

## UPDATE TO CREDITORS & NOTEHOLDERS

9 April 2009

### **BABCOCK & BROWN LIMITED (ADMINISTRATORS APPOINTED) ACN 108 614 955 (“BBL”)**

We take this opportunity to provide an update to BBL’s creditors and noteholders.

#### **Trustee’s role**

As you are aware, the first meeting of creditors of BBL was held on 25 March 2009. As per our Circular dated 18 March 2009, we advised the meeting that Trust Company Fiduciary Services Limited, the Trustee, is the sole creditor of BBL under the terms of the Trust Deeds relating to the notes issued by BBL in Australia and New Zealand. The Trustee represents the interests of the Noteholders in Australia and New Zealand and is entitled to lodge a proof of debt and vote at creditors meetings on behalf of the Noteholders.

Nevertheless, the Administrators will continue to communicate directly with noteholders as well as with the Trustee. However, the Trustee will still be responsible for communicating relevant information to the Noteholders in so far as it is required to do so under the terms of the Trust Deeds. Of course, noteholders are welcome to attend future creditors' meetings as observers.

Please be aware that other information relevant to Noteholders such as details of meetings of creditors, will be placed on our web page dedicated to the BBL administration which can be found at the following link: [www.deloitte.com.au](http://www.deloitte.com.au) > *services* > *corporate reorganisation services* > *businesses under administration*.

#### **Noteholders Claims / Exit Notices**

The Trustee is also entitled to submit a Proof of Debt form on behalf of all Holders for the face value of the notes plus interest accruing to the date of their appointment, 13 March 2009, whether or not Holders have issued Exit Notices. The Trustee has advised that it will be submitting such a proof.

The effect of this Proof of Debt will be to crystallise and accelerate the claims of all noteholders. Following acceptance of this proof of debt by the Administrators, no further purpose will be served by Noteholders issuing Exit Notices to BBL. Accordingly BBL will not be issuing Trigger Notices or acknowledgements of receipt in relation to any Exit notices received on or after 13 March 2009.

## **Committee of Creditors**

At the first meeting of creditors, twelve Noteholders based in Australia and New Zealand, together with the Trustee, nominated themselves to form a committee of creditors. The Administrators will consult regularly with the committee of creditors regarding matters arising during the Administration of BBL and seek the committee's input into certain decisions to be made by the Administrators.

Pursuant to Section 436F of the Corporations Act 2001, the functions of a committee of creditors of a company under Administration are:

1. to consult with the Administrator about matters relating to the administration; and
2. to receive and consider reports by the Administrator

As indicated at the first meeting of creditors, we encourage Noteholders with any queries, concerns or ideas regarding the Administration of BBL to contact us directly by email at [bandbltd@deloitte.com.au](mailto:bandbltd@deloitte.com.au).

## **Extension of Convening Period**

Prior to the second meeting of creditors of BBL, the administrators are required to provide a written report to creditors regarding BBL's business, property, affairs and financial circumstances, and also setting out the administrators' opinion in relation to whether:

- (a) BBL should execute a deed of company arrangement;
- (b) the administration of BBL should end; or
- (c) BBL should be wound up.

Our written report will be provided to the Trustee, but will also be available for viewing by Noteholders on our website.

The Act requires the second meeting of creditors to be convened within a period of 25 business days from the day after the commencement of the administration. This 25 day period is known as the "convening period".

Section 439A(6) of the Act provides that the Court may extend the convening period. If an application is made to the court for the extension of the convening period, the court considers whether it is in the interests of creditors that the convening period be extended.

Having regard to the complexity of the business and structure of BBL and the wider Babcock & Brown group, we considered that an extension four months was necessary in order to allow us to conduct thorough investigations, prepare a comprehensive written report to creditors and explore avenues whereby a Deed of Company Arrangement (DOCA) may be proposed for the benefit of creditors and noteholders. A DOCA is a binding agreement between the company and its creditors which sets out how creditors' claims are to be paid (in whole or in part) or reorganised, and how the company is to be released from the claims of the creditors. Any persons can propose a DOCA.

Our investigations into BBL's affairs and its related entities may indicate a possibility of a DOCA.


As foreshadowed at the first meeting of creditors on 25 March 2009, we brought an application before the Federal Court of Australia on 8 April 2009 for a four month extension of the convening period up to and including 17 August 2009. The Court made an order, as applied for, granting an extension to 17 August 2009.

In practice, we may not require the full four month extension. Nevertheless we consider that this is an appropriate extension, bearing in mind the cost of making successive applications to the court if it is necessary to extend the convening period more than once.

The major impacts of the extension of the convening period granted by the Court include:

- a. the last day for providing our written report to creditors will be 17 August 2009;
- b. the last date for holding the second creditors meeting will be 24 August 2009;
- c. the period during which BBL is in administration will be extended, such that:
  - i. any creditor holding director guarantees cannot enforce those guarantees during the (extended) period of the administration;
  - ii. subject to certain provisions of the Act, owners of property may be prevented from retaking possession of their property during the (extended) period of the administration;
  - iii. no dividends will be paid to creditors during the (extended) period of the administration.

Yours faithfully



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