

## CIRCULAR TO CREDITORS AND NOTEHOLDERS

22 November 2010

Dear Sir / Madam

### **BABCOCK & BROWN LIMITED (IN LIQUIDATION) (“BBL”) ACN 108 614 955 (“the Company”)**

We refer to the appointment of David Lombe and Simon Cathro as Liquidators of the above named company on 24 August 2009.

We advise that we have prepared a report under paragraph 508(1)(b)(ii) of the *Corporations Act 2001* (“the Act”) on the progress of the liquidation setting out our acts and dealings and the general conduct of the winding up, and have filed this with the Australian Securities & Investment Commission on 18 November 2010 in lieu of convening an annual meeting of creditors of the Company as provided under the Act.

We regret that due to limited available funds and the significant cost of mail-outs to circa eight thousand recipients, we have been unable to send out updates to creditors and note-holders since our appointment. However we believe that this report will provide creditors and note-holders with information on all of the important developments since our appointment. In addition, the Committee of Inspection continues to meet regularly and we have continued to post updates to creditors and note-holders on key developments in the winding-up on our website.

There are a limited number of creditors of BBL and nearly eight thousand note-holders. Technically, note-holders are represented by their Trustee as effectively a single creditor, however, notwithstanding this we recognise that note-holders have a direct interest in the progress of the winding-up and we would like to be in a position to provide them with more regular updates. Accordingly, as noted above due to cost, email is the only cost efficient way for us to do this. In this regard we propose to compile a database of note-holder’ email addresses which will allow us to communicate directly rather than rely solely on the updates we post to our website.

Note-holders who wish to be listed to receive electronic communication should email **all** of the following information to **[bandbltd@deloitte.com.au](mailto:bandbltd@deloitte.com.au)**:

1. Contact Name
2. Holding Name (as presented on your holding statement)
3. Registered Address (as present on your holding statement)
4. New address (only applicable if you have changed addresses since 13 March 2009)
5. Holder reference number (e.g. SRN, HIN, CSN)
6. Nominated email address
7. Day time telephone number
8. Indicate whether you contributed towards the fighting fund in September 2009

Alternatively, you can complete the attached Notification of election to receive electronic notices and return the form to the following address:

Babcock & Brown Limited (In Liquidation)  
C/- Deloitte  
PO Box N250  
Grosvenor Place  
Sydney NSW 1220 Australia

**Nominees and custodians holding BBL Notes on behalf of their clients should provide a primary email address for the receipt of the Liquidators' correspondences for and on behalf of their clients.**

**Take note that note-holders that do not register for electronic communication will not receive certain future communications**, although all such notices will continue to be available for viewing on the Deloitte website which can be accessed by following the instructions below.

1. Go to [www.deloitte.com.au](http://www.deloitte.com.au)
2. Click on "Deloitte Receiverships and Administrations".
3. Click on "Businesses under Administration" located on the left hand side of the webpage.
4. Click on "Babcock & Brown Limited" located on the left hand side of the webpage.

For more information you may contact:

**Billy Wong**                      Ph: 61 2 9322 3375  
Email: [bandbltd@deloitte.com.au](mailto:bandbltd@deloitte.com.au)

Yours faithfully



**D J F Lombe**  
For and on behalf of  
D J F Lombe and SJ Cathro  
Joint and Several Liquidator

Australian Securities & Investments Commission  
Information Processing Centre  
Gippsland Mail Centre  
MORWELL VIC 3841

17 November 2010

Dear Sir/Madam

**Babcock & Brown Limited (In Liquidation) (“BBL”)**  
**ACN 108 614 955 (“the Company”)**

**Report pursuant to Section 508(1)(b)(ii) of the Corporations Act 2001 (“the Act”)**

I refer to the appointment of David Lombe and Simon Cathro (“Liquidators”), as Joint and Several Liquidators of the above named company on 24 August 2009.

In accordance with Section 508(3) of the Act, please find below, an update on the liquidation.

**1. Liquidators’ Acts and Dealings to Date**

**Note-holder and Creditor Funding Contribution**

The Liquidators outlined a proposal for creditors and note-holders to make contributions towards the cost of conducting public examinations in their section 439A report and in a circular to note-holders dated 12 August 2009. The initial proposal was well supported and approximately A\$270,000 was raised by the first closing date on 15 September 2009. Based on these encouraging results, the Liquidators decided to extend the period of contributions by a month. The total amount contributed was A\$557,073.50 (A\$10,732.00 and A\$546,341.50 was raised during the Voluntary Administration and Liquidation periods respectively).

**Public Examinations and Potential Recovery Actions**

The Liquidators initially planned to hold the public examinations in November and December of 2009, but these dates were rescheduled due to delays in the receipt of information requested under document production orders. The public examinations were rescheduled to commence in the Federal Court of Australia on 20 July 2010, with further examinations scheduled for the week commencing 2 August 2010.

A number of the potential issues were identified during the course of the Administrators’ initial investigations into the affairs of BBL (as set out in the section 439A Report). The reasons for its failure were reviewed in greater detail in preparation for the public examinations. A key issue identified for examination was BBL’s declaration and payment of dividends over the period 2005 to 2008 (“the dividends”). Another area of focus was the events from December 2007 to August 2008 and the impact of

the global financial crisis on BBL. BBL was represented at the public examinations by Blake Dawson who instructed Peter Woods and Chris Withers as Counsel.

The following parties were examined during the course of the seven day examination period at the Federal Court of Australia which concluded on 4 August 2010:

- Phillip Green (Former CEO and Managing Director)
- Mark O'Sullivan (Ernst & Young Partner and Auditor of BBL)
- Michael Larkin (Former CFO, CEO and Managing Director)
- Elizabeth Nosworthy (Former Non-executive Director and Chairman)
- Michael Sharpe (Former Director and Chairman of the Audit and Risk Committee)
- Margaret Cole (Former Group General Counsel)
- Robert Thomas (Group Financial Controller and Deputy Chief Financial Officer)

The Liquidators are satisfied with the outcome of the examinations and will continue to consult with their legal advisers regarding how to proceed with the potential causes of action that were clearly identified during the course of the examinations.

This process is being funded by IMF (Australia) Limited ("IMF"). On 3 August 2010, the BBL Committee of Inspection resolved to authorise the Liquidators to finalise and execute a litigation funding agreement with IMF. This agreement was finalised between IMF, BBL and the Liquidators on 11 August 2010.

## **US Legal Proceedings**

In October 2009, the Liquidators appointed Californian lawyers to present BBL at court hearings in California in relation to the potential recovery of funds held by the Babcock & Brown Executive Achievement Trust ("the Trust") as outlined in the Liquidators' Section 439A Report. The Trust was established by BBL for the benefit of the Babcock & Brown Group's non-Australian based employees. The Liquidators understand that there is approximately A\$9m held by the Trust. A competing claim is made on those funds by Babcock & Brown International Pty Ltd ("BBIPL").

On 11 December 2009, the BBL Committee of Inspection resolved to authorise the Liquidators to conclude a litigation funding agreement with IMF to fund the legal proceedings in California regarding BBL's entitlement to funds from the Babcock & Brown Executive Achievement Trust.

All attempts to date to settle the dispute with BBIPL have proven unsuccessful, although the Liquidators remain open to further engagement in this regard. The Californian litigation is presently in the discovery phase, and it is not expected that the proceedings will be resolved prior to the end of 2010.

## **2. Investigations – Report to ASIC**

As the Company may be unable to pay its unsecured creditors more than 50 cents in the dollar, the Liquidators reported to the Australian Securities and Investments Commission ("ASIC") pursuant to Section 533 of the Act on 17 November 2009.

ASIC subsequently requested that the Liquidators submit a Supplementary Report pursuant to Section 533(2) of the Act regarding the conduct of a named director. The supplementary report was submitted to ASIC on 12 October 2010, covering matters canvassed during the BBL public examinations.

### **3. Status of Note-holders rights**

As outlined to Note-holders previously, the Liquidators have received legal advice that the Trustee of the Subordinated Notes is the proper creditor of BBL in respect of BBL's obligations under the Subordinated Notes. 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. The Trust Deed specifically states that the Note-holders may not take action directly against BBL (unless the Trustee has failed to do so). The Trustee is required to exercise any rights it has against BBL for the benefit of all Note-holders and the Trustee is represented on the Committee of Inspection.

### **4. Return to Creditors**

To date no recoveries have been made that would allow a distribution to any class of creditors. Further, at this juncture it is not possible to estimate returns to creditors as the matters are extremely complex and may be subject to court proceedings. The Liquidators have entered into litigation funding arrangements and are confident of our ability to pursue the relevant causes of action available to the Liquidators.

### **5. Committee of Inspection ("COI")**

At the Second Meeting of Creditors on 24 August 2009, the Liquidators indicated that the Trustee, as the creditor in respect of BBL's obligations under the Subordinated Notes, was willing to authorise various Note-holders to be members of the COI. The following persons were appointed as members of the COI:

- Michael Britton (Trust Company Limited)
- Dieter Beck
- Cyrus Church
- William Jonkers
- David Gibson
- Malcolm Page
- Barry Dennett
- Tom Watson; and
- Richard Wilkins.

A COI allows more efficient and cost effective discussions with the Liquidators on issues arising from the Liquidation. To date, four COI meeting have been convened on the following dates:

- 9 November 2009
- 11 December 2009
- 21 May 2010; and
- 3 August 2010.

### **6. Tax declaration to Note-holders**

Prior to the financial year ended 30 June 2010, the Liquidators undertook to review all relevant information and concluded that they were not in a position to declare in relation to the BBL Subordinated Notes that the Notes have no value and are unlikely to have any value in the future. This position will be revisited by the Liquidators for the financial year ended 30 June 2011.

## **7. BBL Notes Registers**

Due to the limited funds in BBL, the Liquidators notified ASIC of their intention to close BBL's registers on 9 June 2009. The Liquidators subsequently resolved to close the Australian and New Zealand Note registers effective on 30 September 2010 as the cost was an unnecessary drain on the Liquidators' funds. Note-holders are no longer able to sell their notes via an off market transfer. Note-holders' ownership of BBL Subordinated Notes will not be affected by the closure of the registers.

## **8. Communications to Note-holders and Creditors**

For the period 24 August 2009 to 23 August 2010, the Liquidators have released the following circulars to Note-holder and Creditors:

- Circular to Note-holders and Creditors dated 2 November 2009
- Notice to Note-holders and Creditors dated 23 November 2009
- Circular to Note-holders and Creditors dated 27 April 2010
- Circular to Note-holders and Creditors dated 9 June 2010; and
- Circular to Note-holders and Creditors dated 23 August 2010.

Due to the financial position of BBL and the need to conserve what limited funds are available to the Liquidators to conduct investigations, the Liquidators have thus far refrained from mailing written updates to each creditor and Note-holder unless obligated by the Act. All circulars have been published on the Liquidators' website ([www.deloitte.com.au](http://www.deloitte.com.au)).

The Liquidators are not required to send out copies of this report to Note-holders on the basis that the proper creditor in respect of the Subordinated Notes is the Trustee of the Subordinated Notes as discussed in Section 3 of this report. However the Liquidators intend to mail a copy of this report to all Note-holders and Creditors and to use this opportunity to provide Note-holders and Creditors the option to register for electronic communication from the Liquidators going forward.

## **9. Estimated Timeframe for Completion**

Given the legal proceedings on foot in California regarding the Babcock & Brown Executive Achievement Trust and the potential commencement of recovery actions in Australia against certain persons following the public examinations, the Liquidation of the Company is unlikely to be finalised prior to late 2011.

## **10. Receipts and Payments**

A summary of BBL's receipts and payments for the period 24 August 2009 to 23 August 2010 is attached as **Annexure A**. An accounting of the funding contributions is attached as **Annexure B**. A summary of the Voluntary Administrators' and Liquidators' remuneration is attached as **Annexure C**.

Should you have any queries regarding the contents of this report, you may contact **Billy Wong** of this office on (02) 9322 3375.

Yours faithfully

A handwritten signature in black ink, appearing to read 'D J F Lombe', written over the words 'Yours faithfully'.

**D J F Lombe**  
For and on behalf of  
D J F Lombe and S J Cathro  
Joint and Several Liquidators

## Appendix A

The Summary of Receipts and Payments shows all receipts and payments from date of appointment as Liquidators and includes the funding contributions and cost of the public examinations.

### **Babcock & Brown Limited (In Liquidation)**

#### **Summary of Receipts and Payments 24 August 2009 to 23 August 2010**

<b>CASH BALANCE BROUGHT FORWARD FROM ADMINISTRATION</b>	<b>494,017.65</b>
<i>Less: costs accrued during Administration period</i>	
Administrator's Remuneration	(230,000.00)
Deloitte NZ - Second Creditors Meeting	(10,750.62)
Hire of Meeting Room - Second Creditors Meeting	(5,928.71)
Stationary and Printing	(44,377.34)
<b>CASH BALANCE BROUGHT FORWARD TO LIQUIDATION</b>	<b>202,960.98</b>
 <b>RECEIPTS DURING THE LIQUIDATION PERIOD</b>	
Interest	11,239.49
Funding Contributions *	546,341.50
Note Transfer Costs (Recovered from Note-holders and includes GST)	5,720.00
Refunds - Pre-appointment accounts	79,246.84
Refunds - Reimbursement of Legal Costs by Litigation Funder	11,153.95
GST Refunds	142,008.17
<b>Total receipts</b>	<b>795,709.95</b>
 <b>PAYMENTS DURING THE LIQUIDATION PERIOD</b>	
Bank Charges	4,782.15
Link Market Services - Register Maintenance	33,673.12
Legal - Solicitor Fees	388,096.16
Legal - Solicitor Disbursements	32,159.51
Legal - Counsel Fees	155,700.00
Tax Compliance - Deloitte US	34,337.03
Electronic Case Data Management - Scanning	59,697.38
Deloitte Forensic - Data loading and hosting	17,020.10
Email Backup Escrow Storage Costs	1,140.00
Stationary and Printing	10,615.41
GST Paid	93,004.05
<b>Total payments</b>	<b>830,224.91</b>
<b>Net Cash Position</b>	<b>168,446.02</b>
Funding Contribution Cash Balance	108,299.20
Liquidators' General Cash Balance	60,146.82

\* \$10,732.00 was raised during the Voluntary Administration period.



## Annexure B

The summary below provides an account of the note-holder funding contributions received by the Liquidators and the manner in which the funds have been spent and / or allocated to cover future costs.

### **Babcock & Brown Limited (In Liquidation) Summary of Note-holder Funding Contributions (1)**

<b>Funding contributions</b>		<b>557,073.50</b>
<i>Add receipts:</i>		
Bank Interest	6,150.17	
GST Refunds	31,720.64	
<b>Total receipts to 23 August 2010</b>	37,870.81	<b>37,870.81</b>
<i>Less payments:</i>		
Document processing and scanning	(59,697.38)	
Legal fees	(204,612.97)	
Legal disbursements *	(27,894.02)	
Counsel fees	(145,700.00)	
Deloitte Forensic	(17,020.10)	
GST Paid	(33,351.30)	
<b>Total payments to 23 August 2010</b>	(488,275.77)	<b>(488,275.77)</b>
<b>Outstanding GST refunds</b>	1,630.66	<b>1,630.66</b>
<b>Funding Contribution Cash Balance</b>		<b>108,299.20</b>
<i>Add subsequent receipts post 23 August 2010</i>		
Bank Interest		1,048.85
<i>Less: subsequent payments post 23 August 2010</i>		
Counsel fees		(59,675.00)
Legal disbursements		(471.12)
<i>Provisions</i>		
Deloitte Forensic data loading and hosting costs to October 2010		(24,983.85)
Future Deloitte Forensic data loading and hosting costs to December 2011		(45,500.00)
<b>Short fall funded by Liquidators' General Trading Account (2)</b>		<b>(21,281.92)</b>

\* Includes \$785.00 GST free disbursements

(1) This summary does not include cost paid directly by IMF pursuant to the funding arrangements outlined in this report

(2) This deficit does not include any allowance for the Liquidators' fees in undertaking the public examinations

## Annexure C

Summary of remuneration of Voluntary Administrators and Liquidators\*:

Voluntary Administrators' Remuneration 13 March 2009 to 24 August 2009	Fees Approved by Committee	Fees Paid	Fees Outstanding
Committee approval 9 June 2009 **	858,700.50	730,000.00	128,700.50
Committee approval 7 August 2009	895,604.00	-	895,604.00
<b>Total</b>	<b>1,754,304.50</b>	<b>730,000.00</b>	<b>1,024,304.50</b>

Liquidators' Remuneration Post 24 August 2009	Fees Approved by Committee	Fees Paid	Fees Outstanding
Committee approval 21 May 2010 ***	658,542.00	227,272.73	431,269.27
<b>Total</b>	<b>658,542.00</b>	<b>227,272.73</b>	<b>431,269.27</b>

\* Appropriate information outlining the nature of the remuneration sought was provided to the Committee on each occasion.

\*\* \$500,000 was paid during the Voluntary Administration period. The balance of \$230,000 was paid during the Liquidation period but related to the Voluntary Administration period

\*\*\* The amount of \$227,272.73 was paid by the litigation funder, IMF (Australia) Limited

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

Please complete this form only if you wish to receive email communications from the Liquidators and you have not sent an email to [bandbltd@deloitte.com.au](mailto:bandbltd@deloitte.com.au).

Please return the completed form to:

**Babcock & Brown Limited (In Liquidation)**  
C/- Deloitte  
PO Box N250 Grosvenor Place, 225 George Street  
Sydney NSW 1219 Australia

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**Preferred electronic contact details**

**Contact Name:**

**Holder Reference Number (e.g. SRN, HIN, CSN) \***

**Holding Name (As presented on your holding statement) \***

**Registered residential address (As presented on your holding statement) \***

**New registered residential address (Only applicable if you have changed addresses since 13 March 2009)**

**Nominated email address: (Please print carefully)**

**Day time telephone number (Please include country and area code):**

**Did you contribute to the fighting fund in September 2009? Y / N**

If yes, please the name under which the funds were contributed and the amount

\_\_\_\_\_ \$ \_\_\_\_\_

I/ We, the undersigned, hereby authorise the Liquidators of Babcock & Brown Limited (In Liquidation) (“BBL”) to send future correspondences and circulars in relation to BBL to the nominated email address as provided in this form.

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Name:

Date:

**\*If you have multiple holdings in BBL Notes, please list all holdings for which you wish to receive electronic communications.**