

4 November 2019

## **CIRCULAR TO CREDITORS**

Dear Sir/Madam

### **Big Un Limited (In Liquidation) ACN 106 399 311 (the Company)**

I refer to the appointment of Matthew James Donnelly and myself as Joint and Several Administrators of the Company on 24 August 2018 and subsequent appointment as Joint and Several Deed Administrators on 15 January 2019.

I also refer to our report to creditors dated 8 October 2019 (**the Report**) and to the meeting of creditors held on 23 October 2019 (**the Meeting**) pursuant to Section 75-10(a) of the Corporations Act 2001 Schedule 2 – Insolvency Practice Schedule (Corporations).

#### **1. Meeting of creditors**

As advised in the Report, the proponents of the Deed of Company Arrangement (**DOCA**), WOW World Digital Pty Ltd, were unable to contribute funds per the terms of the DOCA and as a result, the DOCA was unable to be effectuated.

Accordingly, it was resolved by creditors at the Meeting that the Company terminate the DOCA with WOW World Digital Pty Ltd dated 15 January 2019. Consequently, the Company was placed into liquidation and Matthew James Donnelly and I were appointed as Joint and Several Liquidators of the Company.

At the Meeting, creditors did not resolve to form a Committee of Inspection.

A copy of our updated Declaration of Independence, Relevant Relationships and Indemnities (**DIRRI**) dated 8 October 2019 which was initially provided with the Report was tabled at the Meeting and is attached as **Annexure A**.

#### **2. Your rights as a creditor**

All creditors of the Company are now creditors in the liquidation. As a creditor, you have certain rights, although you no longer have the right to seek payment by the Company of your outstanding debt which will now be dealt with in the liquidation.

Information regarding your rights as a creditor is provided in the information sheet attached as **Annexure B**. This includes your right to:

- Make reasonable requests for a meeting
- Make reasonable requests for information
- Give directions to us
- Appoint a reviewing liquidator
- To replace us as liquidators.

Creditors who have not yet lodged a Proof of Debt (**POD**) may do so by submitting a completed POD form enclosed as **Annexure C** to Asad Cheema of this office at [acheema@deloitte.com.au](mailto:acheema@deloitte.com.au).

### 3. What happens next?

As Liquidators, in accordance with the Corporations Act 2001 (**the Act**), we will continue our investigations into the assets, transactions and affairs of the Company as detailed in our previous reports to creditors issued pursuant to Section 75-225 of the Insolvency Practice Rules (Corporations) 2016 (**IPR**) dated 19 September 2018 and 13 December 2018 (**Administrators' Reports**).

If you have not received a copy of the Administrators' Reports, please contact Asad Cheema on (02) 9840 6742 or at [acheema@deloitte.com.au](mailto:acheema@deloitte.com.au).

A brief summary of the potential recoveries and claims available in the liquidation is provided below for your information:

#### a. Shareholdings

As creditors are aware, the Company has shareholdings in the following companies:

- Bellr Pty Limited formerly known as Shoutback! Pty Limited
- Realworld Advertising Pty Limited
- Wayfarer Media Pty Limited.

We will continue to liaise with respective parties in relation to the potential buy-back of their respective shares and reviewing related financial information to ascertain the value of same. Creditors will be provided with a further update in our next report to creditors which will be issued within three months of our appointment pursuant to Section 70-40 of the IPR.

#### b. Voidable Transactions

As detailed in the Administrators' Reports, our investigations have identified a number of voidable transactions that may be recovered in the liquidation. These include but are not limited to the following:

- Payments totalling **\$621,761** made to creditors in the six month period prior to our appointment as Administrators which may constitute as unfair preferences
- Payments totalling **\$798,451** to a number of parties which could potentially be classified as unreasonable director-related transactions
- A potential insolvent trading claim against the directors of the Company for **\$451,270**.

Creditors are advised that our investigations into these voidable transactions are preliminary and any future recoveries is subject to change. A further update will be provided in our next report to creditors.

#### c. Third-Party Claims and Directors/Officers Claims

As advised in the Administrators' Reports, our preliminary investigations have revealed a number of potential claims against various third-parties and one or more of the directors and officers of the Company.

These claims will be investigated further in the liquidation. In order to obtain sufficient evidence to pursue these claim satisfactorily, we intend to seek orders to publically examine the officers and directors of the Company and any relevant third-parties. As the liquidation is unfunded, we will be seeking funding to conduct these examinations and pursue these claims further.

Should any creditor be interested in providing funding and wish to receive additional information in relation to these claims, please contact **Asad Cheema** of this office via the details provided below. Creditors will be provided with a further update on our investigations into these claims in our next report to creditors.

In the event that creditor funding is not forthcoming, we may seek funding from a litigation funder. A litigation funder is an organisation that can provide funds to meet the costs of legal actions including the costs of solicitors, barristers and insolvency practitioners as well as providing indemnities for any adverse costs should such legal action prove to be unsuccessful. Litigation funding allows practitioners to initiate actions that would otherwise not be possible due to a lack of funds.

In return for the funder being exposed to the risk of being unsuccessful, the funder will charge a "risk premium" in addition to his costs if successful. This premium is usually within the range of 35% to 50% of the net amount awarded.

Prior to entering into an agreement with a litigation funder, we are required to obtain approval from creditors or the Court. Creditors will be provided with further information in this regard and our recommended course of action in our next report to creditors.

We will also in due course submit a confidential report to the Australian Securities and Investments Commission (**ASIC**) as required by the Act, outlining the reasons for the failure of the Company and any offences identified as a result of our investigations.

#### **4. Where can you get more information?**

The Australian Restructuring Insolvency and Turnaround Association (**ARITA**) provides information to assist creditors with understanding liquidations and insolvency.

This information is available from ARITA's website at [www.arita.com.au/creditors](http://www.arita.com.au/creditors).

ASIC also provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at [www.asic.gov.au](http://www.asic.gov.au) (search for 'insolvency information sheets').

Should you have any queries, please contact Asad Cheema of this office on (02) 9840 6742 or by email to [acheema@deloitte.com.au](mailto:acheema@deloitte.com.au).

Yours faithfully



**Neil Robert Cussen**  
Joint and Several Liquidator

Encl.

**Annexure A**

## Declaration of Independence, Relevant Relationships and Indemnities (DIRRI)

### Big Un Limited (Subject to a Deed of Company Arrangement) ACN 106 399 311 (the Company)

This document requires the Practitioners appointed to an insolvent entity to make declarations as to:

- A. Their independence generally
- B. Relationships, including
  - (i) The circumstances of the appointment
  - (ii) Any relationships with the Company and others within the previous 24 months
  - (iii) Any prior professional services for the Company within the previous 24 months
  - (iv) That there are no other relationships to declare
- C. Any indemnities given, or up-front payments made, to the Practitioner.

This declaration is made in respect of ourselves, our partners and Deloitte Financial Advisory Pty Ltd (Deloitte).

#### A. Independence

We, Neil Robert Cussen and Matthew James Donnelly of Deloitte have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Joint and Several Administrators of the Company in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to our independence. We are not aware of any reasons that would prevent us from accepting this appointment.

#### B. Declaration of Relationships

##### i. Circumstances of appointment

This appointment was referred to us by Mr. Michael Hird of Armstrong Hird Advisory.

On 17 May 2018, Mr. Neil Robert Cussen held a meeting with the directors of Big Review TV Limited, a subsidiary of the Company. The purpose of the meeting held on 17 May 2018 were:

- To discuss the financial position of Big Review TV Limited
- To clarify and explain the nature and consequences of insolvency for Big Review TV Limited
- To discuss the possible options available to the Company including voluntary administration.

On 24 August 2018, Mr. Neil Robert Cussen held a meeting with the directors of the Company. The purpose of the meeting held on 24 August 2018 were:

- To discuss the financial position of the Company
- To clarify and explain the nature and consequences of insolvency for Big Un Limited
- To discuss the possible options available to the Company including voluntary administration.

We received no remuneration for this advice.

These meetings were in the nature of pre-appointment discussions and was limited to the financial position of the Company and of Big Review TV Limited. During these meetings, advice was limited to verbal discussions of the potential options available.

It is our opinion that these meetings did not present a conflict or impediment as we do not consider ourselves to be bound to provide services to the Company in relation to this matter or in any way obligated to deliver a favourable outcome to any party, nor will the advice provided be subject to review and challenge during the course of the voluntary administration.

The Courts and the Australian Restructuring Insolvency and Turnaround Association's Code of Professional Practice specifically recognises the need for practitioners to provide advice on the insolvency process and the options available and do not consider that such advice results in a conflict or is an impediment to accepting the appointment.

We, or a member of our firm, have provided no other information or advice to the Company prior to our appointment beyond that outlined in this DIRRI.

**ii. Relevant Relationships (excluding Professional Services to the Company)**

We, or a member of our firm, have, or have had within the preceding 24 months, a relationship with:

Name	Nature of relationship	Reasons why not an impediment or conflict
Armstrong Hird Advisory (Armstrong Hird)	Referral from accountant	<p>We have not received any other referral from Armstrong Hird. We are not paid any commissions, inducements or benefits by Armstrong Hird to undertake any appointments.</p> <p>There is no arrangement between us and Armstrong Hird that we will give any work arising out of the Administration to Armstrong Hird. There is no relationship with Armstrong Hird which in our view would restrict us from properly exercising our judgment and duties in relation to the appointment.</p>

**iii. Prior Professional services to the Company**

Neither we, nor our firm, have provided any professional services to the Company in the previous 24 months.

**iv. No other relevant relationships to disclose**

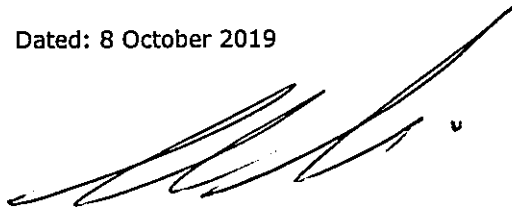
There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with the Company, an associate of the Company, a former insolvency practitioner appointed to the Company or any person or entity that has security over the whole or substantially whole of the Company's property that should be disclosed.

## C. Indemnities and up-front payments

Pursuant to the Deed of Company Arrangement (**DOCA**) dated 15 January 2019 and subsequent letters of confirmation, the proponent of the DOCA, WOW World Digital Pty Ltd (**DOCA Proponent**), indemnified the Company and the Deed Administrators to a maximum amount of \$302,000 from, against and in respect of any costs and payments of their remuneration, and from and against any other loss or damage however arising, out of or in connection with the application pursuant to Section 444GA of the Act to transfer 80% of the Company's shares to the DOCA Proponent.

This aside, we have not been indemnified in relation to this administration, other than any indemnities that we may be entitled to under statute and we have not received any up-front payments in respect of our remuneration or disbursements.

Dated: 8 October 2019



Neil Robert Cussen

Matthew James Donnelly

### Note:

1. If circumstances change, or new information is identified, we are required under Section 506A of the Corporations Act 2001 and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication as well as table a copy of any replacement declaration at the next meeting of the insolvent's creditors.
2. Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.

## Declaration of Independence, Relevant Relationships and Indemnities (DIRRI)

**Big Un Limited (Subject to a Deed of Company Arrangement)  
ACN 106 399 311 (the Company)**

This document requires the Practitioners appointed to an insolvent entity to make declarations as to:

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  - (i) The circumstances of the appointment
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  - (iii) Any prior professional services for the Company within the previous 24 months
  - (iv) That there are no other relationships to declare
- C. Any indemnities given, or up-front payments made, to the Practitioner.

This declaration is made in respect of ourselves, our partners and Deloitte Financial Advisory Pty Ltd (Deloitte).

### A. Independence

We, Neil Robert Cussen and Matthew James Donnelly of Deloitte have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Joint and Several Administrators of the Company in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to our independence. We are not aware of any reasons that would prevent us from accepting this appointment.

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- To discuss the possible options available to the Company including voluntary administration.

We received no remuneration for this advice.



These meetings were in the nature of pre-appointment discussions and was limited to the financial position of the Company and of Big Review TV Limited. During these meetings, advice was limited to verbal discussions of the potential options available.

It is our opinion that these meetings did not present a conflict or Impediment as we do not consider ourselves to be bound to provide services to the Company in relation to this matter or in any way obligated to deliver a favourable outcome to any party, nor will the advice provided be subject to review and challenge during the course of the voluntary administration.

The Courts and the Australian Restructuring Insolvency and Turnaround Association's Code of Professional Practice specifically recognises the need for practitioners to provide advice on the insolvency process and the options available and do not consider that such advice results in a conflict or is an Impediment to accepting the appointment.

We, or a member of our firm, have provided no other information or advice to the Company prior to our appointment beyond that outlined in this DIRRI.

## ii. Relevant Relationships (excluding Professional Services to the Company)

We, or a member of our firm, have, or have had within the preceding 24 months, a relationship with:

Name	Nature of relationship	Reasons why not an impediment or conflict
Armstrong Hird Advisory (Armstrong Hird)	Referral from accountant	<p>We have not received any other referral from Armstrong Hird. We are not paid any commissions, inducements or benefits by Armstrong Hird to undertake any appointments.</p> <p>There is no arrangement between us and Armstrong Hird that we will give any work arising out of the Administration to Armstrong Hird. There is no relationship with Armstrong Hird which in our view would restrict us from properly exercising our judgment and duties in relation to the appointment.</p>

## iii. Prior Professional services to the Company

Neither we, nor our firm, have provided any professional services to the Company in the previous 24 months.

## iv. No other relevant relationships to disclose

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with the Company, an associate of the Company, a former insolvency practitioner appointed to the Company or any person or entity that has security over the whole or substantially whole of the Company's property that should be disclosed.

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Pursuant to the Deed of Company Arrangement (DOCA) dated 15 January 2019 and subsequent letters of confirmation, the proponent of the DOCA, WOW World Digital Pty Ltd (DOCA Proponent), indemnified the Company and the Deed Administrators to a maximum amount of \$302,000 from, against and in respect of any costs and payments of their remuneration, and from and against any other loss or damage however arising, out of or in connection with the application pursuant to Section 444GA of the Act to transfer 80% of the Company's shares to the DOCA Proponent.

This aside, we have not been indemnified in relation to this administration, other than any indemnities that we may be entitled to under statute and we have not received any up-front payments in respect of our remuneration or disbursements.

Dated: 8 October 2019

\_\_\_\_\_  
Neil Robert Cussen

  
\_\_\_\_\_  
Matthew James Donnelly

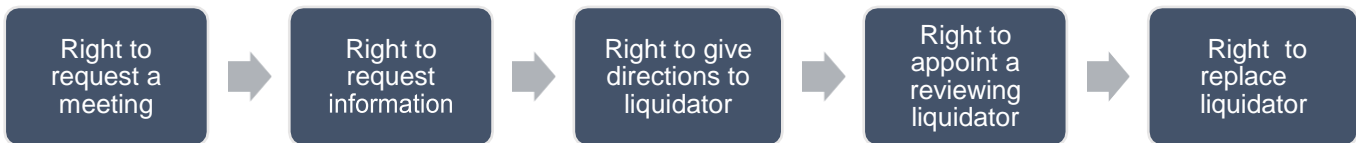
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**Annexure B**

# Creditor Rights in Liquidations

As a creditor, you have rights to request meetings and information or take certain actions:



## Right to request a meeting

In liquidations, no meetings of creditors are held automatically. However, creditors with claims of a certain value can request in writing that the liquidator hold a meeting of creditors.

A meeting may be requested in the first 20 business days in a creditors' voluntary liquidation by  $\geq 5\%$  of the value of the debts held by known creditors who are not a related entity of the company.

Otherwise, meetings can be requested at any other time or in a court liquidation by:

- $> 10\%$  but  $< 25\%$  of the known value of creditors on the condition that those creditors provide security for the cost of holding the meeting
- $\geq 25\%$  of the known value of creditors
- creditors by resolution, or
- a Committee of Inspection (this is a smaller group of creditors elected by, and to represent, all the creditors).

If a request complies with these requirements and is 'reasonable', the liquidator must hold a meeting of creditors as soon as reasonably practicable.

## Right to request information

Liquidators will communicate important information with creditors as required in a liquidation. In addition to the initial notice, you should receive, at a minimum, a report within the first three months on the likelihood of a dividend being paid.

Additionally, creditors have the right to request information at any time. A liquidator must provide a creditor with the requested information if their request is 'reasonable', the information is relevant to the liquidation, and the provision of the information would not cause the liquidator to breach their duties.

A liquidator must provide this information to a creditor within 5 business days of receiving the request, unless a longer period is agreed. If, due to the nature of the information requested, the liquidator requires more time to comply with the request, they can extend the period by notifying the creditor in writing.

## Requests must be reasonable.

### They are not reasonable if:

Both meetings and information:

- (a) complying with the request would prejudice the interests of one or more creditors or a third party
- (b) there is not sufficient available property to comply with the request
- (c) the request is vexatious

Meeting requests only:

- (d) a meeting of creditors dealing with the same matters has been held, or will be held within 15 business days

Information requests only:

- (e) the information requested would be privileged from production in legal proceedings
- (f) disclosure would found an action for breach of confidence
- (g) the information has already been provided
- (h) the information is required to be provided under law within 20 business days of the request

If a request is not reasonable due to (b), (d), (g) or (h) above, the liquidator must comply with the request if the creditor meets the cost of complying with the request.

Otherwise, a liquidator must inform a creditor if their meeting or information request is not reasonable and the reason why.

## Right to give directions to liquidator

Creditors, by resolution, may give a liquidator directions in relation to a liquidation. A liquidator must have regard to these directions, but is not required to comply with the directions.

If a liquidator chooses not to comply with a direction given by a resolution of the creditors, they must document their reasons.

An individual creditor cannot provide a direction to a liquidator.

## Right to appoint a reviewing liquidator

Creditors, by resolution, may appoint a reviewing liquidator to review a liquidator's remuneration or a cost or expense incurred in a liquidation. The review is limited to:

- remuneration approved within the six months prior to the appointment of the reviewing liquidator, and
- expenses incurred in the 12 months prior to the appointment of the reviewing liquidator.

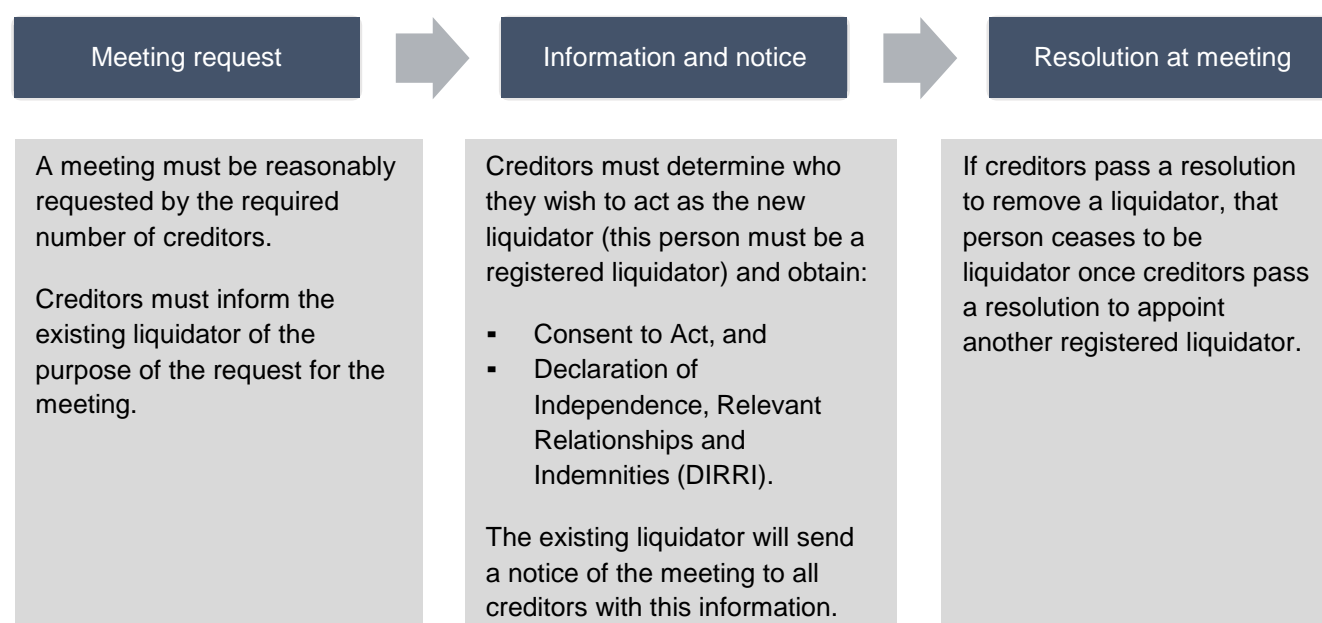
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

An individual creditor can appoint a reviewing liquidator with the liquidator's consent, however the cost of this reviewing liquidator must be met personally by the creditor making the appointment.

## Right to replace liquidator

Creditors, by resolution, have the right to remove a liquidator and appoint another registered liquidator.

For this to happen, there are certain requirements that must be complied with:



**For more information, go to [www.arita.com.au/creditors](http://www.arita.com.au/creditors)**  
**ASIC Insolvency resources got to <http://asic.gov.au/regulatory-resources/insolvency>**

**Annexure C**

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Joint and Several Liquidators of Big Un Limited (In Liquidation)

1. This is to state that the company was, on 24 August 2018 <sup>(1)</sup> and still is, justly and truly indebted to<sup>(2)</sup> (full name):

.....  
(‘Creditor’)

.....  
of (full address)

for \$ ..... dollars and ..... cents.

Particulars of the debt are:

Date	Consideration <sup>(3)</sup> state how the debt arose	Amount \$	GST included \$	Remarks <sup>(4)</sup> include details of voucher substantiating payment

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any manner of satisfaction or security for the sum or any part of it except for the following: .....

Insert particulars of all securities held. Where the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, specify them in a schedule in the following form:

Date	Drawer	Acceptor	Amount \$ c	Due Date

I am **not** a related creditor of the Company <sup>(5)</sup>

I am a related creditor of the Company <sup>(5)</sup>  
relationship: .....

3A.<sup>(6)\*</sup> I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

3B.<sup>(6)\*</sup> I am the creditor's agent authorised to make this statement in writing. I know that the debt was incurred and for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

DATED this                      day of                      2019

Signature of Signatory.....

NAME IN BLOCK LETTERS .....

Occupation .....

Address .....

**See Directions overleaf for the completion of this form**

**OFFICE USE ONLY**

POD No:		ADMIT (Voting / Dividend) - Ordinary	\$
Date Received:	/ /	ADMIT (Voting / Dividend) – Preferential	\$
Entered into CORE IPS:		Reject (Voting / Dividend)	\$
Amount per ROCAP	\$	Object or H/Over for Consideration	\$
<b>Reason for Admitting / Rejection</b>			
PREP BY/AUTHORISED		<b>TOTAL PROOF</b>	\$
DATE AUTHORISED	/ /		

### Proof of Debt Form Directions

- \* Strike out whichever is inapplicable.
- (1) Insert date of Court Order in winding up by the Court, or date of resolution to wind up, if a voluntary winding up.
- (2) Insert full name and address (including ABN) of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor.
- (3) Under "Consideration" state how the debt arose, for example "goods sold and delivered to the company between the dates of .....", "moneys advanced in respect of the Bill of Exchange".
- (4) Under "Remarks" include details of vouchers substantiating payment.
- (5) Related Party / Entity: Director, relative of Director, related company, beneficiary of a related trust.
- (6) If the Creditor is a natural person and this proof is made by the Creditor personally. In other cases, if, for example, you are the director of a corporate Creditor or the solicitor or accountant of the Creditor, you sign this form as the Creditor's authorised agent (delete item 3A). If you are an authorised employee of the Creditor (credit manager etc), delete item 3B.

### Annexures

- A. If space provided for a particular purpose in a form is insufficient to contain all the required information in relation to a particular item, the information must be set out in an annexure.
- B. An annexure to a form must:
  - (a) have an identifying mark;
  - (b) and be endorsed with the words:
    - i) "This is the annexure of *(insert number of pages)* pages marked *(insert an identifying mark)* referred to in the *(insert description of form)* signed by me/us and dated *(insert date of signing)*;  
and
  - (c) be signed by each person signing the form to which the document is annexed.
- C. The pages in an annexure must be numbered consecutively.
- D. If a form has a document annexed the following particulars of the annexure must be written on the form:
  - (a) the identifying mark; and
  - (b) the number of pages.
- E. A reference to an annexure includes a document that is with a form.