries regarding the above, please send your queries to [bandbltd@deloitte.com.au](mailto:bandbltd@deloitte.com.au) or contact **Manit Oberoi** of my office on telephone +61 2 9322 5266.

Yours faithfully



**D J F Lombe**  
Liquidator