

# **PALLINUP LOGISTICS PTY LTD**

(In Liquidation) (“the company”)

ACN 600 340 029

## **Report to Creditors**

Section 70-40

Insolvency Practice Rules (Corporations) 2016

**1 September 2017**

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## **Enclosures**

- (i) Proof of Debt or Claim form

## 1. Introduction

- 1.1 I refer to my appointment as Liquidator of the company on 2 June 2017 and to my Circular to Creditors dated 13 June 2017.
- 1.2 The purpose of this report is to provide creditors with an update on the progress of the liquidation in accordance with Section 70-40 of the Insolvency Practice Rules (Corporations) 2016, and to advise creditors of the likelihood of a dividend being paid in the liquidation.
- 1.3 As you are aware, the company's sole director, Mr Kevin Imberti, died on 16 February 2017. As there is no director of the company, I have not received the Report as to Affairs summarising the assets and liabilities of the company, and as such, my investigations have been hindered.

## 2. Receipts and payments

- 2.1 The following is a summary of receipts and payments in the liquidation to date:

	Amount \$
<b>Receipts</b>	
Indemnity	20,000
<b>Total receipts</b>	20,000
<b>Payments</b>	
ASIC fees	78
Bank charges	13
Liquidator's fees	15,000
Disbursements:	
Advertisements	153
Facsimiles	34
Postage	242
Printing and photocopying	177
Searches	69
Stationery	3
Telephone	35
GST(Net)	1,571
<b>Total payments</b>	17,375
<b>Cash at bank as at 1 September 2017</b>	<b>2,625</b>

## 3. Assets

### 3.1 *Cash at bank*

- 3.1.1 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. Assets (cont.)

#### 3.2 *Pre-appointment debts*

- 3.2.1 The company's records showed that the company had an accounts receivable balance as at the date of liquidation of \$464,808.
- 3.2.2 On review of the accounts receivable balance and following discussions and correspondence with a number of the company's debtors, I have determined that a significant number of the debts have either been paid by debtors prior to my appointment, or the debtor has provided sufficient evidence demonstrating that the debt was not due.
- 3.2.3 Given my experience to date in realising the company's accounts receivable, I have concerns as to the extent to which remaining debts will be realisable. However, I will continue to pursue the remaining debtors for payment.

#### 3.3 *Motor vehicles*

- 3.3.1 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 due to negative equity (see Section 5).
- 3.3.2 Further, I note that numerous unaccounted for motor vehicles have also been identified. I have requested further information regarding the whereabouts of the unaccounted for assets from the director's sons. This matter is still under investigation.

#### 3.4 *Grain*

- 3.4.1 From my investigations to date, I understand that creditors or third parties may be, or may have been, in possession of grain that is or was owned by the company.
- 3.4.2 I would be grateful if creditors would provide me with further information regarding the whereabouts of any grain, currently in storage somewhere, that may be owned by the company.

### 4. Unsecured creditors

- 4.1 According to the company's records, the company had 69 unsecured creditors, whose claims totalled \$2,292,855.
- 4.2 On the basis of current information, I estimate that the total amount owed to unsecured creditors is \$2,694,260.
- 4.3 Please find enclosed a Proof of Debt or Claim form to enable unsecured creditors to lodge their claim against the company.

## 5. 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 3.3.1)
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.
Martin Herman Wiehl	Purchase Money Security Interest. Relates to the supply of agricultural goods.
Tyndall Capital Pty Ltd Marketlend Pty Ltd	Purchase Money Security Interest. Relates to supply of grain. This creditor had also registered "all present and after-acquired property" and "account" security interests but I deemed these to be invalid.
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 The debt owed to the trustee for Bigstone Loan Fund ("Bigstone") was paid following demand on the guarantor prior to my appointment as liquidator. However, the guarantor is now seeking to be subrogated to Bigstone's position and claim.

## 6. Priority creditors

- 6.1 I understand that there are outstanding entitlements owed to the company's former employees. However, the quantum of such entitlements are currently unknown given the poor state of the company's books and records.
- 6.2 If you were an employee of the company at the date that I was appointed, or you have 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/or superannuation.
- 6.3 If you are owed accrued entitlements, you may be eligible for assistance under the Federal Government's Fair Entitlements Guarantee Act 2012 ("FEG"). For further information regarding FEG, please call the FEG hotline: 1300 135 040 or go to the website: [www.employment.gov.au/fair-entitlements-guarantee-feg](http://www.employment.gov.au/fair-entitlements-guarantee-feg). **Former employees have only 12 months to lodge a FEG claim and FEG has no discretion to extend this time.**
- 6.4 Please find enclosed a Proof of Debt or Claim form to enable priority creditors to lodge their claim against the company. Note that any FEG claim must be lodged separately with FEG.

## 7. Dividend

- 7.1 The likelihood of a dividend being paid to creditors will be affected by a number of factors including:
- (i) The size and complexity of the administration.
  - (ii) The amount of assets realisable and the costs of realising those assets.
  - (iii) The statutory priority of certain claims and costs.
  - (iv) The value of various classes of claims including secured, priority and unsecured creditor claims.
  - (v) The volume of enquiries by creditors and other stakeholders.
- 7.2 I consider it unlikely that a dividend will be paid to any class of creditor of the company. However, the likelihood of a dividend is largely dependent on the outcome of my investigations into unaccounted for assets and any possible recovery actions (see Section 11). My investigation is still ongoing.
- 7.3 If a dividend is payable, creditors will be contacted prior to the dividend being paid and will be asked to lodge a Proof of Debt. This will formalise creditors' claims against the company.

## 8. Reasons for the company's failure

- 8.1 From my inquiries to date (see Section 9 below), I consider that the reasons for the company's failure are as follows:
- (i) Inability to meet taxation liabilities;
  - (ii) Disputes over grain supplies/deliveries;
  - (iii) Death of the company's director; and
  - (iv) Unfavourable movements in grain prices.

## 9. Inquiries undertaken to date

- 9.1 The following inquiries and investigations have been made to date:
- (i) Undertaking searches including a company search, PPSR search, vehicle search, director search and property search.
  - (ii) Contacting the Sheriff's Office to determine whether any recovery action has been undertaken on behalf of creditors.
  - (iii) Contacting the Child Support Agency and Workcover WA to determine the company's outstanding liabilities.
  - (iv) Contacting the Office of State Revenue and the Australian Taxation Office ("ATO") to determine the company's outstanding tax-related liabilities.
  - (v) Requesting that the ATO provide me with access to the company's taxation records via the Business Portal.
  - (vi) Convening and holding an initial creditors' meeting.
  - (vii) Requesting and convening meetings with individual creditors to discuss the company's affairs and dealings.
  - (viii) General inquiries regarding the company's assets and liabilities.

## 9. Inquiries undertaken to date (cont.)

- (ix) Investigating the conduct of the company and the deceased director.
- (x) Reviewing the company's pre-appointment insurance policies, financial statements and draft accounts to determine whether there are any unaccounted for assets and/or liabilities.
- (xi) Reviewing the company's bank statements to investigate large and unusual transactions.
- (xii) Sending an initial notice to creditors, encouraging creditors to submit their claim against the company.
- (xiii) Sending notice to creditors to create a creditors' register.
- (xiv) Contact with Tambellup Police Station.
- (xv) Particular enquiries of and communications with the director's sons.
- (xvi) Particular enquiries of the company's customers, and suppliers.
- (xvii) Obtaining the primary accounting records (in particular, the general ledger and cash book).

9.2 I advise that two of my staff members attended the company's former premises on 23 August 2017 to meet with three of the deceased director's sons and his widow. The following inquiries were made:

- (i) General inquiries regarding the company's assets and liabilities.
- (ii) Inquiries regarding the whereabouts of unaccounted for vehicles and plant and equipment.
- (iii) Inquiries relating to the company's accounts receivable balance.
- (iv) Inquiries regarding the whereabouts of grain owned by the company.
- (v) Inquiries regarding large transactions sighted on the company's bank accounts.
- (vi) Inquiries regarding the accuracy of the company's accounting records.
- (vii) General inquiries regarding claims and accusations made by creditors and stakeholders.
- (viii) Further discussions regarding the company's affairs prior to and after the director's death.
- (ix) Inquiries regarding the company's employees and outstanding claims.
- (x) Collection of the company's books and records at the premises.

## 10. Further inquiries that may need to be undertaken

10.1 I note the following further inquiries need to be undertaken:

- (i) Reviewing the company's books and records.
- (ii) Conducting further investigations into the company's affairs and the conduct of its officers.
- (iii) Determining whether there are any possible recovery actions (see Section 11 below).
- (iv) Lodging a report with ASIC detailing my investigation findings.
- (v) Further inquiries regarding assets and liabilities.
- (vi) Investigation regarding certain transactions noted on the company's bank statements.
- (vii) Inquiries regarding the whereabouts of grain possibly owned by the company.

**10. Further inquiries that may need to be undertaken (cont.)**

- 10.2 If creditors are aware of a particular matter that requires further investigation, I would be grateful if you would please contact this office immediately.

**11. Possible recovery actions**

- 11.1 I am yet to determine any possible recovery actions but note that the most common recovery actions available to a liquidator are as follows:

- (i) Insolvent trading.
- (ii) Unfair preferences.
- (iii) Uncommercial transactions.
- (iv) Unfair loans.
- (v) Unreasonable director-related transactions.

**12. What happens next?**

- 12.1 I will proceed with the liquidation, including:

- (i) Determining the whereabouts of, and realising, any remaining assets.
- (ii) Determining whether there are any commercially viable recovery actions.
- (iii) Completing my investigations into the company's affairs.
- (iv) Completing my reporting to the corporate regulator, the Australian Securities and Investments Commission ("ASIC").

- 12.2 I may write to creditors again with further information on the progress of the liquidation.

**13. More information**

- 13.1 Creditors can access information which may be of assistance on the following websites:

- (i) Sheridans at [www.sheridansac.com.au/downloads/](http://www.sheridansac.com.au/downloads/)
- (ii) ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors)
- (iii) ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for "insolvency information sheets")

If you wish to discuss the above matters, please contact David Blanchett or Shannon O'Connor of this office.

Yours faithfully



JENNIFER E. LOW  
Liquidator of  
Pallinup Logistics Pty Ltd



**PALLINUP LOGISTICS PTY LTD**  
**ACN 600 340 029**  
**(In Liquidation) ("the company")**

**FORM 535 - FORMAL PROOF OF DEBT OR CLAIM**

This is to state that the company was on 2 June 2017 and still is, justly and truly indebted to \_\_\_\_\_ for:

\$ \_\_\_\_\_ and \_\_\_\_\_ cents

Date	Consideration (how the debt arose)	Amount \$	Remarks (include details of voucher substantiating payment)

To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: *(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).*

Date	Drawer	Acceptor	Amount \$	Due date

I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied. ①

I am the creditor's agent authorised in writing to make this statement in writing. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied. ①

① *Delete both if this proof is made by the creditor personally. Otherwise, strike out or leave, as appropriate.*

**Please ensure this proof is signed for completion, before lodgement.**

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

**Signature:** \_\_\_\_\_

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

**Occupation:** \_\_\_\_\_

**Creditor's address:** \_\_\_\_\_

☐ I nominate to receive electronic notification of notices or documents in accordance with Section 600G of the Corporations Act 2001 at the following email address:

\_\_\_\_\_