

9 June 2023

Phone: +61 2 9322 7000  
[www.deloitte.com.au](http://www.deloitte.com.au)

## CIRCULAR TO NOTEHOLDERS

Dear Sir / Madam

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

### **STRICTLY PRIVATE & CONFIDENTIAL**

#### **1 Background**

Since being appointed as the liquidator to the Company on 24 August 2009, I have received numerous proofs of debt from individuals and entities claiming to be creditors of the Company.

As you may recall, on 25 June 2012, I issued a notice of my intention to pay a dividend to the creditors of the Company, having commenced the assessment and admission process in relation to proofs of debts submitted by various Noteholders of the Company.

#### **2 Litigation by shareholders**

However, prior to paying any dividends, in December 2012 a group of 78 shareholders of the Company (whose proofs of debt I had previously rejected) commenced legal proceedings in the Federal Court of Australia against the Company and me (as liquidator of the Company) seeking to overturn my rejection of their proofs and therefore to be recognised as creditors of the Company and to participate in any dividends.

Those proceedings were funded and promoted by Bookarelli Pty Ltd (the **Promoter**). As I understand it, the Promoter paid the legal fees of these 78 shareholders and conducted the proceedings on behalf of them. The Promoter is a third party entity, and is not affiliated with me or the Company in any way.

If the above proceedings were successful, that would have resulted in a reduction of the pool of funds available to be distributed to the Noteholders. I successfully defended those proceedings, thereby preserving the pool of available funds for the true creditors (Noteholders etc), but the financial cost of this success was not insignificant.

Although the 2012 proceedings failed, 4 successive similar proceedings were commenced in 2013 (by 100 shareholders), 2014 (by 887 shareholders), 2015 (by 234 shareholders) and 2018 (by 313 shareholders). Each of these proceedings were promoted by the Promoter and were defended by me on behalf of the creditors of the Company. Save for the 2018 proceedings (which remains on foot) all of the above proceedings have also failed. These proceedings included appeals to the High Court of Australia.

However, no dividends can be paid until the 2018 proceedings have been resolved.

#### **3 Noteholders**

I am writing to you because it has recently come to my attention that the Promoter has now approached Noteholders, in addition to the Promoter approaching shareholders (whose proofs I have rejected), offering to manage their affairs with the Company on the proviso that those Noteholders agree to divert any dividends received to the Promoter.

If I have already admitted your proof of debt, that means that I consider that you are a creditor of the Company, and there is nothing further that you need to do at this time.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities (collectively, the "Deloitte organisation"). DTTL (also referred to as "Deloitte Global") and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our global network of member firms and related entities in more than 150 countries and territories (collectively, the "Deloitte organisation") serves four out of five Fortune Global 500® companies. Learn how Deloitte's approximately 312,000 people make an impact that matters at [www.deloitte.com](http://www.deloitte.com).

Liability limited by a scheme approved under Professional Standards Legislation.

Member of Deloitte Asia Pacific Limited and the Deloitte organisation.

Appointing any third parties, such as the Promoter, to act as your liaison with me will not result in you receiving any greater dividend than you would otherwise have received, nor will it result in you receiving that dividend faster. If you have any concerns in this regard you should seek independent legal advice.

The main impediment to a dividend being paid is that the 2018 proceedings remain on foot.

If you are contacted by any person in respect of your claim as a Noteholder and not sure what to do, please contact us by email to [bandbltd@deloitte.com.au](mailto:bandbltd@deloitte.com.au).

#### 4 Receipts and payments

Attached at **Annexure A** is a summary of BBL's receipts and payments for the period 24 August 2009 to 31 May 2023.

I also provide notice pursuant to Section 70-5(6) of the Insolvency Practice Schedule (Corporations), that we have lodged our annual administration returns for the Company with ASIC. Copies of the annual administration returns can be downloaded from the ASIC website at <https://asic.gov.au/>.

#### 5 Updates

Please be advised that we periodically provide updates regarding the liquidation on the following website: <https://www2.deloitte.com/au/en/pages/finance/articles/babcock-and-brown-limited.html>

We encourage Noteholders to review the abovementioned website in the event that they are seeking updates at any stage during the liquidation.

#### 6 Queries

If you have any questions in relation to the above or any other aspects of the liquidation, please contact my team by email to: [bandbltd@deloitte.com.au](mailto:bandbltd@deloitte.com.au).

Yours faithfully



David J F Lombe  
Liquidator

#### Annexures

**Annexure A**      Receipts and payments to 31 May 2023

## Babcock &amp; Brown Limited (In Liquidation)

Summary of Receipts and Payments  
24 August 2009 to 31 May 2023

Summary of receipts and payments	Amount (\$ exc. GST)
<b>Cash balance brought forward from Administration</b>	<b>494,018</b>
<b>Less: costs accrued during Administration period</b>	
Administrator's Remuneration	(230,000)
Deloitte NZ - Second Creditors Meeting	(10,751)
Hire of Meeting Room - Second Creditors Meeting	(5,929)
Stationary and Printing	(44,377)
<b>Cash balance brought forward to Liquidation</b>	<b>202,961</b>
<b>Receipts during the Liquidation period</b>	
Settlement Proceeds - US Trust Proceedings	3,999,988
Settlement Proceeds - Australian Recovery Actions	40,000,000
Interest	7,878,673
Funding Contributions	546,342
Note Transfer Costs (Recovered from Noteholders and includes GST)	9,945
Refunds - Pre-appointment accounts	79,247
Refunds - Reimbursement of Legal Costs by Litigation Funder	11,154
Miscellaneous Income, notes transfer fees (+ GST)	278,050
Grant-Taylor Cost Recoveries	914,408
GST Refunds	1,421,202
<b>Total receipts</b>	<b>55,139,009</b>
<b>Payments during the Liquidation period</b>	
ASIC Funding Levy	1,035
Administrator's Remuneration	1,024,305
Liquidator's Remuneration	5,180,932
Liquidator's Expenses	137,606
Sale Costs	41,500
IMF Fees	8,876,335
Refunds	250
Bank Charges	5,257
Link Market Services - Register Maintenance	43,982
Legal - Solicitor Fees	5,841,852
Legal - Disbursements	2,411,568
Other Professional Fees	2,281
NGER Consulting Fees	25,000
Tax Compliance - Deloitte US	34,337
Electronic Case Data Management - Scanning	59,697
Deloitte Forensic - Data loading and hosting	86,983
Email Backup Escrow Storage Costs	19,570
Stationary and Printing	208,920
Advertising	3,501
GST Paid	1,407,710
Reimbursement and Uplift payments to funding contributors	6,074,438
Trustee fees & expenses	344,462
<b>Total payments</b>	<b>31,831,521</b>
<b>Cash at Bank as at 31 May 2023</b>	<b>23,510,449</b>