

## Circular to Creditors

5 June 2013

Dear Sir/Madam

**Palandri Limited (In Liquidation) (PL)**  
**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 Group”)**

As you may be aware, John Greig, Neil Cussen and Gary Doran were appointed Joint and Several Administrators (**Administrators**) of companies in the Group on 15, 26 and 27 February 2008 and subsequently appointed Joint and Several Liquidators (**Liquidators**) on 7 October 2008.

The purpose of this circular is to provide you with an update on the progress of the liquidation of the Group and to inform you that we will not be convening an annual general meeting of the creditors.

This report provides an update on the following matters:

1. GST and Wine Equalisation Tax (WET) refund
2. Possible unfair preference claim
3. Possible claims against the Group’s auditor
4. Possible claims against the directors.

Creditors will appreciate that by their nature some of the above items were not suited to detailed discussion in circulars whilst the matters were in progress and potential defendants may have obtained a copy of the circulars.

Barring an unexpected ‘last minute’ change in available funding, the matters are effectively complete and in this circular we have explained the outcomes and the critical factors in arriving at those outcomes.

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# 1 GST and WET refund

In our last report to creditors we advised that the Liquidators had accepted an in-principle settlement offer in December 2011 from the Australian Taxation Office (ATO), which was subject to creditor approval.

On 16 January 2012 PWL's Committee of Inspection (the Committee) approved the settlement offer and agreed to compromise the disputed debt of approximately \$7.6m owed by the ATO in connection GST and WET.

The Committee approved the settlement offer on the basis of:

- New evidence came to light which may have compromised our ability to recover GST and WET paid prior 2004 meaning the claim against the ATO would have been significantly reduced
- Substantial litigation risk had the matter gone to trial. Whilst we believed our technical arguments were strongly supported, there is always a risk that the Court may interpret our arguments and the ATO's arguments differently.

The settlement monies were used to pay the Liquidators remuneration, outstanding legal fees, outstanding consultants' fees and a distribution was made to the Group's secured creditors.

# 2 Possible unfair preference claim

In our last report to creditors we advised we had commenced legal proceedings to recover a payment from one supplier which we identified as being a possible unfair preference. At the date of the last report to creditors the proceedings were in discovery status, wherein each party to the action assembled documentary evidence to be shared with the other parties.

During mediation hearings between the supplier, and in consultation with our legal advisors, we accepted an in-principle settlement offer. The settlement monies were used to pay the Liquidators' remuneration and outstanding legal fees. Further details of the settlement are confidential.

# 3 Possible claims against the Group's auditor

## 3.1 Update overview

Since our last report to you the liquidators have extended their investigation into whether the conduct of the Group's external auditor was negligent.

We reviewed the audit working papers in relation to the audit of the Group's financial statements for the years ended 30 June 2005, 2006 and 2007 and identified potential claims against the Group's external auditor.

The liquidators formed the view that:

- There was negligent conduct by the auditor which undermined the level of protection afforded to creditors and investors

- Given the quantum and the nature of the losses sustained by stakeholders in the Group it would be in the public's interest for action to be taken against the auditor.

The liquidators took action to preserve the opportunity to litigate and prevent the matter becoming statute barred and sought litigation funding.

## 3.2 Compliance plan records

During our review we recognised the need to obtain additional audit working papers in relation to the audit of the compliance plans of various schemes in which PWL was the responsible entity. Our requests for these work papers were refused by the Group's auditor. Accordingly, we commenced proceedings in the Supreme Court of Western Australia ("Court") to obtain these records and the hearing was held on the 30 August 2012. The presiding Master deferred his decision on this matter.

On 30 October 2012 the Master handed down his decision and found in favour of the Liquidators. Orders compelling the Group's external auditor to provide the compliance plan audit files were made on 14 November 2012 and the Liquidators obtained these documents on 20 December 2012.

We have now carried out a review of the compliance plan audit files and we believe that the contents of the audit files further support the potential claims against the Group's external auditor.

## 3.3 Litigation funding

The Liquidators have approached three litigation funders.

One of those instructed an independent solicitor (at its cost) to consider the merits of the claim, the quantum of the claim if successful and the cost of litigating the claim through to the conclusion of a contested hearing.

The potential litigation funder verbally expressed the view that there was merit in the claim against the auditors, however the matter was complicated and hence would be more costly and uncertain than other opportunities for it in the market.

The action would involve considerable costs (probably \$100,000 just for a public examination) and the liquidation is without funds.

The liquidators have incurred time on this investigation which at professional charge out rates would have a value in excess of \$100,000 for which they will not be paid because there are insufficient funds in the liquidation.

The Receivers and Managers appointed over the assets of PFL have recently informed the Liquidators that they (and the secured creditor who appointed them) will not be taking or funding any action against the auditors of PFL.

There does not appear to be any appetite from the Australian Securities and Investment Commission (ASIC) to pursue this further.

The liquidators consider that they have exhausted all reasonable possibilities of obtaining litigation funding. Accordingly the liquidators are discontinuing all action against the auditors.

## 4 Possible claims against the directors

As reported previously, we believe that the Group may be able to make a claim against its 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.

Whilst there may be merit in such claims there are difficulties and uncertainties in relation to the potential defendant's capacity to pay and the statute of limitation on civil actions.

As with the claim against the Group's auditor we have not securing funding for this claim due to a lack of interest from the ASIC, the Group's creditors and third party litigation funders.

In the absence of external financial assistance, the Liquidators will not be pursuing this matter further.

## 5 Finalisation of the liquidation

Pursuant to section 508(4) of the Corporations Act 2001, the Liquidations have decided not to convene an annual general meeting of the companies in the Group under subparagraph (1)(b)(i); and have:

- a) Prepared this report under subparagraph (1)(b)(ii) and sent it to creditors of the Group's entities; and
- b) Lodged a copy of this report with ASIC.

In addition to this report, we 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 → Restructuring Services → Insolvency matters.

We intend to proceed to complete the liquidation as soon as possible and will be convening a final meeting of creditors soon.

If you have any questions or would like to discuss this report further, please contact Nicholas Fiori on (08) 9365 7275 or by email [nfiori@deloitte.com.au](mailto:nfiori@deloitte.com.au).

Yours sincerely



**Gary Doran**  
Joint and Several Liquidator