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CIRCULAR TO SHAREHOLDERS

Babcock & Brown Ltd (In Liquidation) ACN 108 614 955 ("the Company")

I refer to my appointment as Liquidator of the Company on 24 August 2009.

I have been aware that the litigation funder Bookarelli Pty Ltd (**Bookarelli**) has been canvassing claims against the Company from at least 2012. This circular has been provided to update you on the status of these claims and the risks of signing an authority to Bookarelli to pursue claims against the Company on your behalf.

As at the date of this correspondence, Bookarelli has funded five (5) claims:

- **NSD2070/2012** – Andrew Grant-Taylor & Ors v Babcock & Brown Limited (In Liquidation) (**Grant-Taylor Proceedings**)
- **NSD2525/2013** – Michael Masters & Ors v David Lombe in his capacity as Liquidator of Babcock & Brown Limited (In Liquidation) (**Masters Proceedings**)
- **NSD947/2014** – Bruce Broome & Ors v David Lombe in his capacity as Liquidator of Babcock & Brown Limited (In Liquidation) (**Broome Proceedings**)
- **NSD501/2015** – Sarah Wilhelm & Ors v David Lombe in his capacity as Liquidator of Babcock & Brown Limited (In Liquidation) (**Wilhelm Proceedings**), and
- **NSD2105/2018** – Malcolm Douglas Pain & Ors v David Lombe in his capacity as Liquidator of Babcock & Brown Limited (In Liquidation) (**Pain Proceedings**).

These proceedings related to allegations that, in breach of the Australian Stock Exchange (**ASX**) Listing rule 3.1 and section 674 of the *Corporations Act 2001* (Cth), the Company became aware of certain information that ought to be disclosed to the ASX.

In respect of the Grant-Taylor, Masters, Broome, and Wilhelm Proceedings, the Federal Court of Australia dismissed those claims in 2019 finding that none of the alleged non-disclosures were required to be made, and even if they were, the applicants had not shown loss or damage. Further, all appeals have been exhausted where the High Court of Australia rejected an application for special leave to appeal on 8 April 2022.

I have been awarded costs in the Grant-Taylor Proceedings which have been satisfied. In relation to the Masters, Broome and Wilhelm Proceedings, a lump sum costs award has been ordered on 21 November 2024 and I intend to prosecute and collect those costs for the benefit of creditors of the Company. The costs from the Masters, Broome and Wilhelm Proceedings are currently outstanding.

Any non-payment of costs from Bookarelli in relation to the lump sum cost awards may result in cost awards against the relevant shareholders individually. This risk is to all shareholders who sign over their rights to Bookarelli to pursue claims against the Company in the future.

Pain Proceedings

On 21 November 2024, the Federal Court of Australia made orders to permanently stay the Pain Proceedings as an abuse of process. The Company was awarded costs, and I plan to enforce them.

The Pain Proceedings was brought by 312 applicants who acquired shares in the Company and who sought compensation and a declaration that the Company failed to disclose material information to the Australian Securities Exchange at the time they purchased their shares. The claims made in the Pain

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Proceedings were effectively identical to the four (4) abovementioned proceedings, save for the applicants advancing an alternative "no transaction" causation case. The "no transaction" causation case put forward was that the applicants would not have purchased shares in the Company had they been informed of the non-disclosures arising between August 2008 and December 2008. Justice Halley ordered the permanent stay of proceedings based on abuse of process where the issues have already been litigated and lost in other proceedings funded by Bookarelli.

I was awarded costs in this matter and intend to prosecute that costs award. **To the extent that these costs are not paid by Bookarelli, I intend to pursue these costs against each of the 312 shareholder applicants.**

Risks to Shareholders

As it currently stands, Bookarelli has lost each of the shareholder proceeding that it has funded. Costs have been ordered against all the shareholders in each of the proceedings. **To the extent that Bookarelli has not, or does not satisfy those costs, I intend to pursue the costs against the individual shareholder applicants. As such, in my view, there is a risk to shareholders that if Bookarelli cannot afford or does not pay extant costs orders the shareholder applicants could be required to pay those costs.** That risk arises in respect of the Masters, Broome, Wilhelm and Pain proceedings as well as any fresh proceedings which Bookarelli seek to fund and bring.

Should you have any queries regarding the above, please contact us by email to bandbltd@deloitte.com.au.

Yours faithfully



David John Frank Lombe

Liquidator