

## ANNUAL REPORT TO CREDITORS AND NOTEHOLDERS

27 September 2018

Dear Sir/Madam,

### **Babcock & Brown Limited (In Liquidation)** **ACN 108 614 955 (BBL)**

I refer to my appointment as Liquidator of BBL on 24 August 2009. This report should be read in conjunction with our previous annual report dated 16 November 2017 (**2017 Annual Report**).

This report has been prepared **pursuant to Section 508(1)(b)(ii) of the Corporations Act 2001 (the Act)**.

In the interest of minimising cost, I have elected not to convene a meeting of creditors under Section 508(1)(b)(i) of the Act, rather a copy will be lodged with the Australian Securities & Investments Commission (ASIC) pursuant to Section 508(4) of the Act.

This report has been prepared in accordance with Section 508(3) of the Act<sup>1</sup>, to update BBL creditors on the progress of the liquidation during the anniversary period 24 August 2017 to 23 August 2018 (**the Period**), and sets out:

1. an account of my acts and dealings and the conduct of the winding up
2. a description of the acts and dealings that remain to be carried out in order to complete the winding up, and
3. an estimate of when the winding up is likely to be completed.

In this Report, "**Subordinated Noteholders**" means registered holders of subordinated notes issued by BBL pursuant to prospectuses issued in Australia dated 9 November 2005 (supplementary prospectus dated 21 November 2005), 9 May 2006, 12 October 2006 (**BBSN**) and investment statements issued in New Zealand dated 9 May 2006, 12 October 2006 (**BBSN2**). I note that Perpetual Corporate Trust acts on behalf of the BBSN and BBSN2 noteholders.

## **1 LIQUIDATOR'S ACTS AND DEALINGS & CONDUCT OF THE WINDING UP DURING THE PERIOD**

**Appendix A** provides a timeline of the key events during the liquidation to date. The key acts and dealings during the Period is provided below:-

### **1.1 Update on the declaration and payment of dividend to unsecured creditors**

In June 2012, I declared an Intention to Declare a Dividend to Unsecured Creditors (with the proposed dividend date 24 August 2012). Babcock and Brown Recoveries<sup>2</sup> (**BBR**) (a company not related to BBL in any way), represented by Thomas Booler & Co Lawyers, submitted proof of debt (**POD**) forms on behalf of shareholders claiming to be unsecured creditors of BBL. These claims totalled approximately \$145.66 million on behalf of 1,028 shareholders (**Applicants**).

<sup>1</sup> Pursuant to Section 1603 of Part 10.25 – Transitional provisions relating to the Insolvency Practise Schedule (Corporations)

<sup>2</sup> Babcock & Brown Recoveries is a registered business name owned by Bookarelli Pty Ltd

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I rejected these shareholder POD forms as the claims did not provide sufficient evidence to support their claim as an unsecured creditor of BBL (as distinct from an ordinary shareholder of BBL).

Four sets of legal proceedings were commenced in the Federal Court of Australia under section 1321 of the Act, by BBR on behalf of BBL shareholders in response to my decision to reject each of the shareholder Applicants' POD forms. Therefore, the unsecured creditor dividend process has been delayed due to these proceedings. **If BBR are successful, it is unclear if a dividend will be available for Subordinated Noteholders.**

Below is a summary of the proceedings heard to date:-

Reference	Proceeding No	Hearing	POD forms submitted	POD value (\$'m)	Applicants admitted in proceedings	Estimated value of claim (\$'m)
"Grant Taylor Proceedings"	NSD 2070/2012	Jul-14	61	12.95	61	7.80
"Masters Proceedings"	NSD 2525/2013	Oct-16	79	14.09	17	1.16
"Broome Proceedings"	NSD 947/2014	Oct-16	735	116.18	123	5.82
"Wilhelm Proceedings"	NSD 501/2015	Oct-16	153	2.44	152	1.48
			<b>1,028</b>	<b>145.66</b>	<b>353</b>	<b>16.25</b>

During the respective hearings, the Applicants' claims in the proceedings were reduced (from \$145.66m to \$16.25m), due to the lack of substantive information provided by BBR on behalf of the Applicants' in their POD claim forms. An update of the proceedings are provided below.

### 1.1.1 Grant Taylor proceedings

As outlined in our 2017 Annual Report, BBL successfully defended all aspects of the proceedings raised by the shareholder Applicants in the Grant Taylor proceedings. The shareholder Applicants subsequently filed an appeal in the Full Federal Court of Australia and judgement was handed down on 21 April 2016, with the Full Federal Court unanimously dismissing the Applicants' appeal and ordering the Applicants to pay BBL's costs.

The Applicants then filed a further application for special leave to appeal to the High Court, and on 12 October 2016 in reviewing the application, the High Court dismissed the Applicants' application for special leave awarding costs to BBL. The High Court costs hearing was held on 12 March 2018, and BBL were awarded the taxed costs of \$9,408.

The recovery of costs in the Federal Court proceedings is unfortunately a prolonged and difficult process. A costs assessor was engaged in October 2017 to review the legal bills and provide both parties with a formal estimate of what costs would be allowed.

On 21 November 2017, we received our cost estimates from the Court being \$860,000 for the hearing and \$157,000 for the appeal. On 7 December 2017, BBL filed and served an order for costs to the Plaintiffs. The plaintiffs lodged an objection to the Court's cost assessor's estimate, as a result the next step is a court costs conference to resolve the issues, which was set for 26 June 2018.

BBL successfully via negotiation recovered the costs of the Appeal for \$155,000. Unfortunately, and despite the registrar's view that BBL's cost estimator was fair in calculating the hearing costs to be \$860,000, the plaintiffs maintained their objection and submitted an offer in the range of \$400,000 to \$450,000. Due to the different positions between the parties, the registrar was unable to settle the hearing costs and ordered the matter to proceed to formal taxation. Unfortunately, the Court has not set a date for this to occur.

### 1.1.2 Masters, Broome and Wilhelm proceedings

Although commenced as three separate proceedings, the plaintiffs subsequently joined the Broome, Masters and Wilhelm proceedings into one proceeding and the three were heard simultaneously before the Federal Court of Australia between 10 October 2016 and 13 October 2016. At this point we are still waiting for judgement to be delivered by Justice Foster.

At the time of preparing our 2017 Annual Report, we had received a notice from the Judge's office associate that the judgment would be delivered in late November 2017.

Subsequently, we received a number of updates from the Judge's associate to the effect that that judgement would be handed down in January 2018, then February 2018, then May 2018, then late August 2018. On 30 August 2018, we were advised that Justice Foster will be unable to finalise his judgment and deliver it for at least two months due to serious illness. Whether further time is required is presently not known and we have been advised that we will be provided an update when possible.

Unfortunately, whilst the judgement in these proceedings remain outstanding, it is not possible to comment upon:-

- the timing of the unsecured creditor dividend process
- the quantum of the return to unsecured creditors (as this depends on whether shareholders are entitled to claim as unsecured creditors), and
- whether there will be any funds that will be available for distribution to Subordinated Noteholders.

If BBL is successful in these three proceedings, then the shareholder plaintiffs will **not** rank as unsecured creditors and as a result there will be funds available to be distributed to unsecured creditors and Subordinated Noteholders.

Pursuant to Regulation 5.6.65 of the Corporations Regulations 2001, I am required to re-advertise my intention to declare a dividend to creditors not more than two months before the intended date of payment. Once all legal proceedings are resolved, I will provide a further update on our website providing guidance as to the timing and quantum of the first dividend payment to unsecured creditors and therefore Subordinated Noteholders. These comments of course do not take into account the initiation of further proceedings by BBR.

## 1.2 Tax Declaration to Subordinated Noteholders

My office have received several enquiries from Subordinated Noteholders for a tax declaration in respect to the likely value of their notes. As discussed above, any future return to Subordinated Noteholders is contingent upon the outcome of the three legal proceedings. **Therefore, I am presently unable to issue a notice declaring that BBL subordinated notes have no value.** I recommend Subordinated Noteholders to obtain their own professional tax advice in respect to their BBL note holdings.

## 1.3 Property located in Massachusetts, USA

In late 2017, I received a number of enquiries in respect to an abandoned property located in Westborough, Massachusetts, USA, which was brought to my attention on the basis that it may be an asset of the Babcock & Brown Group, and therefore may be an asset of the BBL Liquidation.

My appointment as liquidator is only in respect of the holding company BBL, which did not trade or own any physical assets. Notwithstanding, I made enquiries with the CEO of Babcock & Brown International Pty Ltd (**BBIPL**) as well as conducting independent company and real property searches in the state of Massachusetts, USA. Our investigations and enquiries revealed that Babcock & Brown Administrative Services Inc (**BBAS**) managed the property on behalf of a third party and the property is not owned by BBL.

## 1.4 Receipts and payments

A summary of BBL's receipts and payments for the period 24 August 2017 to 23 August 2018 are attached as **Annexure B**.

A summary of the Voluntary Administrators' and Liquidators' remuneration is provided and attached as **Annexure C**.

## 2 ACTS & DEALINGS TO BE CARRIED OUT TO COMPLETE THE LIQUIDATION

The next step in the liquidation is to declare a dividend to unsecured creditors. If the shareholder claims are unsuccessful, I estimate funds to be available for a dividend to Subordinated Noteholders. If the shareholder claims are successful then a dividend would be paid to non-subordinated unsecured creditors. However, this process can only commence once the three legal proceedings are resolved.

The below timetable is contingent upon receiving judgement in the Masters, Broome and Wilhelm proceedings **and BBL being successful; no appeal is lodged by the Plaintiffs, and no further legal proceedings are commenced against BBL.**

The timetable starts from when judgement is delivered subject to any appeal:

<b>November 2018</b>	Update from Federal Court regarding the likely timing of judgement in the Masters, Broome and Wilhelm proceedings which will be posted on our website
<b>Judgement</b> (say, Jan-19)	Resolution and receipt of judgement regarding the Masters, Broome and Wilhelm proceedings – outcome to be posted on our website subject to any appeal
<b>Judgement + 1 month</b> (Feb-19)	Liquidator to advertise notice of intention to declare dividend to unsecured creditors (on the basis that BBL is successful in the Broome, Masters and Wilhelm proceedings and assuming there is no appeal by any party)  Collate, record and adjudicate any further Formal PODs
<b>Judgement + 3 months</b> (Apr-19)	Declaration and payment of dividend to unsecured creditors  Post an update on our website regarding the outcome of the above process
<b>Judgement + 6 months</b> (Jul-19)	If sufficient funds for a distribution to Subordinated Noteholders, Liquidator to advertise notice of intention to declare dividend to Subordinated Noteholders  Declare and pay dividend to Subordinated Noteholders
<b>Judgement + 13 months</b> (Feb-20)	Section 544 of the Act requires a period of 6 months to pass before the Liquidator can pay any unclaimed dividend monies to ASIC.  Finalisation of the liquidation

Please note the above is an estimate and I will endeavour to complete the various steps as soon as possible after the resolution of the shareholder proceedings.

## 3 ESTIMATED TIMEFRAME FOR COMPLETION OF LIQUIDATION

I estimate that the Liquidation can be finalised by February 2020, on the basis that judgement is received in January 2019 with BBL being successful in the proceedings, BBR does not appeal the decision, and no further legal proceedings are commenced against BBL.

## 4 OTHER MATTERS

Please note that this is the last annual report to creditors and noteholders that I am required to issue pursuant to Section 508 of the Act. The Insolvency Law Reform Act 2016, which came into effect on 1 September 2017, repealed annual reports in a liquidation. However, I will continue to provide updates on the liquidation on our website, at [www.deloitte.com/au/babcockandbrown](http://www.deloitte.com/au/babcockandbrown)

Please note that all previous creditor reports and circulars will continue to be available on our website.

For those who do not have internet access, please note that I will issue BBL's Notice of Declaration of Dividend to creditors in writing, once timing is confirmed.

If you require any further update or have any queries regarding the contents of this report you can contact Jack McGrath of my office on +61 2 8260 4867 or email at [bandbltd@deloitte.com.au](mailto:bandbltd@deloitte.com.au).

Yours faithfully,



**David J F Lombe**  
Liquidator

Encl.

**BBL Liquidation timeline of the key events**

<b>Period</b>	<b>Event</b>
<b>Mar-09</b>	Appointed Voluntary Administrator on 13 March 2009
<b>Aug-09</b>	Liquidator seeks funding from creditors to fund investigations into BBL's affairs to pursue identified causes of actions to recover funds for the benefit of BBL's creditors
<b>Aug-09</b>	Second meeting of creditors held and Liquidators appointed 24 August 2009
<b>Nov-09</b>	Liquidator successful in raising c\$560k funding from creditors to pursue further detailed investigations into BBL's affairs
<b>Jul-10</b>	Liquidator conducts public examinations of former executives of BBL and BBL's auditor
<b>Sep-11</b>	Successful recoveries in relation to actions against the former directors and auditor (actions were possible due to funds received from 'contributing creditors')
<b>Feb-12</b>	Liquidator's Section 564 Court Application successful in seeking priority distribution to Contributing Creditors to be paid 10x their contribution
<b>Jun-12</b>	Liquidator advertises Intention to Declare Dividend to Unsecured Creditors on 26 June 2012 (with proposed dividend date 24 August 2012)
<b>Aug-12</b>	Liquidator issues Notice to Creditors that there will be delay in dividend declaration due to an extension provided to claimants to prove their claims (including complex shareholder claims received to date)
<b>Nov-12</b>	Liquidator issues Notice of Rejection of Claim to BBR Shareholder claims
<b>Dec-12</b>	Andrew Grant Taylor Proceedings commenced in Federal Court on 11 December 2012 following rejection of BBR Shareholder PODs
<b>May-13</b>	Sale campaign commenced on 24 May 2013 for sale of BBIPL shares and Subordinated loan agreement
<b>Aug-13</b>	Sale process completed on 28 August 2013
<b>Dec-13</b>	Michael Masters proceedings commenced in the Federal Court on 13 December 2013
<b>Feb-14</b>	Court orders for parties to mediate with Mediation held on 25 & 26 February 2014 but no resolution met
<b>Jul-14</b>	Grant Taylor proceedings heard before Federal Court over 5 days in July 2014
<b>Sep-14</b>	Bruce Broome proceedings commenced in the Federal Court on 19 September 2014
<b>Mar-15</b>	Federal Court issues favourable judgement in Grant Taylor proceedings on 4 March 2015
<b>May-15</b>	Sarah Wilhelm proceedings commenced in Federal Court on 5 May 2015
<b>Aug-15</b>	Grant Taylor Appeal hearing heard on 24 and 25 August before Full Federal Court
<b>Apr-16</b>	Full Federal Court unanimously dismissed shareholder Applicants' appeal. Applicants filed an application for special leave to appeal in the High Court
<b>Oct-16</b>	Broome, Masters and Wilhelm proceedings joined and hearing in the Federal Court held 10 to 13 October 2016
<b>Oct-16</b>	High Court dismisses the Applicants' application for special leave to appeal on 12 October 2016
<b>Jun-17</b>	Review and prepare application to recover Grant-Taylor hearing/s costs from Applicants
<b>Aug-17</b>	BBL's costs consultants prepared the BBL's Bills of Cost to be filed on the Grant-Taylor matter
<b>Sep-17</b>	Advised by the Court that Justice Foster will be delivering the Masters, Broome & Wilhelm judgement end of November 2017
<b>Oct-17</b>	BBL's Bills of Costs filed and served onto the Grant Taylor proceedings
<b>Nov-17</b>	Federal Court reviewed and issued BBL's costs estimates in the Grant-Taylor proceedings, available to be served to the plaintiffs
<b>Nov-17</b>	Advised by the Court that Justice Foster will be delivering the Masters, Broome & Wilhelm judgement in the second week of January 2018
<b>Nov-17</b>	Enquiries received regarding property located in Westborough, Massachusetts, USA
<b>Jan-18</b>	Advised by the Court that Justice Foster will be delivering the Masters, Broome & Wilhelm judgement on 30 January 2018 (rather than 16 January 2018)
<b>Feb-18</b>	Advised by the Court that Justice Foster will be delivering the Masters, Broome & Wilhelm judgement on 2 February 2018
<b>Feb-18</b>	Advised by the Court that Justice Foster will be delivering the Masters, Broome & Wilhelm judgement on 9 February 2018
<b>Feb-18</b>	Advised by the Court that Justice Foster will be delivering the Masters, Broome & Wilhelm judgement on or about 16 February 2018
<b>Mar-18</b>	High Court dealt BBL's High Court costs in the Grant Taylor matter and issued a judgment to the plaintiffs for payment
<b>Mar-18</b>	Advised by the Court that Justice Foster will be delivering the Masters, Broome & Wilhelm judgement second half of May 2018
<b>Jun-18</b>	Advised by the Court that Justice Foster will be delivering the Masters, Broome & Wilhelm judgement mid-August 2018
<b>Jun-18</b>	Court conference to deal with BBL's Federal Court Hearing and Appeal costs, ordered for formal taxation on the hearing costs due to the Plaintiffs continuing objection
<b>Aug-18</b>	Advised by the Court that Justice Foster that he will be unable to finalise his judgment in the Broome, Masters and Wilhelm proceedings for at least two months
<b>TBC</b>	Federal Court's judgement on the Broome, Masters and Wilhelm proceedings expected

**BBL Receipts and Payments – 24 August 2017 to 23 August 2018**

<b>Summary of receipts and payments</b>	<b>\$ (excl. GST)</b>
<b>Opening cash at bank 24 August 2017</b>	<b>23,534,670</b>
<b>Receipts</b>	
Miscellaneous income	300
Bank interest	553,072
Legal cost recoveries	164,408
<b>Total receipts</b>	<b>717,780</b>
<b>Payments</b>	
Legal fees	137,854
Legal disbursements	24,611
Data loading and hosting	1,600
Liquidators remuneration	97,631
Liquidators expenses	2,517
Storage costs	1,628
Stationary and printing	22,179
<b>Total payments</b>	<b>288,021</b>
<b>Net receipts/(payments)</b>	<b>429,760</b>
<b>GST receivable/(payable)</b>	<b>(699)</b>
<b>Closing cash at bank 23 August 2018</b>	<b>23,965,129</b>

**BBL Summary of Remuneration**

A summary of remuneration of Voluntary Administrators and Liquidators, paid as at 23 August 2018, is provided below. Appropriate information outlining the nature of the remuneration sought was provided to the Committee of Inspection on each occasion when approval was sought.

**Voluntary Administration: 13 March 2009 to 23 August 2009**  
**Liquidation: 24 August 2009 to 28 February 2018**

Period	Total Fees \$ (excl. GST)	Fee approval received / Date of resolution
13-Mar-09 to 22-May-09	858,700.50	09-Jun-09
23-May-09 to 31-Jul-09	595,604.00	07-Aug-09
01-Aug-09 to 23-Aug-09	300,000.00	07-Aug-09
<b>Voluntary Administrator</b>	<b>1,754,304.50</b>	
24-Aug-09 to 16-Apr-10	658,542.00	21-May-10
17-Apr-10 to 19-Nov-10	614,083.00	15-Dec-10
20-Nov-10 to 19-Feb-11	112,461.00	28-Feb-11
20-Feb-11 to 31-May-11	60,779.00	29-Aug-11
01-Jun-11 to 25-Nov-11	211,564.50	20-Dec-11
26-Nov-11 to 17-Feb-12	97,347.50	20-Dec-11
17-Feb-12 to 30-Apr-12	97,194.50	20-Dec-11
01-May-12 to 31-Aug-12	325,966.50	27-Sep-12
21-Aug-12 to 30-Apr-12	21,112.00	27-Sep-12
01-Sep-12 to 30-Nov-12	158,540.00	27-Sep-12
01-Dec-12 to 31-Jan-13	58,843.00	28-Feb-13
01-Feb-13 to 31-Mar-13	70,574.50	28-Feb-13
01-Apr-13 to 30-Apr-13	28,968.50	28-Feb-13
01-May-13 to 30-Jun-13	61,355.50	22-Jul-13
01-Jul-13 to 31-Jul-13	44,104.00	22-Jul-13
01-Aug-13 to 19-Sep-13	51,867.50	22-Jul-13
20-Sep-13 to 31-Oct-13	17,566.00	10-Dec-13
01-Nov-13 to 30-Nov-13	28,091.00	10-Dec-13
01-Dec-13 to 31-Jan-14	52,434.00	10-Dec-13
01-Dec-13 to 31-Jan-14	458.00	02-Apr-14
01-Feb-14 to 28-Feb-14	80,855.50	02-Apr-14
01-Mar-14 to 31-Mar-14	23,260.00	02-Apr-14
01-Apr-14 to 30-Apr-14	72,995.00	02-Apr-14
01-Apr-14 to 30-Apr-14	16,116.50	28-Jul-14
01-May-14 to 30-Jun-14	49,532.50	28-Jul-14
01-Jul-14 to 31-Aug-14	109,565.00	28-Jul-14
01-Jul-14 to 31-Aug-14	8,498.00	29-Oct-14
01-Sep-14 to 30-Sep-14	40,693.00	29-Oct-14
01-Oct-14 to 30-Nov-14	72,054.00	29-Oct-14
01-Dec-14 to 31-Dec-14	27,148.50	18-Dec-15
01-Jan-15 to 31-Jan-15	15,033.00	18-Dec-15
01-Feb-15 to 28-Feb-15	37,148.00	18-Dec-15
01-Mar-15 to 20-Mar-15	25,261.00	01-Apr-15
21-Mar-15 to 30-Jun-15	78,193.50	01-Apr-15
01-Jul-15 to 11-Sep-15	39,635.00	30-Sep-15
12-Sep-15 to 31-Dec-15	69,750.00	30-Sep-15
21-Nov-15 to 31-Dec-15	403.50	17-Feb-16
01-Jan-16 to 31-Jan-16	75,179.00	17-Feb-16
01-Feb-16 to 30-Apr-16	104,555.00	17-Feb-16
01-Feb-16 to 08-Apr-16	4,160.50	02-Jun-16
09-Apr-16 to 13-May-16	14,732.50	02-Jun-16
14-May-16 to 31-Jul-16	69,965.00	02-Jun-16
14-May-16 to 31-Jul-16	1,167.00	09-Nov-16
01-Aug-16 to 21-Oct-16	75,714.50	09-Nov-16
22-Oct-16 to 16-Dec-16	32,043.00	09-Nov-16
17-Dec-16 to 31-Jan-17	3,622.50	09-Nov-16
01-Feb-17 to 01-Dec-17	50,341.00	15-Dec-17
02-Dec-17 to 28-Feb-18	47,290.00	15-Dec-17
<b>Liquidator</b>	<b>4,016,764.00</b>	