

4 January 2010

## Circular to creditors

Dear Sir/Madam

### **Palandri Limited (In Liquidation)**

**PWPL ACN – 085 042 879 Ltd Formerly Palandri Wine Production Ltd (PWPL)**

**PWL ACN – 084 252 488 Ltd Formerly Palandri Wines Ltd (PWL)**

**PIML ACN – 091 709 769 Ltd Formerly Palandri Investment Management Ltd (PIML)**

**MRWIPL ACN – 112 505 692 Pty Ltd Formerly Margaret River Wine Investments Pty Ltd (MRWIPL)**

**PFL ACN – 090 580 500 Ltd Formerly Palandri Finance Ltd (PFL)**

**All in Liquidation, (Collectively “the Palandri Group”)**

As you may be aware, Neil Cussen, John Greig and I were appointed joint and several administrators (**Administrators**) of the companies in the Palandri Group on 15, 26 and 27 February 2008 and subsequently appointed joint and several liquidators (**Liquidators**) on 7 October 2008.

Pursuant to Section 508(1) of the *Corporations Act 2001 (Cth)* (**Act**) this report sets out an account of the Liquidators' acts and dealings, the conduct of the winding up for the period 7 October 2008 to 7 October 2009 (**Past Period**) and a description of the acts and dealings that remain to be carried out by the liquidator in order to complete the winding up with an estimate of when the winding up is likely to be completed.

In addition to this report, I refer creditors to our previous circulars which can be accessed from our website at [www.deloitte.com.au](http://www.deloitte.com.au) by selecting Services → Corporate reorganisation services → Business under administration.

## **1 Wind up of managed investment schemes**

PWL is the responsible entity of the following managed investment schemes:

- The Margaret River Wine Business – ARSN 086 241 198
- The Margaret River Wine Business Trust – ARSN 119 602 505
- The Palandri America Wine Business – ARSN 098 544 908
- The Palandri Agricultural Property Trust – ARSN 114 192 933
- Palandri Winegrape Project 2005/2006 – ARSN 114 193 234
- Palandri Global Supply Challenge 2007 – 2008 – ARSN 124 150 616

(collectively referred to as the **Schemes**)

We examined the financial viability of the Schemes for investors and concluded that the Schemes were either insolvent, not financially viable or both. As a result of this analysis, we applied to the Supreme Court of Western Australia to wind up the Schemes and on 24 September 2008 the Court ordered that the Schemes be wound up. It was also ordered that registered liquidators, Mark Anthony Conlan and Neil Raymond Cribb (**Scheme Liquidators**) be responsible for ensuring that the winding up of the Schemes proceed in accordance with their constitutions and any orders of the Court made under sub section 601NF(2) of the Act.

## **2 Lease and management agreements**

The Schemes operated on a number of vineyards owned and leased by the Group which were subleased to investors through Lease and Management Agreements (LMAs). It was a condition of the LMAs and the Schemes' constitutions that investors may be liable for a share of any loss incurred by the Schemes. As the Group's operations were loss making at the time of our appointment, it was likely that by continuing to operate the vineyards, we would have incurred further liabilities for investors.

The Group's vineyards had also been pledged as security to financiers and these facilities were in default. It was necessary for us to terminate the LMA's so that we could sell the Group's vineyards, partially repay the Group's secured creditors and stop incurring liabilities on behalf of investors.

In December 2008, the Court directed PWL to modify the constitutions of all the Schemes in order to clarify PWL's ability to terminate the LMAs. The purpose of this direction was to allow the Liquidators to release members of the Schemes from having to pay for maintenance costs and rent for the current period. In March 2009, we wrote to investors in the Schemes informing them that we intended to terminate the LMA. Following the termination of the LMA's, we proceeded to sell the Palandri Group's vineyards. These sales were finalised after we conducted a robust marketing campaign for the properties in order to achieve the best possible outcome for the Group's creditors.

## **3 PFL Loan Book**

We have continued the process of realising the assets in the PFL loan portfolio by collecting repayments from borrowers in accordance with the terms of their loan deeds. Total repayments collected by the liquidators from PFL debtors for the period 7 October 2008 to 7 October 2009 amounted to \$803,462. As at 7 October 2009 the total book value of the PFL loan portfolio amounted to \$23,433,523, however a significant portion of this portfolio is in default and we have been pursuing defaulting debtors to maximise the value of this loan portfolio. We have commenced legal action against a number of defaulting debtors and also negotiated commercial settlements in certain cases with the agreement of PFL's committee of inspection.

Where debtors have continued to default on their obligations to PFL, the Liquidators have in certain cases commenced legal proceedings in order to recover the full outstanding loan obligation of the debtors. These proceedings are being used by the Liquidators as test cases for the entire loan portfolio and thus will provide a precedent as to the enforceability of the loan portfolio as a whole.

Legal proceedings are currently underway in the District Court of Western Australia, the Supreme Court of Western Australia and the Federal Court of Australia against three specific debtors and their guarantors. Furthermore legal advice from specialist counsel has been received in relation to the test cases currently proceeding in the courts and the remaining loan portfolio, to assist with developing the most appropriate strategy for enforcing the collection of the loan portfolio.

## **4 Remaining wine assets**

We have continued our efforts to sell the Palandri Group's remaining wine stocks. This includes arranging adequate storage of packaged and bulk wine stock, marketing, employing some of the Group's sales staff to help facilitate distribution of the wine and arrange appropriate liquor licensing. Funds realised from the sale of these stocks has been used to:

- a) make a final distribution to the Public Trustee of Queensland (**PTQ**) in respect of the security which was granted over certain wine stocks to investors who invested in the wine bond issued by the Margaret River Wine Business Trust. The final distribution to the PTQ of \$90,000 represents a total return of 100 cents in the dollar on the principal amount owed in relation to the wine bond (\$1,241,000).
- b) pay remaining liabilities of the liquidation.

## 5 Receipts and payments

Our receipts and payments since the date of our appointment as liquidators of the Group are summarised as follows:

	PL	PWPL	PWL	PIML	MRWIPL	PFL	Total
<b>Cash balance as at 7 Oct 2008</b>	359,236	54,990	2,488,112	156	-	555,103	3,457,597
<b>Receipts</b>							
Recharge of expenses	445,000	410,000	-	-	-	-	855,000
Loan Income	-	-	-	-	-	803,462	803,462
Wine sales	180,541	15,837	295,854	-	-	-	492,232
PP&E	-	-	5,459,657	-	-	-	5,459,657
Other receipts	53,940	1,310,504	473,108	30,008	-	1,793	1,869,353
GST	-	62,878	-	876	-	7,245	71,000
<b>Total receipts</b>	<b>679,482</b>	<b>1,799,220</b>	<b>6,228,619</b>	<b>30,884</b>	<b>-</b>	<b>812,500</b>	<b>9,550,704</b>
<b>Payments</b>							
Recharge of expenses	-	-	(855,000)	-	-	-	(855,000)
Administrators fees and expenses	-	-	-	-	-	(39,055)	(39,055)
Liquidators fees and expenses	(675,899)	(486,335)	(589,553)	-	-	(445,245)	(2,197,032)
Legal fees	(110,143)	-	(528,738)	-	-	(198,050)	(836,931)
Payments to secured creditors	-	(990,159)	(4,455,141)	-	-	-	(5,445,300)
Other expenses	(77,586)	(230,171)	(2,174,848)	(9,702)	-	(95,316)	(2,587,622)
GST	(83,141)	-	(81,982)	-	-	(74,099)	(239,221)
<b>Total payments</b>	<b>(946,769)</b>	<b>(1,706,665)</b>	<b>(8,685,261)</b>	<b>(9,702)</b>	<b>-</b>	<b>(851,764)</b>	<b>(12,200,161)</b>
<b>Cash balance as at 7 Oct 2009</b>	<b>91,948</b>	<b>147,545</b>	<b>31,469</b>	<b>21,338</b>	<b>-</b>	<b>515,839</b>	<b>808,140</b>

## 6 Investigation

In our report to creditors dated 26 September 2008 (**Report**), we identified the following issues that required further investigation:

- (1) Preference payments
- (2) Claims against directors
- (3) Goods and Services Tax (**GST**) and Wine Equalisations Tax (**WET**) refund
- (4) Possible claims against the Group's auditors
- (5) Insurance.

### 6.1 Preference payments

In our Report we identified payments totalling approximately \$1.5m that may represent preference payments and may be recoverable by a liquidator. We are continuing to investigate these payments. Additionally, we have identified a series of payments to one party for up to \$1m that may be recoverable as a preference payment. Further investigations are required in this respect and we are commencing negotiations with the party to determine whether a commercial settlement is possible or whether we need to commence legal action. If we successfully recover any funds from this action, this will assist to fund further investigations into the Palandri Group's activities and other potential recoveries.

### 6.2 Claims against directors

After further investigation, we believe that the Palandri Group may be able to make a claim against directors for damages arising as a result of:

- breaches of fiduciary duties including the duty to act with care and diligence and the duty to prevent insolvent trading
- issuing misleading financial statements.

We have obtained statutory declarations from the Group's directors which indicate that they do not own any material assets to make a claim of this nature commercially feasible. We intend to apply to the Australian Securities and Investments Commission (ASIC) for financial assistance to investigate these issues further. In this situation, ASIC may consider providing such funding where it may lead to successful prosecution of directors for breach of duties.

### 6.3 GST and WET refund

We have continued our investigation into the Palandri Group's entitlement to a refund of GST and WET that was paid by the Group in error. In our report we estimated that this refund could be up to \$7m.

We have submitted a claim to the Australian Taxation Office (ATO) for a portion of the total refund amount that relates to the Palandri Group's 1999 scheme in order to test the validity of the overall claim. The ATO has indicated that they intend to exercise discretion in this instance to reject this claim. We are currently discussing the claim with our GST advisors and lawyers to assess the feasibility of commencing legal action against the ATO for recovery of the amounts claimed.

We are pursuing this claim vigorously and will continue to press for a resolution that is in the best interests of creditors.

### 6.4 Possible claims against the Palandri Group's auditors

We believe that a valid claim exists against the Palandri Group's auditors in relation to their opinion on the 2006 and 2007 financial statements. We have met with the auditors and formally requested copies of their files for these years however they have refused to cooperate with these enquiries as they believe that there is no valid claim against them.

We have reported our concerns regarding the auditor's conduct to ASIC and we are now going to submit a claim to ASIC for financial assistance to investigate this matter further as we believe that it may result in a successful prosecution for breach of their duties and may also result in recovery for the Palandri Group's creditors.

### 6.5 Insurance

We have received a number of claims from investors in the Group's managed investment schemes in relation to damages caused as a result of the Group's management of those schemes. We are engaged with the Palandri Group's insurers to assist them to determine whether any of the Palandri Group's insurance policies will respond to these claims. The Group's insurers have required a large amount of information in order to assess the claims that have been submitted and we have been assisting them to obtain the required information where possible. Once we have resolved this matter, we will provide an update to investors that may benefit from the policy.

## 7 Annual General Meeting

Pursuant to Section 508(4) of the Corporations Act 2001 (Cth) (Act), the Liquidators have decided not to convene an annual general meeting of the creditors under subparagraph (1)(b)(i); and have:

- a) Prepared a report under subparagraph (1)(b)(ii); and
- b) Lodged a copy of the report with ASIC.

If a creditor requests the Liquidators to give the creditor a copy of the report free of charge, the Liquidators will comply with the request. You may also access a copy of our report from our website at [www.deloitte.com.au](http://www.deloitte.com.au). From our website home page please select Services → Corporate Reorganisation Services → Businesses under administration → Palandri Limited.

## 8 Conclusion

The main issues that remain to be dealt with in this liquidation relate to:

- a) further investigation of certain parties involvement in the Palandri Group's failure and obtaining funding that will allow for this continued investigation
- b) the Group's claim against the ATO for recovery of GST and WET paid in error by the Group
- c) claims from investors in the Group's managed investment schemes and liaising with the Group's insurer in relation to these claims
- d) obtaining funding that will allow for this continued investigation.

We are continuing to explore avenues which may result in funding for this purpose, however if we are unsuccessful in obtaining further funding, then it is possible that no further investigation may be conducted. If any creditor may be willing to provide funding to the liquidators to facilitate the continued investigation, please contact Dermott McVeigh of this office to discuss the matter as soon as possible.

If you have any queries or if you would like to discuss anything further, please call Sarah Marshall of this office on (08) 9365 7369.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dermott J McVeigh', with a long horizontal flourish extending to the right.

**Dermott J McVeigh**

Partner

For Gary Doran

Joint and Several Liquidator