

ION Limited (ACN 009 106 272)
Castalloy Limited (ACN 007 528 583)
Castalloy Manufacturing Pty Ltd (ACN 007 838 986)
Castalloy Wheels Pty Ltd (ACN 007 894 984)
Core Cast Limited (ACN 097 447 660)
ION Light Metal Castings Pty Ltd (ACN 104 930 181)
ION Automotive Group Limited (ACN 104 279 156)
XIAS Pty Ltd (formerly ION Automotive Systems Pty Ltd) (ACN 104 930 109)
XITMS Pty Ltd (formerly ION Transmissions Pty Ltd) (ACN 099 982 180)
XCTA Pty Ltd (formerly Cootes Transport Pty Ltd) (ACN 010 383 016)
XCTS Pty Ltd (formerly Cootes Tanker Service Pty Ltd) (ACN 004 495 765)
XIRC Pty Ltd (formerly I.R. Cootes Pty Ltd) (ACN 004 801 076)
XLC Pty Ltd (formerly Liquip Corp Pty Limited) (ACN 082 859 970)
XLO Pty Ltd (formerly Liquip Overseas Pty Ltd) (ACN 094 440 589)
XLS Pty Ltd (formerly Liquip Sales Pty Ltd) (ACN 001 595 222)
XLSE Pty Ltd (formerly Liquip Service Pty Ltd) (ACN 082 859 989)
XLSV Pty Ltd (formerly Liquip Sales (Vict.) Pty Ltd) (ACN 005 691 761)
XST Pty Ltd (formerly Stevenson Transport Pty Ltd) (ACN 006 271 352)

**(All subject to Deed of Company Arrangement)
(Collectively "ION DOCA Group")**

Deed Administrators' Update 31 January 2007

1. Determination of Sons of Gwalia appeal by the High Court

In our update of 23 October 2006 we reported that the High Court had heard an appeal from a decision of the Full Court of the Federal Court brought by the Deed Administrators of Sons of Gwalia and by ING. The High Court handed down its decision on 31 January 2007 in that proceeding.

The High Court held that a shareholder who has a claim against a company for misleading or deceptive conduct or breach of continuous disclosure obligations can prove in the administration or liquidation of the company, and will rank equally with unsecured creditors in respect of that claim.

The High Court considered section 563A of the *Corporations Act 2001* (Cth), which provides that payment of a debt owed by a company to a person *in the person's capacity as a member of the company* is to be postponed until all debts owed to, or claims made by, the company's creditors have been satisfied.

Chief Justice Gleeson and Justices Gummow, Kirby, Hayne, Heydon and Crennan (Justice Callinan dissenting) held that section 563A did not operate to postpone the debts owed to shareholders with claims against a company for misleading or deceptive conduct or failure to comply with its continuous disclosure obligations.

- Shareholders with such claims were not owed debts *in their capacity as members of the company* within the meaning of that phrase in section 563A. Rather, they were seeking to enforce against the company remedies to which they were entitled under various statutes providing protection to consumers and investors.
- If Federal Parliament had intended that member claims relating to damages arising from the purchase or sale of shares should rank behind the claims of general creditors, it could have used clear language to this effect such as that contained in similar legislation in the United States, but had not done so.

2. Implications of the High Court's decision for the administration of the ION Group's Deeds of Company Arrangement

The Deed Administrators welcome the High Court's decision, as it will now enable them to proceed to determine the proofs of debt that have been lodged by ION shareholders under the ION Group Deeds of Company Arrangement (the **ION Group DOCAs**) in response to the Deed Administrators' Notice Inviting Formal Proof of Debt or Claim on 28 June 2005.

The Deed Administrators have been awaiting the determination of this threshold question by the High Court. The outcome of the Sons of Gwalia decision now gives the Deed Administrators certainty that shareholders can be creditors under the ION Group DOCAs.

The Deed Administrators will now proceed to determine the shareholder proofs according to law as confirmed by the High Court. To date, the Deed Administrators have received in excess of 3,000 proofs of debt lodged by shareholders of ION alleging that various conduct of ION was misleading or deceptive conduct or in breach of continuous disclosure

obligations. The nature and particulars of those allegations differ between shareholder claimants.

The Deed Administrators understand that shareholders will now wish to expedite the adjudication of their claims. The shareholder claims must be determined according to law and having regard to the interests of all persons properly entitled to participate in distributions from the Fund established under the ION Group DOCAs. The adjudication of shareholder claims will now occur in the most expeditious manner, consistent with those principles.

A number of shareholders have made helpful suggestions to the Deed Administrators as to how the Deed Administrators might expedite the process of determining their proofs or the proofs of shareholders generally. The Deed Administrators have been giving careful consideration to those suggestions, and will respond shortly to those shareholders.

As a general principle, the Deed Administrators anticipate that, as part of the process of determining all shareholder claims, it will be expedient for them to seek assistance from the Court in relation to certain of those claims. It will be appropriate, in that regard, to involve relevant shareholders, and possibly other non-shareholder creditors, in any such applications that need to be made. The Deed Administrators, with the assistance of their advisors, will now settle the formulation of the precise terms of the assistance that they require from the Court and will ensure that all creditors are informed as soon as possible of the course that they propose to adopt.

It is evident to the Deed Administrators that many shareholders' proofs of debt lodged to date are either defective in some way, or lack appropriate particulars, so as to enable the Deed Administrators to make a proper determination of those proofs. Shareholders can expect to be given a reasonable opportunity to address those matters once they receive correspondence from the Deed Administrators.

It will be apparent that the exercise that the Deed Administrators will now embark upon to determine the proofs of debt according to law will take some time to complete. The Deed Administrators appreciate the patience of all creditors while this process is undertaken.