

**PALLINUP LOGISTICS PTY LTD**

(In Liquidation) ACN 600 340 029

ABN 72 600 340 029

**Annual Report to Creditors**

**13 July 2018**

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## **Annexures**

- A     Receipts and payments
- B     Schedule of Liquidator's remuneration

## **Enclosures**

- (i)    Proof of Debt or Claim
- (ii)   Funding Expression of Interest (EOI) Form

## 1.0 Introduction

- 1.1 I refer to my Circular to Creditors dated 13 June 2017 and to my Report to Creditors dated 1 September 2017.
- 1.2 As you are aware, I was appointed Liquidator of Pallinup Logistics Pty Ltd (“the company”) on 2 June 2017.
- 1.3 The purpose of this report is to update you on the progress of the liquidation in accordance with Section 508 of the Corporations Act 2001 (“the Act”). Despite its repeal, Section 508 of the Act continues to apply in respect of a liquidation with an annual reporting year commencing prior to 1 September 2017 but ending after 1 September 2017 (Section 1603 of the Act).

## 2.0 Receipts and payments

- 2.1 See Annexure A for a summary of the receipts and payments in the liquidation of the company from 2 June 2017 to 30 June 2018.

## 3.0 Asset realisations

- 3.1 As previously advised, the sole director of the company, Mr Kevin Imberti, died on 16 February 2017. Therefore, I have not received a Report as to Affairs (“RATA”) for the company which provides directors’ estimates of potential realisations.

### 3.2 *Cash at bank*

A debit balance of \$5.26 was held in the company’s National Australia Bank account as at the date of my appointment. No amount was realised following the closure of the company’s bank account.

### 3.3 *Pre-appointment debts*

- 3.3.1 The company’s records showed that the company had an accounts receivable balance as at the date of liquidation of \$464,808.

- 3.3.2 It has been determined that \$113,870 of this debt was paid into the company’s bank account prior to the date of liquidation.

- 3.3.3 A total of \$230,559 has been assessed as being uncollectable because of disputes raised by the customers involving the legitimacy of the invoices, or because the customer is a creditor of the company and entitled to a set off under Section 553C of the Act.

- 3.3.4 A further \$120,379 remains outstanding, of which \$72,952 is in respect of amounts owed by related parties. I will continue to pursue these remaining debtors for payment.

### 3.0 Asset realisations (cont.)

#### 3.4 *Motor vehicles*

- 3.4.1 A search of the Personal Property Securities Register (“PPSR”) showed numerous security interests registered against the company in respect of motor vehicles, trucks, trailers and dollies. All of the company’s financed vehicles have been disclaimed because of negative equity in those vehicles (see Section 5.1).
- 3.4.2 Following the repossession and sale of the company’s 2013 Lexus RX450 by Toyota Finance, I received a refund of \$3,714.91, being the surplus sale proceeds after the costs of sale and payment of the outstanding balance on the finance agreement. I note that the Lexus was sold by Toyota Finance for an amount \$10,000 in excess of my agent’s valuation.
- 3.4.3 The company’s financial statements listed three unencumbered vehicles being a Scania Truck, a Holden Barina and a Nissan Patrol Wagon.
- 3.4.4 The Scania Truck (“the truck”) was not registered in the company’s name, but rather, in the name of the director. The director’s family has advised me that the truck is not an asset of the company but is an asset of the director’s deceased estate. Following considerable time spent, I have determined that continuing to pursue this matter will not result in any realisation net of costs.
- 3.4.5 On further review of the company’s records, I have determined that the Holden Barina was sold prior to my appointment for fair value.
- 3.4.6 As noted in my Report to Creditors dated 1 September 2017, numerous unaccounted for motor vehicles have been identified, including the Nissan Patrol Wagon. This matter is still under investigation.

#### 3.5 *Grain and livestock*

- 3.5.1 From my investigations to date, I have been unable to locate any grain or livestock that may be owned by the company.
- 3.5.2 I will continue to consider all new information provided to me concerning the company’s grain and livestock.

#### 3.6 *Unaccounted for sundry assets*

- 3.6.1 The company’s financial statements list a number of other assets including tractors, computers and agricultural machinery. I have been unable to locate any of these assets.
- 3.6.2 Any new information provided to me concerning the company’s sundry assets will be considered.

#### 4.0 Priority creditors

- 4.1 I understand that there are outstanding entitlements owed to the company's former employees. However, the quantum of the entitlements are currently unknown given the poor state of the company's books and records.
- 4.2 If you were an employee of the company at the date of liquidation, or if you had previously been employed by the company, you may be a creditor of the company for any or all of the following debts: outstanding wages, annual leave, long service leave, pay in lieu of notice, redundancy and superannuation.
- 4.3 Please find enclosed a Proof of Debt or Claim form to enable creditors to lodge their claim against the company.

#### 5.0 Secured creditors

- 5.1 According to a search of the PPSR on 2 June 2017, the following security interests have been registered against the company's ACN:

Secured party	Details of charge
Toyota Finance Australia Ltd Volkswagen Financial Services Australia Pty Ltd Paccar Financial Pty Ltd	Security interests over motor vehicle(s) (see paragraph 3.4.1).
Iron Capital Holdings Pty Ltd Lewfinire Pastoral Company Pty Ltd	Former security interest over a tractor. This creditor repossessed the tractor prior to my appointment and has submitted an unsecured claim in the liquidation for the shortfall balance.
Martin Herman Wiehl	Purchase Money Security Interest. Relates to the supply of agricultural goods. No items were located to satisfy the security interest.
Tyndall Capital Pty Ltd Marketlend Pty Ltd ("Marketlend")	Purchase Money Security Interest. Relates to supply of grain. No items were located to satisfy the security interest. This creditor had also registered "all present and after-acquired property" and "account" security interests (see paragraph 5.2).
The trustee for Bigstone Loan Fund Financial Resources Pty Ltd Mobile Tracking and Data Pty Ltd	There is no debt owed to these creditors.

- 5.2 I note that the validity of Marketlend's all present and after acquired property and account security interests has not been determined. At such time that I have identified realisable assets that may be subject to these securities, I will review further the validity of these registrations.
- 5.3 As previously advised, in my Report to Creditors dated 1 September 2018, the debt owed to the trustee for Bigstone Loan Fund ("Bigstone") was settled following demand on the guarantor prior to my appointment as liquidator.
- 5.4 At the time of my last report, the parties who discharged this debt were seeking to be subrogated to Bigstone's position and claim in the liquidation.

## 5.0 Secured creditors (cont.)

- 5.5 I have determined that the parties do not have a right of subrogation as they did not either discharge the debt in full pursuant to a guarantee or have the prerequisite subrogation or assignment agreement.

## 6.0 Unsecured creditors

- 6.1 According to the company's most recent records, the company had 69 unsecured creditors, whose claims totalled \$2,292,855.
- 6.2 To date, I have received claims from 22 unsecured creditors whose claims total \$1,967,613.
- 6.3 On the basis of current information, I estimate that the total amount owed to unsecured creditors is \$ 2,586,331.
- 6.4 I consider it unlikely that a dividend will be paid to unsecured creditors of the company. However, the likelihood of a dividend is largely dependent on the outcome of my further investigations (see Sections 7 and 8).

## 7.0 Investigations

### *Failure of the company*

- 7.1 From my initial investigations, I determined that the failure of the company was caused by an inability to meet taxation liabilities, disputes over grain supplies and deliveries, the death of the company's director and unfavourable movements in grain prices.

### *Preferences*

- 7.2 There is the potential for a Liquidator to recover payments to creditors that have been preferred over other creditors of the company within six months of the company being placed into external administration. That is, if a creditor receives payment in preference to other creditors, the amount paid to that creditor is potentially recoverable by the Liquidator.
- 7.3 From my investigations, I determined that the Australian Taxation Office ("ATO") received an unfair preference in the sum of \$25,000. The ATO has repaid this sum in full.

### *Breaches of director duties*

- 7.4 My investigations into the conduct of the deceased director are ongoing.

### *Australian Securities and Investments Commission ("ASIC")*

- 7.5 On 27 February 2018, I submitted to ASIC a detailed account of my investigation into the conduct of the company's director with regard to his breaches of civil obligations under the Act, including insolvent trading.
- 7.6 ASIC subsequently reviewed my findings and advised that it did not intend to commence any further investigation into the matters raised in my report.

## **8.0 Further work required**

- 8.1 The outstanding matters that are delaying the finalisation of the liquidation are the realisation of pre-appointment debts, investigating unaccounted for assets, investigating and pursuing other potential preference claims, and investigating and pursuing other potential recovery actions.
- 8.2 Once these matters are concluded, I can proceed to finalise the liquidation. On the basis of current information, I estimate that the liquidation will remain ongoing for another year.

## **9.0 Independence**

- 9.1 A Declaration of Independence, Relevant Relationships and Indemnities was contained in my Circular to Creditors dated 13 June 2017. There have been no changes to my independence in this matter.

## **10.0 Remuneration**

- 10.1 Please refer to Annexure B for details of the Liquidator's remuneration.
- 10.2 At the meeting of creditors held on 23 June 2017, creditors approved my Liquidator's remuneration up to a limit of \$60,000.00 plus GST.
- 10.3 As at 30 June 2018, I have incurred fees in the liquidation of \$142,783.01 plus GST.
- 10.4 To date, I have been paid remuneration of \$20,000.00 plus GST.

## **11.0 Funding request**

- 11.1 Before investigating further and pursuing any identified recovery actions, I must secure a source of funds to complete my investigations and pursue any potential claims.
- 11.2 At this stage, my funding request is for the increased time that I would have to spend on the matter(s) (i.e. the additional fees from now on), and in particular, the initial costs of engaging a solicitor to assess and assist with the investigation and pursuit of potential claims.
- 11.3 Therefore, I am canvassing whether any creditor is willing to provide funding to progress the investigations and pursue claims identified.
- 11.4 If, as a creditor, you provide me with funding for this purpose, subsequently a legal action is commenced, the action is successful and monies are recovered, you may make an application to the Court pursuant to Section 564 of the Act. This section gives the Court discretion to reward you a greater portion of the monies recovered, as compared to those creditors that did not provide any funding, in consideration of the risk assumed by you.
- 11.5 The principal risk to a creditor of providing funding at this stage is that my investigations are still in their initial stages. Further, if proceedings were commenced I would expect the claims to be vigorously defended, which adds to the cost and time taken to pursue a claim. Another risk is that based on subsequent legal advice or any defence raised, I may determine that the claim should not be pursued because there is no commercial benefit to the liquidation or there is not adequate protection from an adverse costs award.

**11. Funding request (cont.)**

- 11.6 Also, I note that if the matters are to be pursued all the way to trial, I will require further funding. This could be as much as an additional \$50,000 to \$200,000.
- 11.7 I ask that you consider this request and complete the “Funding Expression of Interest (EOI) Form” enclosed and return it to my office indicating whether you are, or are not, interested in providing me with the initial funding. Would you please return the form by Friday, 27 July 2018.
- 11.8 If I receive notification from a creditor that it would be prepared to provide me with initial funding, I will contact the creditor(s) directly to discuss the funding arrangement.
- 11.9 If I receive no offers of funding from creditors, I will proceed to consider an alternative option of funding I have obtained from a third party who has expressed an interest in a contingency arrangement.
- 11.10 If I subsequently propose to enter into any funding agreement, I will convene a meeting of creditors for the purpose of seeking approval from creditors to enter into the funding agreement and to enter into deeds or agreements spanning longer than three months as required under Section 477(2B) of the Act.

**12.0 Meeting of creditors**

- 12.1 If a creditors’ voluntary winding up continues for more than one year, a Liquidator must either convene an Annual General Meeting or prepare a report and lodge it with ASIC.
- 12.2 In fulfilling my obligations as Liquidator of the company under Section 1603 of the Act (see Section 1.3), I will lodge a copy of this report with ASIC.
- 12.3 At this stage, I have decided not to convene an annual meeting of creditors. However, I may choose to convene a meeting of creditors at a later date for the purposes detailed in Section 11.10 of this report, and for the approval of the Liquidator’s further remuneration.

Should you have any queries in relation to the above matters, please do not hesitate to contact David Blanchett or Sarah Marsegaglia of this office.

Yours faithfully



JENNIFER E. LOW  
Liquidator of  
Pallinup Logistics Pty Ltd



## PALLINUP LOGISTICS PTY LTD (In Liquidation)

ACN 600 340 029

ABN 72 600 340 029

**RECEIPTS AND PAYMENTS**  
**FOR THE PERIOD 2 JUNE 2017 to 30 JUNE 2018**

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	Amount \$
<b>Receipts</b>	
Indemnity	20,000
Motor vehicle	3,715
Preference claim	25,000
Refund from court enquiry	115
<b>Total receipts</b>	<b>48,830</b>
<b>Payments</b>	
Bank charges	88
Insurance	689
NAB trace advice	45
ASIC fees	78
Liquidator's fees	20,000
Disbursements:	
Advertisements	153
Facsimiles	36
Stationery	3
Postage	482
Printing and photocopying	489
Searches	135
Storage	15
Telephone	83
Travel	499
GST (net)	314
<b>Total payments</b>	<b>23,109</b>
<b>Cash at bank as at 30 June 2018</b>	<b>25,721</b>

**PALLINUP LOGISTICS PTY LTD (In Liquidation)**  
**ACN 600 340 029**  
**ABN 72 600 340 029**

**Liquidator's remuneration  
for the period 2 June 2017 to 30 June 2018**

Name	Position	Hours	Sheridans Rate ① \$ / hr	Charge \$
J. E. Low	Liquidator	36.90	538	19,852.20
D. Blanchett	Senior Manager	151.98	381	57,904.38
S. O'Connor	Manager	62.18	281	17,472.52
M. Ledger	Senior 1	3.07	227	696.83
P. Nguyen	Intermediate 2	194.79	172	33,504.45
H. Christianopoulos	Graduate	2.21	147	324.87
S. Marsegaglia	Graduate	68.34	147	10,045.98
J. Don	Graduate	0.34	147	49.98
A. Avery	Secretary	9.50	137	1,301.50
M. Francis	Secretary	10.40	137	1,424.80
M. Lawrence	Secretary	1.50	137	205.50
<b>Total fees incurred</b>		<b>541.21</b>		<b>142,783.01</b>

① Rounded to the nearest dollar.

## FORMAL PROOF OF DEBT OR CLAIM

\$ and cents

Email address:

PALLINUP LOGISTICS PTY LTD (In Liquidation)  
ACN 600 340 029

***Funding Expression of Interest Form***

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To: Jennifer Low, Liquidator of Pallinup Logistics Pty Ltd (In Liquidation)

I/we ❶ \_\_\_\_\_

of ❷ \_\_\_\_\_

hereby advise that I am willing/not willing (*cross out which is not applicable*) to contribute to the initial funding to the Liquidator.

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Please return by post, facsimile or email by **Friday, 27 July 2018.**

Post: Ms Jennifer Low  
Liquidator of Pallinup Logistics Pty Ltd (In Liquidation)  
C/- Sheridans  
PO Box Z5209  
PERTH WA 6831

Facsimile: (08) 9221 9340

Email: [general@sheridansac.com.au](mailto:general@sheridansac.com.au)

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Notes:

- ❶ Name(s) of creditor
- ❷ Address of creditor