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

Responses to Frequently Asked Questions from Creditors / Note holders

1. Trustee as creditor

Why are we still being classed as note holders and being represented by the trustee for note holders without any right of vote ourselves?

After receiving legal advice on this issue, the Administrators take the view that for the purposes of voting at the second meeting of creditors of BBL (**Meeting**), the Trustee is the relevant "creditor" of Babcock & Brown Limited (**BBL**). The Administrators also take the view that there is no basis upon which to distinguish between note holders who have issued Exit Notices, and those note holders who have not. We explain the reasons for our views in detail below.

The Trust Deed for the notes provides that BBL undertakes to pay to the Trustee, all payments of principal and interest in respect of the notes. In the event that BBL fails to do so, thereby committing an Event of Default, the Trustee is permitted to take certain actions against BBL, including taking action to liquidate BBL, or to prove in the liquidation of BBL. The Trust Deed specifically states that the note holders may not take action directly against BBL (unless the Trustee has failed to do so). Of course the Trustee exercises any rights it has against BBL for the benefit of (all) note holders.

Relevant case law provides that a "creditor" is the person to whom a debt must be paid: that is, the person who can look directly at the debtor and assert a direct entitlement to the benefit of a judgment made against the debtor. In the circumstances, given that the repayment obligations of BBL are owed directly to the Trustee, and the Terms of Issue only authorise the Trustee (and not the note holders) to take action in respect of an Event of Default committed by BBL, it seems clear that the intention is for the Trustee to be the party who may "look directly to" BBL. Accordingly, we are advised that the Trustee is the true "creditor" of BBL.

The above position is supported by the judge's comments in *Re Australian Capital Reserve Ltd* (Gyles J, 29 August 2007).

2. Exit notices

Why is no distinction being drawn between note holders who issued exit notices and those that did not?

In our view, the Trustee has the voting rights and there is no basis for treating note holders differently depending upon whether or not they had issued Exit Notices, for the reasons set out below.

Clause 12.4 of the Terms of Issue provides that all notes are repayable upon a winding up of BBL. Accordingly, amounts owing to all note holders by BBL will become due and payable in the event that BBL is placed into liquidation. The Administrators have recommended in their Report to Creditors dated 12 August 2009 that creditors should vote in favour of winding up of BBL (there being no other viable option). Accordingly, the Administrators consider that it is likely that the Meeting will determine that BBL should be wound up.

Accordingly, (ignoring for the moment our view that the Trustee is the proper "creditor") there is no basis to distinguish between note holders who have issued Exit Notices, and those note holders who have not. Assuming that BBL is wound up, there is no basis the rights of note holders who failed to lodge an Exit Notice would be subordinated to the rights of those note holders who did lodge Exit Notices.

3. *Ranking of creditors*

Why are there differences in the ranking of BBL creditors?

We believe that there are three distinct levels of priority amongst the potential creditors of BBL. The Terms of Issue of the BBSN and BBSN2 make clear provision for the notes to be subordinated to other creditors of BBL. Group employees are not employees of BBL and therefore their claims are not preferred but rank as unsecured creditors. Shareholder claims for dividends rank behind all other creditors, including the note holders.

In terms of the funding proposal it is envisaged that the Liquidators (if appointed) will apply to Court for an order that all note holders who contributed funds in response to the funding proposal (**Funding Note Holders**) rank ahead of non-contributing note holders in relation to any recovery. This is addressed in further detail below.

4. *Ranking of Funding Note Holders' claim*

Am I correct in understanding that subject to court approval, the intention is that a Funding Note Holder would:

- *rank equally (and preferentially) for the return of the contribution amount with all other Funding Note Holders (**Return of Contribution**); and*
- *receive a further preferential return on outstanding debts in excess of the Contribution (**Preferential Return**),*

assuming funds are recovered.

How will the proposed preferential return work in practice? Will the Funding Note Holders:

- *receive a return calculated in relation to their contribution? or*
- *have the whole of their claim elevated so as to rank ahead of unsecured creditors? Eg. note holder A (who is a Funding Note Holder) has 10,000,000 notes, note holder B (who is a Funding Note Holders) one has 100 notes. Both note holder A and note holder B contributed $400 each.*

The basis upon which Funding Note Holders will be preferred will depend upon both the amounts contributed and recovered. The basic principle will be that Funding Note Holders will:

- rank equally amongst each other (irrespective of whether they are note holders or other creditors), both in terms of their Return of Contribution and Preferential Return;
- rank ahead of other creditors; and
- have their Preferential Return capped at an amount less than or equal to their claim against BBL.

5. *Length of time to ascertain when sufficient monies received.*

Contributions need to be made by 15 September 2009. We would expect to be in a position to make an announcement before the end of September 2009 as to whether sufficient funding has been raised to proceed with the examination of former directors of BBL and other parties connected with the failure of BBL and the Group.

6. *Mediation*

The language in 4(c) of the funding proposal suggests that a mediation may be considered which would resolve all outstanding claims. What precedents are there for this type of mediation and how likely do you think this is to occur given the size of the potential claims?

Mediation is a possible option but it is impossible, at this stage, to comment on the likelihood of the eventuality of a mediation, or the success of any such mediation.

7. **Nominee Account Issues**

With custodian/nominee accounts there is only one listing as a note holder however there could be hundreds of funds within the master account.

The custodian will need to provide us with a breakdown of the underlying investors, showing us which had contributed and which had not. When a payment is subsequently made, we will provide the custodian with a breakdown of the underlying parties entitlements, based on the information provided to us by the custodian.