

12 August 2009

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Dear Sir / Madam,

BABCOCK & BROWN LIMITED
ACN 108 614 955
(ADMINISTRATORS APPOINTED) ("BBL")

FUNDING PROPOSAL TO CREDITORS AND NOTEHOLDERS

The voluntary administrators of BBL (**Administrators**) invite BBL noteholders, employees and other creditors to consider providing funding for the purposes of enabling them to continue their investigations into the affairs of BBL and to determine whether any valuable causes of action exist against any third party that might provide a return which would ultimately benefit noteholders and other creditors.

This funding proposal is to be read in conjunction with the Administrators' report to creditors pursuant to section 439A of the *Corporations Act 2001 (Act)* dated 12 August 2009 (the **Report**).

1. Current Position

- 1.1 The Administrators have advised the creditors of BBL in their Report that there is no alternative to liquidation for BBL. Accordingly, it is expected that creditors will vote at the second meeting of creditors of BBL (to be held on 24 August 2009) that BBL be wound up. If that occurs, BBL will be in liquidation and the Administrators will become the liquidators of BBL.
- 1.2 The Administrators have undertaken preliminary investigations into the affairs of BBL and have identified some potential causes of action against the directors of BBL and certain third parties (refer to section 9 of the Report).
- 1.3 BBL has valuable directors and officers insurance which is likely to respond to actions against the directors of BBL of the type identified in the Report.
- 1.4 The Administrators believe that it is in the interests of creditors for further investigations to be undertaken by them as liquidators, including by way of a liquidators' public examination of the directors of BBL in order to ascertain whether valuable causes of action exist which could form a basis of recovery for creditors. The public examination procedure provides a significant forensic advantage to the liquidator, by enabling the liquidator to examine the directors of BBL under oath as to their conduct as directors of BBL and the reasons for BBL's failure and also to compel the production of relevant documents.
- 1.5 BBL presently has insufficient funds to enable a liquidator to continue the Administrators' preliminary investigations into any potential causes of action. The two options available to a liquidator to raise additional funds to fund further inquiries are to:
 - (a) enter into negotiations with a litigation funder (**Funder**); or
 - (b) raise funding directly from the creditors.

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- 1.6 Whilst the Administrators believe that a Funder is likely to be interested in funding the cost of further investigations, there is a significant cost associated with such funding; namely that up to 50% of any net recoveries is assigned to the benefit of the Funder.
- 1.7 In the first instance, the Administrators would prefer to explore whether the noteholders, employees and other creditors of BBL are interested in funding these further investigations on the basis identified below.

2. Funding Proposal

- 2.1 Noteholders, employees and other creditors of BBL are invited to consider funding the liquidators of BBL (**Liquidators**) on the following basis:
- (a) Contributing noteholders, employees and other creditors (each a **Contributory**) are asked to fund a fixed amount of AU\$400 per Contributory irrespective of the size of their investment (**Contribution**).
 - (b) Contributories agree that the Contribution can be used by the Liquidators for the purposes of:
 - (i) meeting their existing and future remuneration and expenses;
 - (ii) paying legal expenses; and
 - (iii) funding the cost of undertaking public examinations and other investigations into the affairs of BBL.
 - (c) Any unused portion of the funding is to be returned rateably to Contributories.
 - (d) Contributories will be liable only for the amount of their Contribution and are not being asked to indemnify the Liquidators for any other amounts or to assume any risk in relation to the proposed examinations and litigation. Accordingly the risk of loss to a Contributory is limited to the amount of his or her Contribution.
 - (e) In the event that valuable causes of action are identified by reason of the public examination process, and it is not possible to resolve those claims without litigation, it is the Liquidators' intention to seek litigation funding for those proceedings as the Liquidators will require an indemnity from a Funder for any adverse costs award in such proceedings.
- 2.2 In the event that the minimum Contribution level which is sufficient to fund the examinations is not reached, the Liquidators shall advise Contributories of this fact and return the Contributions to the Contributories in full (less the administrative cost of facilitating that refund, and without interest). The Administrators currently estimate that approximately 30% of all noteholders, employees and other creditors will need to make a Contribution in order for the examinations to be funded.
- 2.3 The Contributions are to be treated by the Liquidators as advances from the Contributories repayable out of funds recovered by the Liquidators (net of the liquidation costs and expenses).

3. Ability to give preference to funding creditors

- 3.1 In addition to returning the Contributions out of any funds recovered (by way of pro rata return to each Contributory if less than the full amount of each Contribution is recovered) the Liquidators also undertake to make application to the Court for an order that entitles the Contributories to obtain a preferential return out of assets recovered over and above those creditors who elect not to participate in these funding arrangements.
- 3.2 Whilst the Liquidators cannot guarantee that Contributories will be preferred out of any net recovery, it is the intention of the Liquidators to make an application to Court for such an order in the event of a successful recovery. Such an application can only be made in the event of a successful recovery and not before.
- 3.3 By way of further background, section 564 of the Act permits the Court to make orders in favour of certain creditors in a liquidation who agree to indemnify the Liquidator to assist the Liquidator in recovering funds. Section 564 is in the following terms:
- "When in any winding up –*
- (a) *property has been recovered under an indemnity for costs of litigation given by certain creditors, or has been protected or preserved by the payment of money or the giving of indemnity by creditors; or*
- (b) *expenses in relation to which a creditor has indemnified a Liquidator have been recovered;*
- the Court may make such orders as it deems just with respect to the distribution of that property and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk assumed by them.*
- 3.4 We note that it may be necessary to involve the trustee of the subordinated notes issued by BBL in the funding arrangements and the application to the Court as the legal owner of the notes.

4. Advantages of making a Contribution

- 4.1 The Liquidators list the following advantages that may accrue to noteholders, employees and other creditors of BBL should they decide to make a Contribution:
- (a) The Liquidators will be funded to undertake a public examination of the directors of BBL and to continue their investigations into whether valuable causes of action exist against those directors and third parties. Such causes of action may, if successfully prosecuted, result in recoveries to the Liquidators for the benefit of creditors.
- (b) In the event of a successful recovery against any party, Contributories will, subject to the level of recovery, be repaid their Contribution before any creditor receives a dividend and, may also receive a preferential recovery out of the net recoveries before any distribution is made to all other creditors who did not agree to make a Contribution. The subordinated notes issued by BBL are subordinated to other creditor claims (such as claims by employees) and accordingly a preferential return may provide a noteholder with his or her best prospect of receiving a return from the liquidation of BBL.

- (c) It may be that once an examination of the directors of BBL is undertaken, and valuable causes of action are confirmed, the BBL insurers are willing to consider a mediation to resolve all outstanding claims without the need for litigation to be commenced. In the event that this were to occur, there would be no need to enter into an agreement with a Funder and so there would be no diversion of a large percentage of any recovery to the Funder.
- (d) If Contributors have funded the public examinations and valuable causes of action have been confirmed, it is likely that any litigation funding arrangement subsequently entered into with a Funder will be on more favourable terms to BBL and its creditors than if the Funder takes on the initial cost and risk of the public examinations.

5. Disadvantages of making a Contribution

- 5.1 There is no guarantee that the Contribution will be returned or that the outcome of the Liquidators' investigations will result in a recovery for the benefit of creditors.

6. What to do if you wish to make a Contribution

- 6.1 The Liquidators require any Contributions to be made by no later than 15 September 2009 and it will be shortly thereafter that the Liquidator will determine whether the minimum Contribution amount has been received for the purposes of commencing public examinations against the directors of BBL and investigating causes of action.
- 6.2 Cheques for the Contribution (AU\$400) should be made payable to "Babcock & Brown Limited (In Liquidation)" and forwarded to the Liquidators at the following address:

The Liquidators of
Babcock & Brown Ltd (In Liquidation)
C/- Deloitte
P O Box N250
Grosvenor Place, Sydney NSW 1220

- 6.3 Alternatively Contributors can direct deposit funds to the following account but they must ensure that they provide sufficient details of their names with the direct deposit so that the Liquidators are able to identify them:

Account Name:	Babcock & Brown Ltd (In Liquidation)
BSB Number	082-057 (National Australia Bank)
Account Number	835 382 289
Ref:	BBL Funding Proposal

And notify this office of the deposit to the attention of Stewart Graham by:

Email: stewagraham@deloitte.com.au **OR**

Fax: +61 2 9322 7261

Yours faithfully



D J F Lombe
For and on behalf of
DJF Lombe and SJ Cathro
Joint and Several Administrators