

Annual meeting and report to creditors 3 March 2016

Oceanlinx Limited (in Liquidation) (Receivers and Managers Appointed) ACN 077 104 404 (the Company, Oceanlinx)

1 Key messages

This report is provided to creditors of Oceanlinx pursuant to section 508 of the *Corporations Act 2001* (**the Act**) and sets out key actions and updates on the liquidation since our last report dated 10 December 2014 (**the Supplementary 439A Report**). This update should be read in conjunction with the Supplementary 439A Report.

Return to creditors

The estimated likely return to unsecured creditors is between nil and 16 cents in the dollar. This significant deterioration in return to creditors, is due to the costs of defending legal actions brought against the Company, expected future legal proceedings and potential claims to proceeds from the insurance recovery in priority to unsecured creditors and costs of dealing with these creditors' claims.

Please refer to section 2 and 3 for further details.

Future actions

The following matters are required to be resolved before the liquidation can end:

- Finalisation of Federal Court Proceedings brought by a consortium made up of Tibor Vertes (a director of the Company) and a small number of creditors (**the Consortium**) which were unsuccessful in purchasing the Company's intellectual property.
- The adjudication and settlement of contingent creditor claims brought against Oceanlinx by various parties who assert a priority claim to insurance settlement proceeds recovered by the Receivers and Managers of the Company (**the Receivers**) on behalf of the Company.
- Resolution of Maritime Authority of NSW / Roads and Maritime Services (**NSW Maritime**) claim against the insurers under the Company's management liability policy.
- Determination of all proofs of debt and any appeal thereof, and thereafter, payment of dividend to unsecured creditors.

Please refer to section 2 and 3 for further details.

Meeting of creditors

Pursuant to section 508(1)(b)(i) of the Act, an AGM has been convened at 3:30pm AEDT on 17 March 2016 at the office of Deloitte at Level 9, 225 George Street, Sydney NSW.

The purpose of the AGM is to receive this report regarding the conduct of the liquidation and to approve the Liquidators' remuneration.

Please refer to section 5 for further details.

2 Update on the liquidation

Since the Supplementary 439A Report the Liquidators have:

Federal Court Proceedings:

- Defended Federal Court proceedings brought against Oceanlinx and the Liquidators by the Consortium who were unsuccessful in purchasing the intellectual property of the Company and sought to have the sale set aside (**the Federal Court Proceedings**).
- The Federal Court Proceedings were heard by Justice Yates in July 2015 and we expect to receive a judgment in relation to these Proceedings on 11 March 2016.

Ocean Energy Construction Pty Ltd:

- On 28 April 2015 the Liquidators received correspondence from Ocean Energy Construction Pty Ltd (**OEC**), a creditor of the Company, asserting priority entitlement to the insurance settlement proceeds pursuant to section 562(1) of the Act.
- In an attempt to adjudicate OEC's claim the Liquidators have:
 - Exchanged extensive correspondence with OEC seeking explanation and substantiating documentation in support of their claim
 - Reviewed documentation provided by OEC in support of their claim in conjunction with Company books and records
 - Conducted interviews with the former officers of the Company including the former Company Secretary and accountant in an attempt to verify the claim.
- The Liquidators continue to be in regular contact with OEC and this process is ongoing.

South Australian Maritime:

- The Liquidators continue to assist the Receivers in their discussions with the South Australian Maritime (**SA Maritime**) in relation to their claim against the insurance settlement proceeds pursuant to section 562(1) of the Act. SA Maritime's claim relates to clean-up costs associated with the Carrickalinga prototype.
- Court proceedings have been commenced in relation to this matter, however, the Liquidators are not party to the proceedings.

Before the liquidation can end, the following key matters must be attended to:

Finalisation of the Federal Court Proceedings:

- The judgment in relation to the Federal Court Proceedings will be handed down on 11 March 2016.
- Solicitors for the Consortium have foreshadowed that appeal avenues will be explored, should the judgment be unfavourable to their client. Appeal proceedings may include appeal of the decision to the full Federal Court and possible appeal to the High Court thereafter.

Adjudication of the OEC Claim:

- It is uncertain at this stage whether OEC is entitled to any part of the insurance settlement proceeds. In the event that OEC does have an enforceable claim, it will reduce funds available for distribution to unsecured creditors.
- We continue to be in regular contact with OEC in an attempt to reach a final position in respect of their claim.
- No Court proceedings have been lodged as yet in relation to the OEC Claim.

South Australian Maritime claim:

- As the Liquidators were not involved in the settlement of the claim under the insurance policy, the Receivers continue to liaise directly with SA Maritime in order to determine the validity of their priority claim under section 562(1) of the Act.
- In the event that the Receivers make a determination in favour of SA Maritime, or judgment is delivered in favour of SA Maritime, this would further diminish funds available to unsecured creditors.

Settlement of the NSW Maritime claim:

- Since the Supplementary 439A Report, NSW Maritime have lodged a claim under Oceanlinx's management liability policy in relation to their claim for the clean-up costs associated with the Port Kembla prototype.
- The insurers are presently liaising directly with solicitors for NSW Maritime and have not accepted indemnity in relation to this matter.
- There is likelihood that resolution of this matter will involve recourse to litigation; however proceedings have not yet commenced. The Liquidators are likely to be joined as a party to any such proceedings should they be commenced.
- In the event that the Liquidators are not joined as a party to the proceedings in relation to this matter, the Liquidators are likely to incur costs associated in providing information to parties to the proceedings. Such costs would reduce the funds available for distribution to unsecured creditors.

Distribution to unsecured creditors:

- The estimated likely return to unsecured creditors is between nil and 16 cents in the dollar.
- The revised estimate is lower than the estimate set out in our Supplementary 439A Report primarily due to the following reasons:
 - the estimate provided in the Supplementary 439A Report was contingent on the determination of the section 562 claims.
 - at the time of writing the Supplementary 439A Report the Federal Court Proceedings had not been contemplated. Legal fees and expenses incurred in defending these proceedings significantly exceeded the contingency factored into the estimate for legal fees provided in the Supplementary 439A Report.
 - the Liquidators were not on notice as to the existence of OEC's section 562 claim at the time of writing the Supplementary 439A Report. We have incurred considerable time and legal costs in dealing with the claim to date, which are expected to increase significantly with the commencement of the legal proceedings threatened by OEC.

3 Updated Estimated Statement of Position (ESOP)

Set out below is the updated ESOP of Oceanlinx. All amounts are exclusive of GST.

Estimated statement of position	Notes	439A Sup. Report		AGM Report	
		10 December 2014		3 March 2016	
\$'000		High	Low	High	Low
Assets available					
Cash at bank and other assets		349	349	19	19
Surplus from Receivers and Managers		2,400	2,230	1,800	1,800
Repayment of potential unfair preference		51	51	-	-
Funds held by Receivers and Managers		-	-	500	500
Less Receivers additional costs	1	-	-	(100)	(200)
SA Maritime - cost of assessing claim		-	-	(50)	(50)
OEC Claim - cost of assessing claim		-	-	(75)	(75)
Less s562 apportionment to SA Govt	2	-	-	-	(3,000)
Less s562 apportionment to OEC		-	-	-	(715)
Recovery of legal action costs if Consortium unsuccessful	3	-	-	154	-
Total assets		2,800	2,630	2,248	(1,721)
Administration Costs					
Administrators' Fees		(267)	(267)	-	-
Administrators' disbursements		(15)	(15)	-	-
Legal fees		(120)	(120)	-	-
		(403)	(403)	-	-
Liquidators' Costs					
Current Liquidators' Fees	4	-	-	(217)	(217)
Liquidators' disbursements to date		-	-	(13)	(13)
Legal Fees		-	-	(200)	(200)
		-	-	(430)	(430)
Estimated Costs to Completion					
Liquidators' fees to completion		(80)	(80)	(120)	(120)
Legal fees to completion		(20)	(20)	(75)	(75)
Payment of Consortium's legal action costs if action successful	5	-	-	-	(120)
Future legal costs - OEC Claim	6	-	-	(200)	(200)
OEC legal action costs if action successful		-	-	-	(140)
		(100)	(100)	(395)	(655)
Funds available to secured creditors		2,297	2,127	1,423	(2,806)
CN Holders - ALLPAAP security interest		-	-	-	-
Funds available to unsecured creditors		2,297	2,127	1,423	(2,806)
Less: Cash set aside for salvage costs		N/A	N/A	N/A	N/A
Surplus / deficit available to unsecured creditors		2,297	2,127	1,423	(2,806)
Unsecured creditors					
CN Holders - unsecured	7	(370)	(370)	(370)	(370)
Trade creditors		(3,044)	(3,044)	(3,044)	(3,044)
Contingent liabilities - SA	8	(3,000)	(3,000)	(3,000)	-
Contingent liabilities - NSW	9	(500)	(1,500)	(1,500)	(3,500)
Contingent liability - OEC	10	-	-	(715)	-
		(6,914)	(7,914)	(8,629)	(6,914)
Surplus / (deficit) to creditors from Liquidation	11	(4,617)	(5,787)	(7,206)	(9,720)
Return cents in the dollar		33	27	16	-

*The above is provided for illustrative purposes only. The ESOPs are not directly comparable as they present estimated statements of position on different bases at different points in time.

Notes to estimated statement of position

1	<p>The Receivers are currently holding surplus cash of \$500k for the purpose of dealing with contingent creditor claims pursuant to section 562 of the Act. In accordance with section 562 of the Act, the Receivers are entitled to claim costs associated with dealing with these claims from the insurance proceeds. The Receivers' costs associated with dealing with the section 562 Claims have been estimated at between \$100k and \$200k in the high and low scenarios.</p>
2	<p>It is uncertain whether SA Maritime or OEC have enforceable claims under section 562 of the Act. The low scenario assumes that the claims are both enforceable and will be paid in full in priority to unsecured creditors, while the high scenario assumes that no priority payment is made to either SA Maritime or OEC and that their claims will rank as unsecured claims against the company.</p>
3	<p>In the event that judgment handed down in the Federal Court Proceedings is not in favour of the Consortium, the Liquidators intend to seek a cost order for payment of legal expenses incurred. The high scenario includes an estimate of the recovery of legal expenses at the rate of 70% of those actually incurred. The low scenario assumes that the liquidators are not successful in the Federal Court Proceedings and there is no recovery of legal expenses.</p>
4	<p>In our Supplementary 439A Report we estimated future costs of the liquidation including legal expenses to be \$100k subject to Court actions and a determination under section 562 of the Act. Following publication of the Supplementary 439A Report the Federal Court Proceedings were filed and commenced by the Consortium and we received notice of the OEC claim.</p> <p>In the event that further Court actions or appeals are made in relation to the Federal Court Proceedings or a determination under section 562 of the Act, the liquidation costs may be significantly higher than estimated.</p>
5	<p>The low scenario assumes that judgment in the Federal Court Proceedings is not in favour of the Liquidators and a costs order is imposed against them.</p>
6	<p>Given the nature of correspondence exchanged to date, the Liquidators anticipate legal fees associated with making a determination in relation to OEC's claim to be extensive.</p> <p>The low range scenario assumes that any legal action commenced by OEC is found in their favour and that the Liquidators are subject to an adverse cost order. In the event that the Liquidators are successful in such proceedings, the Liquidators would seek to impose a costs order against OEC. Such recovery is uncertain and has therefore not been factored into the ESOP.</p>
7	<p>Unsecured CN Holders claims of \$370k rank pari passu with unsecured trade creditors.</p>
8	<p>The Liquidators have received a proof of debt from SA Maritime in the amount of \$3m. The high scenario assumes that SA Maritime is not entitled to a priority distribution and that their total claim will rank as an unsecured claim in the winding up of the Company.</p>
9	<p>In our Supplementary 439A Report we estimated NSW Maritime's contingent claim to be in the range of \$500k to \$1.5m. We have received subsequent advice from NSW Maritime indicating that their claim could be as high as \$3.5m. Based on our own preliminary enquiries and additional information from NSW Maritime, we have made a conservative estimate of their claim, being \$3.5m in the low scenario and \$1.5m in the high scenario.</p>
10	<p>Following publication of our Supplementary 439A Report we received notice of a priority claim from OEC in the amount of \$715k. The high scenario assumes that OEC's claim will rank as an unsecured claim in the winding up of the Company.</p>
11	<p>Unsecured creditors are estimated to receive between nil and 16 cents in the dollar.</p>

4 Remuneration

The Liquidators' remuneration is based on the firm's hourly rates which are included in **Appendix E** to this report. Creditor approval for fees will be sought at the Annual General Meeting.

At the second meeting of creditors held on 17 December 2014 creditors approved the Liquidators' estimated remuneration of \$80,000 plus GST for the period 17 December 2014 to completion. However, the actual time costs incurred for the period from 17 December 2014 to 17 February 2016 were \$216,124.50 plus GST. The increase in fees is due primarily with dealing with contingent creditors' claims from SA Maritime and OEC and additional work in dealing with the Federal Court Proceedings commenced by the Consortium. Accordingly, creditor approval will be sought for an additional \$136,124.50 plus GST in respect of the period 17 December 2014 to 17 February 2016.

	\$
Liquidation – 17 December 2014 to 17 February 2016	216,124.50
Less: past approved remuneration	(80,000)
Subtotal	136,124.50
GST	13,612.45
Total (including GST)	149,736.95

The estimated fees for the Liquidation from 18 February 2016 to completion of the Liquidation are as follows:

	\$
Liquidation – 18 February 2016 to completion	120,000.00
GST	12,000.00
Total (including GST)	132,000.00

A summary of the estimated time to be spent by the Liquidators and their staff in the Liquidation from 18 February 2016 to completion of the Liquidation at their respective hourly rates is attached as **Appendix E**.

At the Annual General Meeting of creditors, we will propose for creditors to approve the following resolutions regarding our remuneration as Liquidators:

- i. *"That the additional remuneration of the Liquidators, their partners and staff, for the period of the Liquidation from 17 December 2014 to 17 February 2016 is fixed at a sum equal to the cost of time spent by the Liquidators and the Liquidators' partners and staff, calculated at the hourly rates as detailed in the Remuneration Report of 3 March 2016 of fees equalling \$136,124.50 plus GST plus disbursements equalling \$13,051.51 plus GST, and that the Liquidators can draw the remuneration and disbursements as required."*
- ii. *"That the remuneration of the Liquidators, their partners and staff, for the period of the Liquidation from 18 February 2016 to the conclusion of the liquidation is fixed at a sum equal to the cost of time spent by the Liquidators and the Liquidators' partners and staff, calculated at the hourly rates as detailed in the Remuneration Report of 3 March 2016 of fees equalling \$120,000 plus GST and disbursements, and that the Liquidators can draw the remuneration and disbursements as incurred. Should a lesser amount be actually incurred, only the lesser amount will be drawn. Should the fees be a greater amount, then the amount will be subject to a separate fee approval and will not be drawn until approved."*

If a lesser amount is incurred only the amount actually incurred will be paid. These fees will be capped and accordingly we will be unable to draw fees more than this amount without further approval by creditors.

5 Meeting of creditors

We enclose at **Appendix A** the notice of meeting of creditors of Oceanlinx to be held at 3:30pm AEDT on 17 March 2016 at the office of Deloitte at Level 9, Grosvenor Place, 225 George Street, Sydney NSW.

Attendance at this meeting is not compulsory and will not impact your ability to participate in any future dividends declared by the Liquidators. Creditors may attend and vote in person, by proxy or by attorney. The appointment of a proxy must be made in accordance with Form 532 (enclosed as **Appendix B**).

Proxy forms or facsimiles thereof must be lodged with the Liquidators prior to the commencement of the meeting. Where a facsimile copy of a proxy is sent, the original must be lodged with the Liquidators within 72 hours after the receipt of the facsimile. An attorney of the creditor must show the instrument by which he or she is appointed to the Chairman of the meeting prior to the commencement of the meeting.

Please note that a creditor is required to lodge a Proof of Debt or Claim (enclosed as **Appendix C**) to be entitled to vote at the meeting of creditors. A creditor will not be able to vote at the meeting unless a Proof of Debt or Claim is lodged with the Liquidators prior to the commencement of the meeting.

Creditors should provide proxies and Proofs of Debt to the Liquidators prior to the meeting by one of the following methods:

Post	Oceanlinx Limited (in Liquidation) (Receivers and Managers appointed) c/o Deloitte Attn: Laura Lombe (Proofs and Proxies) PO Box N250, Grosvenor Place, Sydney, NSW, 1220
Email	llombe@deloitte.com.au
Fax	02 9322 7001

If a creditor wishes to rely on a previously lodged Informal Proof of Debt, they must make reference to that when submitting a proxy, or when attending the meeting of creditors. Please note that this is for voting purposes only at the meeting to be held on 17 March 2016. As the timing and amount of any distribution to unsecured creditors remains unknown, the Liquidators are not calling for Formal Proofs of Debt at this time.

We trust that creditors find this report informative and useful. In the event that you have any queries regarding the contents of this report, or the liquidation in general, please do not hesitate to contact Laura Lombe of this office on 02 9322 3115 or llombe@deloitte.com.au.

Yours faithfully



Vaughan Strawbridge
Joint and Several Liquidator

Definitions

k / \$'000	Thousands of dollars
m	Millions of dollars
Administrators	Mr Vaughan Strawbridge and Mr Jason Tracy appointed on 2 April 2014
AEDT	Australian Eastern Daylight Time
AGM	Annual general meeting
CN Holders	Convertible Note Holders
Consortium	Plaintiff's in Federal Court Proceedings NSD 1304/2014 consisting of Robit Nominees Pty Ltd and Ocean Energy Construction Pty Ltd
Company / Oceanlinx	Oceanlinx Limited (in Liquidation) (Receivers and Managers appointed) ACN 077 104 404
Deloitte	Deloitte Touche Tohmatsu
ESOP	Estimated Statement of Position
Federal Court Proceedings	The matter of Oceanlinx Limited (in Liquidation) (Receivers and Managers appointed) Federal Court of Australia No. NSD1304/2014
GST	Goods and Services Tax
Liquidators	Mr Vaughan Strawbridge and Mr Jason Tracy appointed on 17 December 2014
NSW	New South Wales
NSW Maritime	Maritime Authority of NSW also known as Roads and Maritime Services
OEC	Ocean Energy Construction Pty Ltd
Receivers and Managers / Receivers	Mr Rahul Goyal and Ms Cassandra Matthews of Korda Mentha appointed on 26 March 2016
SA Maritime	South Australia Maritime
section 562 claim	Claims made pursuant to section 562 of the <i>Corporations Act 2001</i> (Cth)
Supplementary 439A Report	Report to creditors dated 10 December 2014 (pursuant to section 439A of the <i>Corporations Act 2001</i>)
the Act	<i>Corporations Act 2001</i> (Cth)
the Court	The Federal Court of Australia or any of the state Supreme Courts

Appendices

Appendix A – Notice of Meeting

Appendix B – Form of Proxy

Appendix C – Proof of Debt

Appendix D – Receipts and Payments

Appendix E – Remuneration Report

Appendix A – Notice of Meeting

FORM 529
CORPORATIONS ACT 2001

Section 508
Subregulation 5.6.12(6)

NOTICE OF ANNUAL MEETING OF CREDITORS

OCEANLIX LIMITED
(IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ACN 077 104 404
("THE COMPANY")

Notice is given pursuant to section 508(1) of the *Corporations Act 2001* that an annual meeting of creditors of the Company will be held at the offices of Deloitte Touche Tohmatsu, Level 9, 225 George Street, Sydney NSW 2000 on Thursday 17 March 2016 at 3:30PM (AEDT).

Attendance at this meeting is not compulsory. Creditors may attend and vote in person, by proxy or by attorney. The appointment of a proxy must be made in accordance with Form 532.

A specific proxy can be lodged showing approval or rejection of each resolution. Proxy forms or facsimiles thereof must be lodged with our office by 4.00pm on the day prior to the meeting. Where a facsimile copy of a proxy is sent, the original must be lodged with our office within 72 hours after receipt of the facsimile. An attorney of the creditor must show the instrument by which he or she is appointed to the Chairman of the meeting, prior to the commencement of the meeting.

In accordance with Regulation 5.6.23(1) of the Corporations Regulations, creditors will not be entitled to vote at this meeting unless they have lodged particulars of their claim against the company with us prior to the commencement of the meeting.

DATED this 3rd day of March 2016.



V N Strawbridge
Joint and Several Liquidator

Deloitte Touche Tohmatsu
Grosvenor Place
225 George Street
SYDNEY NSW 2000

Appendix B – Form of Proxy

CORPORATIONS ACT 2001

APPOINTMENT OF PROXY
CREDITORS' MEETING

OCEANLINX LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED)
ACN 077 104 404
("the Company")

*I/*We (1)
of
a creditor of Oceanlinx Limited, appoint (2)
.....
or in his or her absence

as *my/our *general/special proxy to vote at the joint meeting of members and creditors to be held on Thursday 17 March 2016 at 3:30pm (AEDT) , or at any adjournment of that meeting.(3)

(i) . to vote on all matters arising at the meeting (IF GENERAL PROXY)

OR

(ii) to vote for or against the following resolutions (IF SPECIAL PROXY)

ONLY COMPLETE THE FOLLOWING IF YOU HAVE APPOINTED A SPECIAL PROXY ABOVE:

Please circle your preferred voting option:

1. To consider and if thought fit, approve the Joint and Several Liquidators' current remuneration:

"That the additional remuneration of the Liquidators, their partners and staff, for the period of the Liquidation from 17 December 2014 to 17 February 2016 is fixed at a sum equal to the cost of time spent by the Liquidators and the Liquidators' partners and staff, calculated at the hourly rates as detailed in the Remuneration Report of 3 March 2016 of fees equalling \$136,124.50 plus GST plus disbursements equalling \$13,051.51 plus GST, and that the Liquidators can draw the remuneration and disbursements as required."

FOR / AGAINST / ABSTAIN

2. To consider and if thought fit, approve the Joint and Several Liquidators' future remuneration:

"That the remuneration of the Liquidators, their partners and staff, for the period of the Liquidation from 18 February 2016 to the conclusion of the liquidation is fixed at a sum equal to the cost of time spent by the Liquidators and the Liquidators' partners and staff, calculated at the hourly rates as detailed in the Remuneration Report of 3 March 2016 of fees equalling \$120,000 plus GST and disbursements, and that the Liquidators can draw the remuneration and disbursements as incurred. Should a lesser amount be actually incurred, only the lesser amount will be drawn. Should the fees be a greater amount, then the amount will be subject to a separate fee approval and will not be drawn until approved."

FOR / AGAINST / ABSTAIN

DATED this day of 2016.

Signature _____

CERTIFICATE OF WITNESS

This certificate is to be completed only if the person giving the proxy is blind or incapable of writing. The signature of the creditor, contributory, debenture holder or member must not be witnessed by the person nominated as proxy.

I, of
certify that the above instrument appointing a proxy was completed by me in the presence of and at the request of the person appointing the proxy and read to him or her before he or she signed or marked the instrument.

Dated:

Signature of Witness:

Description:

Place of Residence:

* Strike out if inapplicable

- (1) If a firm, strike out "I" and set out the full name of the firm.
- (2) Insert the name, address and description of the person appointed.
- (3) If a special proxy add the words "to vote for" or the words "to vote against" and specify the particular resolution.

Appendix C – Proof of Debt

INFORMAL PROOF OF DEBT FORM

Regulation 5.6.47

OCEANLINX LIMITED
(IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED)
ACN 077 104 404

Name of creditor:

Address of creditor:

.....

ABN:

Amount of debt claimed:\$.....

(see note)

Amount of GST included:\$.....

Consideration for debt:

Whether debt secured or
unsecured:

If secured, give details of security including dates, etc:

.....

.....

.....

Balance, if any, after deducting value of security (see note):

.....

.....

.....

.....

Creditor
(or person authorised by creditor)

.....

Dated

Note:

Under the Corporations Regulations, a creditor is not entitled to vote at a meeting unless (Regulation 5.6.23):

- a. his claim has been admitted, wholly or in part, by the Liquidator; or
- b. he has lodged with the Liquidator particulars of the debt or claim, or if required, a formal proof of debt.

A secured creditor may vote (Regulation 5.6.24):

- a. for the whole of his debt provided that he surrenders his security;
- b. for the deficiency if the value of the security is less than the amount of the debt.

Proxies must be made available to the Liquidator.

Appendix D – Receipts and Payments

Oceanlinx Limited
ACN 077 104 404
(In Liquidation)

Summary of Receipts and Payments
17 December 2014 to 3 March 2016

RECEIPTS

Cash at Bank (on appointment)	72,250.93
Bank Interest	5,422.66
Surplus funds from Receivers and Managers	100,000.00
Insurance settlement proceeds held subject to s562 claims	1,800,000.00
GST Clearing Account	46,151.31
Total Receipts	<u>2,023,824.90</u>

PAYMENTS

Bank Charges	6.35
Hire of Meeting Room	525.00
Legal Fees (Taxable)	89,968.40
Liquidators Remuneration (VA Period)	86,565.00
Liquidators Disbursements (VA Period)	6,117.59
Cost of Advertising	2,171.35
Consultancy Fees	660.00
Contingent Liabilities	700,000.00
GST Receivable	18,600.75
Total Payments	<u>904,614.44</u>
Cash at Bank	<u>1,119,210.46</u>
Less Funds held subject to section 562 claims	<u>(1,100,000)</u>
Net Cash at Bank	<u><u>19,210.46</u></u>

NB: Contingent liabilities payment of \$700,000 represents a return to the Receivers and Managers of a portion of the insurance settlement proceeds held subject to section 562 of the Corporations Act 2001.

Appendix E – Remuneration Report

Remuneration Report

Initial advice to creditors - remuneration

Remuneration Methods

There are four basic methods that can be used to calculate the remuneration charged by an insolvency practitioner. They are:

Time based / hourly rates

This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.

Fixed Fee

The total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration. Sometimes a practitioner will finalise an administration for a fixed fee.

Percentage

The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.

Contingency

The practitioner's fee is structured to be contingent on a particular outcome being achieved.

Method chosen

Given the nature of this Liquidation we propose that our remuneration be calculated on time base / hourly rates. This is because:

- We will only be paid for work done, subject to sufficient realisations of the company assets.
- It ensures creditors are only charged for work that is performed. Our time is recorded and charged in six minute increments and staff are allocated to duties according to their relevant experience and qualifications.
- We are required to perform a number of tasks which do not relate to the realisation of assets, e.g. responding to creditor enquiries, reporting to the ASIC, distributing funds in accordance with the provisions of the Corporations Act 2001.
- We are unable to estimate with certainty the total amount of fees necessary to complete all tasks required in this Liquidation.

Explanation of Hourly Rates

The rates for our remuneration calculation are set out in the following table together with a general guide showing the qualifications and experience of staff engaged in the Liquidation and the role they take in the Liquidation. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.

Title	Description	Hourly Rate (excl GST)
Appointee	Registered liquidator. Brings his or her specialist skills to the administration or insolvency task.	\$600.00
Partner	Registered liquidator. Brings his or her specialist skills to the administration or insolvency task.	\$600.00
Principal/ Consultant	Typically CA or CPA qualified with in excess of 10 years' experience on insolvency matters with a number of years at manager level. Answerable to the appointee but otherwise responsible for all aspects of an administration. Capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in his/her own right.	\$460.00
Director	Typically CA or CPA qualified with in excess of 8 years' experience on insolvency matters with a number of years at manager level. Answerable to the appointee but otherwise responsible for all aspects of an administration. Capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in his/her own right.	\$300.00
Manager	Typically CA or CPA qualified with 6 to 8 years' experience working on insolvency matters. Will have experience conducting administrations and directing a number of staff.	\$230.00
Senior Analyst	Typically completed or near completion of CA or CPA qualifications with 4 to 6 years insolvency experience. Assists in planning and control of smaller matters as well as performing some more difficult tasks on larger matters.	\$175.00
Analyst	Typically studying towards CA or CPA qualification with 2 to 4 years insolvency experience. Works under supervision of more senior staff in performing day-to-day fieldwork.	\$145.00
Graduate	Junior staff member who has completed a university degree with less than one year's experience working on insolvency matters. Works under supervision of more senior staff in performing day-to-day fieldwork. This may include staff located in other offices of Deloitte overseas. These staff work under the supervision of Australian staff with insolvency experience.	\$145.00
Secretary	Advanced secretarial skills	\$160.00
Vacationer	Junior staff member who has not yet completed a university degree with less than one year's experience working on insolvency matters. Works under supervision of more senior staff in performing day-to-day fieldwork.	\$140.00

Our best estimate for the cost of the Liquidation to completion is \$336,124.50 (excluding GST and disbursements).

Disbursements

Disbursements are divided into three types:

- Externally provided professional services - these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- Externally provided non-professional costs such as travel, accommodation and search fees - these are recovered at cost.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Liquidation, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

We are not required to seek creditor approval for disbursements, but must account to creditors. Details of the basis of recovering internal disbursements in this Liquidation are provided below. Full details of any actual costs incurred will be provided with future reporting.

Basis of disbursement claim

Disbursements	Rate (Excl GST)
Advertising	At cost based on commercial rates charged by ASIC and state and national newspapers
Courier	At cost based on commercial rates charged by major external courier firms
Search and Filing Fees	At cost based on commercial rates charged by external search providers
Meeting Room Hire - External	At cost based on commercial rates charged by external conference room facilitators
Stationery, Printing & Copying - External	At cost based on commercial rates as offered by commonly used external providers
Litigation support - Relativity	At cost – based on gigabyte hosted
Travel – Flights/ Accommodation	At cost based on commercial rates as offered by commonly used external providers
General (Miscellaneous) Expenses	At cost
Travel - Taxi/train/tolls/parking (excl. mileage)	At cost
Travel - Mileage (staff vehicle use)	\$0.70 per km
Postage	Australia Post rates

Scale applicable for financial year ending 30 June 2016.

Remuneration Request Approval Report

Part 1: Declaration

We, Vaughan Strawbridge and Jason Tracy of Deloitte Touche Tohmatsu, have undertaken a proper assessment of this remuneration claim for our appointment as Joint and Several Liquidators of the Company in accordance with the law and applicable professional standards. We are satisfied that the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of the Liquidation.

Part 2: Executive Summary

To date, *remuneration totalling \$80,000* has been approved in this Liquidation. This remuneration report details approval sought for the following fees:

Period	Report Reference	Amount (ex GST)
Past remuneration approved:		
Approved on 17 December 2014		\$80,000
Current remuneration approval sought:		
17 December 2014 to 17 February 2016	4	\$136,124.50
18 February 2016 to completion of Liquidation*		<u>\$120,000.00</u>
Total remuneration approval sought:		\$256,124.50

* Approval for the future remuneration sought is based on an estimate of the work necessary to the completion of the Liquidation. Should additional work be necessary beyond what is contemplated, further approval may be sought from creditors.

Please refer to report section references detailed in the above table for full details of the calculation and composition of the remuneration approval sought.

Part 3: Description of work completed / to be completed

3.1: Actual work completed – 17 December 2014 to 17 February 2016

Task Area	General Description	Includes
Assets 16.3 hours \$7,079.00	Assets subject to specific charges	<ul style="list-style-type: none"> • Discussion with secured creditors and their representatives • Review CN Holder documentation
	Other Assets	<ul style="list-style-type: none"> • Request for documents from Receivers and discussion of issues with tax team regarding further potential R&D recoveries
Creditors 48.5 hours \$15,151.00	Creditor Enquiries	<ul style="list-style-type: none"> • Receive and follow up creditor enquiries via email and telephone • Review and prepare correspondence to creditors and their representatives via email
	Creditor reports	<ul style="list-style-type: none"> • Preparation of Annual Report to creditors
	Meeting of Creditors	<ul style="list-style-type: none"> • Preparation of meeting notices, proxies and advertisements
	Shareholder enquiries	<ul style="list-style-type: none"> • Responding to shareholder queries
Investigation 504.6 hours \$169,745.00	Conducting investigation	<ul style="list-style-type: none"> • Reviewing company's books and records • Meeting with Deloitte Forensics to arrange loading of Company data into data platform • Forensic data collection
	Litigation / Recoveries – General	<ul style="list-style-type: none"> • Various meetings with lawyers to discuss status of ongoing legal matters • Review of books and records to verify potential director / Company loans • Teleconference with Receivers and legal representatives to discuss s562 claims and how to progress the liquidation • Preparation and review of ESOP and scenario analysis for provision to Receivers
	Federal Court proceedings	<ul style="list-style-type: none"> • Prepare and amend affidavit material for court proceedings • Review and amend points of defence • Preparation of documentation for exhibit bundles • Preparation of chronological summary of correspondence from commencement to end of sale campaign • Review and consider correspondence from plaintiffs • Review and consider counsel advice regarding various litigious issues • Review of documents pursuant to discovery notices • Collation of various documents pursuant to court orders • Various meetings with lawyers and counsel in preparation for Federal Court Proceedings • Attend directions hearings and federal Court proceedings
	NSW Maritime claim	<ul style="list-style-type: none"> • Correspondence with NSW Maritime in relation to contingent claim

Task Area	General Description	Includes
		<ul style="list-style-type: none"> • Various correspondence with NSW Maritime regarding D&O Policy / Insurance Policy • Review and amend confidentiality agreement with NSW Maritime
	SA Maritime claim	<ul style="list-style-type: none"> • Various correspondence with SA Maritime in relation to contingent claim • Various correspondence with the Receivers regarding SA Maritime claim • Review of correspondence received from SA Maritime / Receivers • Preparation of ESOP to assist Receivers with their discussions with SA Maritime
	OEC claim	<ul style="list-style-type: none"> • Prepare summary of supporting documentation provided by creditor • Review of and consider correspondence from OEC regarding contingent claim • Review substantiating documentation provided by OEC in support of claim • Review of Company books and records in conjunction with documentation provided by OEC • Preparation of chronological bundle of documents in relation OEC claim • Review of email correspondence between Company directors and officers in order to verify OEC claim • Meeting and various email and telephone correspondence with former Company secretary and accountant in order to verify OEC claim • Various meetings with lawyers to further consider the nature and basis of the creditors claim • Various discussions with the Receivers regarding adjudication of OEC claim • Telephone attendance with former director regarding the Company's insurance policy and the OEC claim • Meeting with creditor and solicitors to discuss nature and basis of claim
Administration 71.5 hours \$24,149.50	ASIC Form 524 and other forms	<ul style="list-style-type: none"> • Preparing and lodging ASIC forms including form EX01
	ATO and other statutory reporting	<ul style="list-style-type: none"> • Notification of appointment as liquidators • Review and finalise minutes of reconvened second meeting of creditors • Preparing Form 524s and following up ATO lodgements • Preparing BASs and correspondence with ATO
	Books & Records/ Storage	<ul style="list-style-type: none"> • Reviewing and filing company books and records • Recalling documents for investigation • Communication with lawyers for NSW Maritime to make books and records available for inspection

Task Area	General Description	Includes
	Bank account administration	<ul style="list-style-type: none"> Requesting bank statements, compiling and delivering to Bridges for Discovery Bank account reconciliations Correspondence with bank regarding specific transfers
	Document maintenance / file review / checklist	<ul style="list-style-type: none"> Filing of documents File reviews Updating checklists
	Planning / Review	<ul style="list-style-type: none"> Discussion with Bridges Lawyers re litigation and next steps
TOTAL 640.90 hours \$216,124.50		

3.2: Forecast work from 18 February 2016 to Completion

Task Area	General Description	Includes [Suggestion Only - delete or add details as appropriate to the work done]
Assets 10.0 hours \$2,870.00	Assets subject to specific charges	<ul style="list-style-type: none"> Discussions with secured creditors and their representatives regarding the discharge of the secured creditors security interest
Creditors 78.0 hours \$16,150.00	Creditor Enquiries	<ul style="list-style-type: none"> Receive and follow up creditor enquiries via email and telephone Maintaining creditor enquiry register Review and prepare correspondence to creditors and their representatives via facsimile, email and post
	Creditor reports	<ul style="list-style-type: none"> Preparing general reports to creditors advising on the status of the liquidation Prepare revised ESOP Prepare and forward circulars to creditors regarding the settlement of various contingent creditor claims and the outcome of legal proceedings
	Meeting of Creditors	<ul style="list-style-type: none"> Preparation of meeting notices, proxies and advertisements Forward notice of meeting to all known creditors Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting Preparation and lodgement of minutes of meetings with ASIC Responding to stakeholder queries and questions immediately following meeting
Dividend 184.0 hours \$36,605.00	Processing proofs of debt	<ul style="list-style-type: none"> Preparation of correspondence to potential creditors inviting lodgement of PODs Receipt of PODs Maintain POD register Adjudicating PODs Request further information from claimants regarding

Task Area	General Description	Includes [Suggestion Only - delete or add details as appropriate to the work done]
		POD <ul style="list-style-type: none"> Preparation of correspondence to claimant advising outcome of adjudication
	Dividend procedures	<ul style="list-style-type: none"> Preparation of correspondence to creditors advising of intention to declare dividend Advertisement of intention to declare dividend Obtain clearance from ATO to allow distribution of company's assets Preparation of dividend calculation Preparation of correspondence to creditors announcing declaration of dividend Advertise announcement of dividend Preparation of distribution Preparation of dividend file Preparation of payment vouchers to pay dividend Preparation of correspondence to creditors enclosing payment of dividend
Investigations 185.0 hours \$45,325.00	Litigation / Recoveries – General	<ul style="list-style-type: none"> Reviewing company's books and records Ongoing communication with SA Maritime, NSW Maritime and OEC regarding their respective contingent claims Various investigations pursuant to future foreshadowed litigation / appeals Preparation of court material including affidavits, defence and exhibit bundles pursuant to future foreshadowed litigation / appeals Correspondence with lawyers and counsel regarding strategy on litigious matters Various meetings with lawyers to discuss ongoing litigious matters Attend future foreshadowed court proceedings
Administration 94.0 hours \$19,025.00	ASIC Form 524 and other forms	<ul style="list-style-type: none"> Preparing and lodging ASIC forms including 505, 524, 911 etc. Correspondence with ASIC regarding statutory forms
	ATO and other statutory reporting	<ul style="list-style-type: none"> Preparing BAS Correspondence with ATO
	Books & Records/ Storage	<ul style="list-style-type: none"> Sending job files to storage Request approval from ASIC for early destruction of books and records Destruction of books and records
	Fees/ Billings	<ul style="list-style-type: none"> Preparing Remuneration Reports
	Planning / Review	<ul style="list-style-type: none"> Discussions regarding status of liquidation
	Document maintenance / file review / checklist	<ul style="list-style-type: none"> Six monthly administration review Filing of documents File reviews Updating checklists

Task Area	General Description	Includes [Suggestion Only - delete or add details as appropriate to the work done]
	Bank account administration	<ul style="list-style-type: none"> • Preparing correspondence opening and closing accounts • Requesting bank statements • Bank account reconciliations • Correspondence with bank regarding specific transfers
	Finalisation	<ul style="list-style-type: none"> • Notifying ATO of finalisation • Cancelling ABN / GST / PAYG registration • Completing checklists • Finalising WIP
TOTAL		
546.00 hours		
\$119,975.00		

Part 4: Calculation of Remuneration

Resolution 1 - Calculation of Additional Remuneration – 17 December 2014 to 17 February 2016.

See the table at *Attachment 1*.

Resolution 2 - Calculation of Future Remuneration – 18 February 2016 to completion of the Liquidation.

See the table at *Attachment 2*.

Part 5: Statement of remuneration claim

5.1 Statement of remuneration claim – Additional remuneration 17 December 2014 to 17 February 2016

The following resolution in relation to the Liquidators' additional remuneration will be proposed to the creditors of Oceanlinx Limited (in Liquidation) (Receivers and Managers Appointed):

“That the additional remuneration of the Liquidators, their partners and staff, for the period of the Liquidation from 17 December 2014 to 17 February 2016 is fixed at a sum equal to the cost of time spent by the Liquidators and the Liquidators' partners and staff, calculated at the hourly rates as detailed in the Remuneration Report of 3 March 2016 of fees equalling \$136,124.50 plus GST plus disbursements equalling \$13,051.51 plus GST, and that the Liquidators can draw the remuneration and disbursements as required.”

5.2 Statement of remuneration claim – Future remuneration 18 February 2016 to the completion of the Liquidation

The following resolution in relation to the Liquidators' future remuneration will be proposed to the creditors of Oceanlinx Limited (in Liquidation) (Receivers and Managers Appointed):

“That the remuneration of the Liquidators, their partners and staff, for the period of the Liquidation from 18 February 2016 to the conclusion of the liquidation is fixed at a sum equal to the cost of time spent by the Liquidators and the Liquidators' partners and staff, calculated at the hourly rates as detailed in the Remuneration Report of 3 March 2016 of fees equalling \$120,000 plus GST and disbursements, and that the Liquidators can draw the remuneration and disbursements as incurred. Should a lesser amount be actually incurred, only the lesser amount will be drawn. Should the fees be a greater amount, then the amount will be subject to a separate fee approval and will not be drawn until approved.”

Part 6: Disbursements

Disbursements are divided into three types:

- Externally provided professional services - these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- Externally provided non-professional costs such as travel, accommodation and search fees - these are recovered at cost.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

We have undertaken a proper assessment of disbursements claimed for the Company, in accordance with the law and applicable professional standards. We are satisfied that the disbursements claimed are necessary and proper.

The following disbursements have been paid by the Liquidation to our firm for the period from *17 December 2014 to 17 February 2016*. Where amounts have been paid to our firm for externally provided services and costs, that is in reimbursement of a cost previously paid by our firm either due to a lack of funds in the Liquidation at the time the payment was due or the direct invoicing of our firm by the supplier.

Disbursements paid 17 December 2014 to 17 February 2016	Basis	Total (excl. GST)
Internal disbursements		
Photocopying, telephone & faxes	5% of incurred insolvency fees	\$10,806.23
Search & Filing Fees	At Cost	\$25.28
General Expenses (Relativity database)	At Cost	\$2,220.00
Total		\$ 13,051.51

Future disbursements provided by my firm will be charged to the Liquidation on the following basis:

Internal disbursements	Rate (Excl GST)
Photocopying, telephone & faxes	5% of incurred insolvency fees
Search & Filing Fees	At Cost
General Expenses (Relativity database)	At Cost
Staff Amenities – taxi/train/tolls/parking/ mileage/ flights	At Cost

Rates applicable for financial year ending 30 June 2016.

Part 7: Information Sheet

Refer to *Attachment 3* for ASIC Information Sheet 85 *Approving fees: a guide to creditors*.

Summary of hours spent by staff

Resolution 1 - Actual remuneration from 17 December 2014 to 17 February 2016

Employee	Position	\$/hour (ex GST)	Total actual hours	Total (\$)	Task Area							
					Assets		Creditors		Investigations		Administration	
					Hours	Total (\$)	Hours	Total (\$)	Hours	Total (\$)	Hours	Total (\$)
Strawbridge, Vaughan	Partner	600	156.40	93,840.00	9.00	5,400.00	10.80	6,480.00	121.50	72,900.00	15.10	9,060.00
Tracy, Jason	Partner	600	0.20	120.00	-	-	-	-	-	-	0.20	120.00
Pilgram, Chris	Director	460	2.00	920.00	-	-	-	-	2.00	920.00	-	-
Rose, Dan	Director	460	53.60	24,656.00	-	-	-	-	46.90	21,574.00	6.70	3,082.00
Tran, Jennie	Manager	300	0.70	210.00	-	-	-	-	-	-	0.70	210.00
Bor, Mathew	Manager	300	0.20	60.00	-	-	-	-	-	-	0.20	60.00
Nguyen, Tony	Manager	300	5.00	1,500.00	-	-	-	-	-	-	5.00	1,500.00
George, Tanya	Manager	300	6.50	1,950.00	-	-	-	-	-	-	6.50	1,950.00
Wollinski, Christopher	Manager	300	0.40	120.00	-	-	-	-	0.40	120.00	-	-
Becker, Matthew	Manager	300	66.40	19,920.00	-	-	-	-	66.40	19,920.00	-	-
Clark, Carol	Senior Analyst	230	6.20	1,426.00	-	-	-	-	-	-	6.20	1,426.00
Lombe, Laura	Senior Analyst	230	162.50	37,375.00	-	-	14.00	3,220.00	137.40	31,602.00	11.10	2,553.00
Dobson, Gabrielle	Senior Analyst	230	0.50	115.00	-	-	-	-	-	-	0.50	115.00
Spowart, Naty	Senior Analyst	230	0.60	138.00	-	-	-	-	-	-	0.50	115.00
McEwen, Julia	Senior Analyst	230	0.60	138.00	-	-	-	-	0.60	138.00	-	-
Edmondson, Adam	Senior Analyst	230	0.20	46.00	-	-	-	-	-	-	-	-
Carter, Matt	Senior Analyst	230	11.30	2,599.00	-	-	-	-	7.30	1,679.00	4.00	920.00
Pogroske, Dean	Senior Analyst	230	78.80	18,124.00	7.30	1,679.00	23.70	5,451.00	37.50	8,625.00	10.30	2,369.00
Pulver, Harry	Graduate	145	50.10	7,264.50	-	-	-	-	50.10	7,264.50	-	-
Yao, Anthony	Vacationer	145	18.00	2,610.00	-	-	-	-	14.00	2,030.00	4.00	580.00
Chew, Shanni	Vacationer	145	20.50	2,972.50	-	-	-	-	20.50	2,972.50	-	-
Thay, Kevin	Vacationer	145	0.30	43.50	-	-	-	-	-	-	0.30	43.50
TOTAL			640.90	216,124.50	16.30	7,079.00	48.50	15,151.00	504.60	169,745.00	71.50	24,149.50
GST				21,612.45								
TOTAL (including GST)				237,736.95								
<i>Average hourly rate</i>				<i>337.22</i>		<i>434.29</i>		<i>312.39</i>		<i>336.40</i>		<i>337.76</i>

Summary of hours to be spent by staff

Resolution 2 - Forecast remuneration from 18 February 2016 to completion of the Liquidation

Employee	Position	\$/hour (ex GST)	Total actual hours	Total (\$)	Assets		Creditors		Dividend		Investigations		Administration	
					Hours	Total (\$)	Hours	Total (\$)	Hours	Total (\$)	Hours	Total (\$)	Hours	Total (\$)
Strawbridge, Vaughan	Partner	600	35.00	21,000.00	2.00	1,200.00	4.00	2,400.00	5.00	3,000.00	20.00	12,000.00	4.00	2,400.00
Hollinshead, Phil	Director	460	24.00	11,040.00	-	-	2.00	920.00	5.00	2,300.00	15.00	6,900.00	2.00	920.00
George, Tanya	Manager	300	7.00	2,100.00	-	-	2.00	600.00	3.00	900.00	-	-	2.00	600.00
Clark, Carol	Senior Analyst	230	11.00	2,530.00	-	-	4.00	920.00	6.00	1,380.00	-	-	1.00	230.00
Lombe, Laura	Senior Analyst	230	180.00	41,400.00	6.00	1,380.00	29.00	6,670.00	60.00	13,800.00	55.00	12,650.00	30.00	6,900.00
Henderson, Emma	Analyst	145	118.00	17,110.00	-	-	8.00	1,160.00	50.00	7,250.00	40.00	5,800.00	20.00	2,900.00
Pulver, Harry	Graduate	145	171.00	24,795.00	2.00	290.00	24.00	3,480.00	55.00	7,975.00	55.00	7,975.00	35.00	5,075.00
TOTAL			546.00	119,975.00	10.00	2,870.00	73.00	16,150.00	184.00	36,605.00	185.00	45,325.00	94.00	19,025.00
GST				11,997.50										
TOTAL (including GST)				131,972.50										
<i>Average hourly rate</i>				<i>219.73</i>		<i>287.00</i>		<i>221.23</i>		<i>198.94</i>		<i>245.00</i>		<i>202.39</i>



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 85

Approving fees: a guide for creditors

If a company is in financial difficulty, it can be put under the control of an independent external administrator.

This information sheet gives general information for creditors on the approval of an external administrator's fees in a liquidation of an insolvent company, voluntary administration or deed of company arrangement (other forms of external administration are not discussed in this information sheet). It outlines the rights that creditors have in the approval process.

Entitlement to fees and costs

A liquidator, voluntary administrator or deed administrator (i.e. an 'external administrator') is entitled to be:

- paid reasonable *fees*, or remuneration, for the work they perform, once these fees have been approved by a creditors' committee, creditors or a court, and
- reimbursed for out-of-pocket *costs* incurred in performing their role (these costs do not need creditors' committee, creditor or court approval).

External administrators are only entitled to an amount of fees that is reasonable for the work that they and their staff properly perform in the external administration. What is reasonable will depend on the type of external administration and the issues that need to be resolved. Some are straightforward, while others are more complex.

External administrators must undertake some tasks that may not directly benefit creditors. These include reporting potential breaches of the law and lodging a detailed listing of receipts and payments with ASIC every six months. The external administrator is entitled to be paid for completing these statutory tasks.

For more on the tasks involved, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors* and INFO 74 *Voluntary administration: a guide for creditors*.

Out-of-pocket costs that are commonly reimbursed include:

Important note: This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

- legal fees
- valuer's, real estate agent's and auctioneer's fees
- stationery, photocopying, telephone and postage costs
- retrieval costs for recovering the company's computer records, and
- storage costs for the company's books and records.

Creditors have a direct interest in the level of fees and costs, as the external administrator will, generally, be paid from the company's available assets before any payments to creditors. If there are not enough assets, the external administrator may have arranged for a third party to pay any shortfall. As a creditor, you should receive details of such an arrangement. If there are not enough assets to pay the fees and costs, and there is no third party payment arrangement, any shortfall is not paid.

Who may approve fees

Who may approve fees depends on the type of external administration: see Table 1. The external administrator must provide sufficient information to enable the relevant decision-making body to assess whether the fees are reasonable.

Table 1: Who may approve fees

	Creditors' committee	Creditors	Court
Administrator in a voluntary administration	✓ ¹	✓	✓
Administrator of a deed of company arrangement	✓ ¹	✓	✓
Creditors' voluntary liquidator	✓ ¹	✓ ⁵	✗ ³
Court-appointed liquidator	✓ ¹	✓ ^{4, 5}	✓ ²

¹ If there is one.

² If there is no approval by the committee or the creditors.

³ Unless an application is made for a fee review.

⁴ If there is no creditors' committee or the committee fails to approve the fees.

⁵ If insufficient creditors turn up to the meeting called by the liquidator to approve fees, the liquidator is entitled to be paid up to a maximum of \$5000, or more if specified in the Corporations Regulations 2001.

Creditors' committee approval

If there is a creditors' committee, members are chosen by a vote of creditors as a whole. In approving the fees, the members represent the interests of all the creditors, not just their own individual interests.

There is not a creditors' committee in every external administration. A creditors' committee makes its decision by a majority in number of its members present at a meeting, but it can only act if a majority of its members attend.

To find out more about creditors' committees and how they are formed, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors*, INFO 74 *Voluntary administration: a guide for creditors* and INFO 41 *Insolvency: a glossary of terms*.

Creditors' approval

Creditors approve fees by passing a resolution at a creditors' meeting. Unless creditors call for a poll, the resolution is passed if a simple majority of creditors present and voting, in person or by proxy,

indicate that they agree to the resolution. Unlike where acting as committee members, creditors may vote according to their individual interests.

If a poll is taken, rather than a vote being decided on the voices or by a show of hands, a majority in *number* and *value* of creditors present and voting must agree. A poll requires the votes of each creditor to be recorded.

A separate resolution of creditors is required for approving fees for an administrator in a voluntary administration and an administrator of a deed of company arrangement, even if the administrator is the same person in both administrations.

A proxy is where a creditor appoints someone else to represent them at a creditors' meeting and to vote on their behalf. A proxy can be either a *general* proxy or a *special* proxy. A general proxy allows the person holding the proxy to vote as they wish on a resolution, while a special proxy directs the proxy holder to vote in a particular way.

A creditor will sometimes appoint the external administrator as a proxy to vote on the creditor's behalf. An external administrator, their partners or staff must not use a general proxy to vote on approval of their fees; they must hold a special proxy in order to do this. They must vote all special proxies as directed, even those against approval of their fees.

Calculation of fees

Fees may be calculated using one of a number of different methods, such as:

- on the basis of *time spent* by the external administrator and their staff
- a quoted *fixed fee*, based on an upfront estimate, or
- a percentage of asset realisations.

Charging on a time basis is the most common method. External administrators have a scale of hourly rates, with different rates for each category of staff working on the external administration, including the external administrator.

If the external administrator intends to charge on a time basis, you should receive a copy of these hourly rates soon after their appointment and before you are asked to approve the fees.

The external administrator and their staff will record the time taken for the various tasks involved, and a record will be kept of the nature of the work performed.

It is important to note that the hourly rates do not represent an hourly wage for the external administrator and their staff. The external administrator is running a business—an insolvency practice—and the hourly rates will be based on the cost of running the business, including overheads such as rent for business premises, utilities, wages and superannuation for staff who are not charged out at an hourly rate (such as personal assistants), information technology support, office equipment and supplies, insurances, taxes, and a profit.

External administrators are professionals who are required to have qualifications and experience, be independent and maintain up-to-date skills. Many of the costs of running an insolvency practice are fixed costs that must be paid, even if there are insufficient assets available to pay the external administrator for their services. External administrators compete for work and their rates should reflect this.

These are all matters that committee members or creditors should be aware of when considering the fees presented. However, regardless of these matters, creditors have a right to question the external administrator about the fees and whether the rates are negotiable.

It is up to the external administrator to justify why the method chosen for calculating fees is an appropriate method for the particular external administration. As a creditor, you also have a right to question the external administrator about the calculation method used and how the calculation was made.

Report on proposed fees

When seeking approval of fees, the external administrator must send committee members/creditors a report with the notice of meeting setting out:

- information that will enable the committee members/creditors to make an informed assessment of whether the proposed fees are reasonable
- a summary description of the major tasks performed, or to be performed, and
- the costs associated with each of these tasks.

Committee members/creditors may be asked to approve fees for work already performed or based on an estimate of work yet to be carried out.

If the work is yet to be carried out, it is advisable to set a maximum limit ('cap') on the amount that the external administrator may receive. For example, future fees calculated according to time spent may be approved on the basis of the number of hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X. If the work involved then exceeds this figure, the external administrator will have to ask the creditors' committee/creditors to approve a further amount of fees, after accounting for the fees already incurred.

Deciding if fees are reasonable

If asked to approve an amount of fees either as a committee member or by resolution at a creditors' meeting, your task is to decide if that amount of fees is reasonable, given the work carried out in the external administration and the results of that work.

You may find the following information from the external administrator useful in deciding if the fees claimed are reasonable:

- the method used to calculate fees
- the major tasks that have been performed, or are likely to be performed, for the fees
- the fees/estimated fees (as applicable) for each of the major tasks
- the size and complexity (or otherwise) of the external administration
- the amount of fees (if any) that have previously been approved
- if the fees are calculated, in whole or in part, on a time basis:
 - the period over which the work was, or is likely to be performed
 - if the fees are for work that has already been carried out, the time spent by each level of staff on each of the major tasks
 - if the fees are for work that is yet to be carried out, whether the fees are capped.

If you need more information about fees than is provided in the external administrator's report, you should let them know before the meeting at which fees will be voted on.

What can you do if you think the fees are not reasonable?

If you do not think the fees being claimed are reasonable, you should raise your concerns with the external administrator. It is your decision whether to vote in favour of, or against, a resolution to approve fees.

Generally, if fees are approved by a creditors' committee/creditors and you wish to challenge this decision, you may apply to the court and ask the court to review the fees. Special rules apply to court liquidations.

You may wish to seek your own legal advice if you are considering applying for a court review of the fees.

Reimbursement of out-of-pocket costs

An external administrator should be very careful incurring costs that must be paid from the external administration—as careful as if they were dealing with their own money. Their report on fees should also include information on the out-of-pocket costs of the external administration.

If you have questions about any of these costs, you should ask the external administrator and, if necessary, bring it up at a creditors' committee/creditors' meeting. If you are still concerned, you have the right to ask the court to review the costs.

Queries and complaints

You should first raise any queries or complaints with the external administrator. If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ASIC at www.asic.gov.au/complain, or write to:

ASIC Complaints
PO Box 9149
TRARALGON VIC 3844

ASIC will usually not become involved in matters of commercial judgement by an external administrator. Complaints against companies and their officers can also be made to ASIC. For other enquiries, email ASIC through infoline@asic.gov.au, or call ASIC's Infoline on 1300 300 630 for the cost of a local call.

To find out more

For an explanation of terms used in this information sheet, see ASIC's information sheet INFO 41 *Insolvency: a glossary of terms*. For more on external administration, see ASIC's related information sheets at www.asic.gov.au/insolvencyinfosheets:

- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 75 *Voluntary administration: a guide for employees*
- INFO 45 *Liquidation: a guide for creditors*
- INFO 46 *Liquidation: a guide for employees*
- INFO 54 *Receivership: a guide for creditors*
- INFO 55 *Receivership: a guide for employees*
- INFO 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*

These are also available from the Insolvency Practitioners Association (IPA) website at www.ipaa.com.au. The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.