

D18-071119-WESTCOR01-Ltr to creditors-mmk

**To the creditor as addressed**

21 November 2007

Dear Sir/Madam

**Westpoint Corporation Pty Ltd (In Liquidation) (Receivers and Managers Appointed)  
ACN 009 395 751  
("Westpoint Corporation")**

I refer to my appointment as Liquidator of Westpoint Corporation on 16 February 2006.

**1. Change of appointee**

PPB's Perth office has restructured its accounting practice in July this year. This involved a combination with the firm, McGrathNicol. As a result, Andrew Birch and I became partners at McGrathNicol with effect from 30 July 2007.

Jeff Herbert does not have any association with the new practice and has informed me that he will resign from his appointment as liquidator of Westpoint Corporation.

On 31 October 2007, Justice French, in the Federal Court of Australia, ordered that Andrew Birch be appointed as liquidator of Westpoint Corporation in place of Mr Herbert.

His Honour also ordered that the costs of bringing the application are not to be treated as costs in the winding up of Westpoint Corporation and are therefore not payable out of the assets of the liquidation.

Justice French granted any creditor liberty to apply to the Court, on or before 12 December 2007, for a variation of the above orders.

If you are in doubt as to whether this has an effect on you, I recommend that you seek independent legal advice.

**2. Update on liquidation**

**2.1 ING Receivership**

The debt owed to ING has reduced to approximately \$400,000 as at 30 September 2007. The Receivers and Managers have advised me that they will remain in office to realise the floating charge assets in order to satisfy claims from employees for unpaid wages, leave and retrenchment pay. These assets are in the form of legal actions and intra group loan accounts, the recovery of which may result in a surplus remaining after priority claims.

## 2.2 Committee of Inspection

At the previous creditors' meeting held on 13 December 2006, creditors resolved to appoint a committee of inspection comprising the following members:

- + Chris Fairman – former employee of Westpoint Corporation
- + Bryan O'Keefe – former employee of Westpoint Corporation
- + Martin Jones – liquidator of various Westpoint entities
- + Derrick Vickers – liquidator of various Westpoint entities
- + Nola Rice – representing the Australian Taxation Office

However, Martin Jones has resigned as a member of the committee due to a potential conflict of interest.

## 2.3 Unfair preferences

As set out in my report of 24 November 2006, I identified several payments to the Australian Taxation Office (“ATO”) totalling \$4.1 million that I considered likely to be unfair preferences.

In January 2007, I completed a report that concluded that Westpoint Corporation was insolvent during the six-month relation back period.

In February 2007, I issued a demand against the ATO seeking repayment of the \$4.1 million.

The ATO has not informed me if it will repay the claimed preferences. However, I anticipate that I will have to litigate this recovery action and to do so, I require funding.

Therefore, I held discussions with the Department of Employment and Workplace Relations (“DEWR”), who are owed \$1.8 million as a priority creditor of Westpoint Corporation, to provide funding. I have now reached an agreement as to the terms of the funding DEWR will provide to pursue the claim against the ATO.

I held a committee of inspection meeting on 9 November 2007 and obtained their approval to enter into the funding agreement with DEWR, given that the agreement is likely to extend beyond three months<sup>1</sup>.

I will now continue to pursue the unfair preference claim against the ATO.

If you have any queries, please contact Ms Melinda Kubank on (08) 6363 7636.

Yours faithfully

*Westpoint Corporation Pty Ltd (In Liquidation) (Receivers and Managers Appointed)*



Simon Read  
*Liquidator*

---

<sup>1</sup> As required by section 477(2B) of the Corporations Act