

## **INITIAL NOTICE TO CREDITORS**

11 May 2017

Dear Sir/Madam

### **Hanson Property Developments Pty Ltd (In Liquidation) ACN 124 538 110 ("the Company")**

We advise that Ezio Senatore was appointed liquidator of the Company on 27 April 2017 pursuant to an Order of the Supreme Court of New South Wales.

We provide a summary of actions conducted to date:

#### **Week 1**

- Contacted all major banks to identify bank accounts.
- Placed insurance cover
- Issued demands on the director to produce a Report as to Affairs and books and records
- Issued demands on the Company's registered office (Allen Vong & Associates) in respect of the delivery of the Company's books and records
- Discuss the background of the Company's affairs with the petitioning creditor's solicitor
- Make preliminary enquiries and issue written demands on the following parties:-
  - Sales agent (Chris Farmer, Ray White Queanbeyan)
  - Managing agent (Nicole Stewart, Ray White Queanbeyan)
  - Conveyancer (Peter Romano, Velocity Conveyancing/RSK Legal)
- Ascertain initial financial position of the Company and direction of winding up
- Notified government agencies and all state-based utility providers of our appointment
- Conducted preliminary searches on the director, related entities and other officers of the Company
- Attended to statutory lodgement requirements

#### **Week 2**

- Held a meeting with the petitioning creditor's solicitor to obtain a full briefing of events leading to the appointment
- Took steps to conduct a valuation of the properties
- Issued a letter to the mortgagees' representative
- Issued demands on the Company's former solicitor

#### **Future Strategy / Focus**

##### *Assets*

- Continue collecting rent
- Conduct a formal valuation of assets
- Plan and manage sale of assets
- Maintain adequate insurances coverage

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## *Investigation*

- Review offences, recoverable transactions and insolvent trading – see attached 'Creditor Information Sheet' issued by the Australian Restructuring Insolvency & Turnaround Association ("ARITA").
- Pursue any recoveries for the benefit of creditors
- Report offences of officers of the Company to the Australian Securities & Investments Commission

## *Creditors*

- Provide creditors with a detailed report regarding conduct of the appointment, (proposed) asset realisations, offences of directors, merits of calculation of anticipated dividend to creditors
- Hold meeting of creditors discussing the conduct of the winding up, future actions to be undertaken and approving the remuneration of the liquidator

## *Dividend*

- Pay the petitioning creditor's taxed costs of winding up
- Should there be sufficient funds available, declare and pay a first and final dividend to creditors

Should you have any queries, the following staff members are available to assist:-

Clare Dong  
P: (02) 6263 5096  
E: [cldong@deloitte.com.au](mailto:cldong@deloitte.com.au)

Aaron Brewin  
P: (02) 6263 5056  
E: [abrewin@deloitte.com.au](mailto:abrewin@deloitte.com.au)

# Creditor Information Sheet

## Offences, Recoverable Transactions and Insolvent Trading



### Offences

A summary of offences under the *Corporations Act 2001* that may be identified by an administrator or liquidator.

Section	Offence
180	Failure by officer to exercise a reasonable degree of care and diligence in the exercise of his powers and the discharge of his duties
181	Failure to act in good faith
182	Making improper use of position as an officer or employee, to gain, directly or indirectly, an advantage
183	Making improper use of information acquired by virtue of his position
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for proper purpose. Use of position or information dishonestly to gain advantage or cause detriment
206A	Contravening an order against taking part in management of a corporation
206A, B	Taking part in management of corporation while being an insolvent under an administration
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 out of net assets, which are fair and reasonable to members as a whole and not materially prejudicial to creditors
286	Failure to keep proper accounting records
312	Obstruction of auditor
314-7	Failure to comply with requirements for financial statement preparation
437C	Performing or exercising a function or power as officer while a company is under administration
437D(5)	Unauthorised dealing with company's property during administration
438B(4)	Failure by directors to assist administrator, deliver records and provide information
438C(5)	Failure to deliver up books and records to administrator
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

### Voidable transactions

#### Preferences

A preference is a transaction such as a payment between the company and one or more of its creditors, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant time period is six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent as a result of the transaction.

Where a creditor receives a preferred payment, 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 2001*.

#### 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 time period is four years and if the intention of the transaction is to defeat creditors, the time period is ten years.

The company must have been insolvent at the time of the transaction, or become insolvent as a result of the transaction.

### ***Unfair loan***

A loan is unfair if and only if the interest or charges were extortionate when the loan was made or have since become extortionate. There is no time limit on unfair loans – they only have to have been entered into any time on or before the day when 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. It will only be necessary to satisfy the court that there was a breach on the balance of probabilities. There is no time limit on when the transaction occurred.

### ***Unreasonable payments to directors***

Liquidators have the power to reclaim 'unreasonable payments' made to directors by companies prior to liquidation. The provision relates to transactions made to, on behalf of, or for the benefit of, a director or close associate of a director. To fall within the scope of the section, 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 are voidable by a liquidator:

- Circulating security interest created with six months of the liquidation unless it secures a subsequent advance
- Unregistered charges, and
- Charges in favour of related parties who attempt to enforce the charge within 6 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 actually 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 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