

NOTICE TO SHAREHOLDERS

ION Limited (Administrators Appointed) ("ION") ACN 009 106 272

Following the financial press coverage of the recent decision of Justice Finkelstein in *Crosbie, in the matter of Media World Communications Ltd (Administrators Appointed)* [2005] FCA 51 (**Media World**) we have received letters from shareholders of ION claiming to be creditors by virtue of their shareholding and seeking admission to vote at the second creditors' meeting.

We set out below the Administrators' position on the matter.

- Subscriber shareholders with a claim against ION based on a misleading prospectus are not creditors of ION and will not be admitted as creditors to the second creditors' meetings, unless they had rescinded their contract with the Company to acquire their shares prior to the appointment of the Administrators on 7 December 2004.
- Transferee shareholders are not creditors simply by virtue of their shareholding and on that basis alone will not be admitted as creditors to the second creditors' meetings.
- Transferee shareholders who purchased shares on the open market in reliance on statements released by ION (which they claim were misleading or deceptive) and suffered damages as a consequence, may be creditors. The law is not settled on this point and on whether their claims, in any event, would be subordinated to those of other creditors.

There is currently no binding Australian authority which allows a transferee shareholder with a misleading conduct claim to be admitted as a creditor of ION. In *Media World*, Justice Finkelstein expressed the view that a transferee shareholder with a misleading conduct claim in respect of his or her shares might be a creditor of that company in administration and entitled to vote at creditors' meetings. However, Justice Finkelstein's comments about the status of a transferee shareholder with a misleading conduct claim as a creditor of a company in administration are not binding and were expressly made in a moot context and without the benefit of full argument by parties with opposing viewpoints.

If a transferee shareholder with a misleading conduct claim against ION considers that he or she should be admitted to the second creditors' meeting for voting purposes, the following information should be provided to the Administrators prior to the meeting (and preferably prior to the day of the meeting):

- (a) details of the precise statements that were made by, or other conduct of, officers of ION that the shareholder asserts was misleading or deceptive;
- (b) the date(s) the statements were made or relevant conduct occurred;

- (c) when and in what circumstances the shareholder first became aware of the statements or conduct;
- (d) details of why the shareholder says the statements or conduct were misleading or deceptive;
- (e) how the statements or conduct were relevant to the shareholder's decision to purchase any parcel(s) of shares in ION and the date(s) of purchase of those shares and whether, and, if so, to what extent the shareholder relied on that information;
- (f) whether there was any other information on which the shareholder relied in making his or her decision to purchase that parcel or parcels of shares in ION and, if so, details of that information;
- (g) details of the loss and damage that the shareholder says he or she suffered in reliance on the relevant statements or conduct;
- (h) why the shareholder says his or her loss and damage was caused by those statements or conduct.

Given the doubt about the legal position of transferee shareholders with misleading conduct claims, if the Administrators are otherwise satisfied with the substance of the materials provided by a shareholder, the Administrators will mark the shareholder's proof of debt for voting purposes as 'objected to' and allow the person to vote in accordance with Regulation 5.6.26(2) of the Corporations Regulations, subject to the vote being declared invalid by the Court if the objection is sustained.

The admission to vote at the second creditors' meeting does not mean that a person's claim will be admitted for the purposes of distributions under any deed of company arrangement (**DOCA**) or in a winding up of ION. If ION's creditors resolve to enter into a DOCA, or to wind up ION, the Deed Administrator or Liquidator (as the case may be) will call for formal proofs of debt in due course and assess all creditors' claims for the purposes of any entitlement to a distribution out of the assets of ION.

If a transferee shareholder with a misleading conduct claim elects not to seek to be admitted as a creditor for voting purposes at the second creditors' meeting, that shareholder will not be precluded from later asserting a right to be treated as a creditor of ION for the purposes of participating in any distribution of ION's assets in either a DOCA or a liquidation.

In that context, the Administrators understand that in another (unrelated) administration a proceeding has been issued in the Federal Court in which that Court is being asked to consider the entitlement of a transferee shareholder who claims to have been misled and suffered a loss as a consequence to be a creditor of that company. The outcome of that proceeding may provide guidance to the Administrators on the unresolved points of law referred to above.

The Administrators' Report to Creditors pursuant to section 439A of the Corporations Act 2001 will be posted to the McGrathNicol+Partners' website and the ASX.

Colin Nicol
Administrator

29 April 2005