



**Orphans Asia Pty Ltd (In Liquidation)**  
**ACN 637 786 639**  
**(Orphans Asia)**

**Statutory Report to Creditors**

We refer to our initial information for creditors dated 29 April 2021, in which we advised you of our appointment as liquidator and your rights as a creditor in the liquidation.

The purpose of this report is to:

- provide you with an update on the progress of the liquidation; and
- advise you of the likelihood of a dividend being paid in the liquidation.

**1. Update on the progress of the liquidation**

*1.1 Appointment details*

- On 30 March 2021, the Federal Court of Australia (**the Court**) ordered that Michael Hill and Anthony Connelly of McGrathNicol be appointed Liquidators of Orphans Asia. Michael Hill and Anthony Connelly were also appointed Liquidators of SA Services & PW Pty Ltd (In Liquidation) (**SASPW**), an associated company, on this date.

*1.2 Background and events leading up to the liquidation*

- The Liquidators' appointment over Orphans Asia and SASPW occurred following their appointment over PW Kitt Co Pty Ltd (In Liquidation) (**PWK**), an associated company. Details regarding Orphans Asia, SASPW and PWK are provided below.
- On 7 August 2020, the Court, on the application of the Australian Securities and Investments Commission (**ASIC**), ordered that Michael Hill, Anthony Connelly and Katherine Sozou of McGrathNicol (**the Receivers and Managers**) be appointed Receivers and Managers to the property and assets of:
  - PWK; and
  - Larry John Dawson (**Mr Dawson**) (the sole director of PWK).(collectively, **the Defendants**)
- As set out in the Court order, the Receivers and Managers' appointment over the Defendants was for the purpose of:
  - identifying, collecting and securing the property of the Defendants;
  - ascertaining the amount of investor funds received by the Defendants;
  - identifying any dealings with, payments of, distributions by or uses made of investor funds by the Defendants;
  - identifying any property purchased or acquired with investor funds;
  - recovering investor funds; and
  - providing a report to Court within 42 days in relation to the matters referred to above.
- The Receivers and Managers provided their report to the Court on 26 August 2020. The Receivers and Managers' findings supported ASIC's concerns of suspected fraudulent activity by PWK and, on that basis, ASIC sought to have PWK wound up. ASIC also commenced proceedings to wind up Orphans Asia and SASPW as both companies had received funds from PWK.
- Investigations to date indicate Orphans Asia, SASPW and PWK are all likely to have operated together.



### 1.3 *Offices and personnel*

- The Liquidators have been unable to identify a physical location from which Orphans Asia operated. As detailed above, investigations indicate Orphans Asia, SASPW and PWK are all likely to have operated together. On 10 August 2020, the Receivers and Managers' staff members physically attended the PWK registered office located at Level 36, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW 2000. This was a virtual office that had no physical presence.
- ASIC records disclose Orphans Asia's registered office and principal place of business as being the same as its sole director's residential address. Mr Dawson is the sole director of Orphans Asia.
- In late 2020, Mr Dawson was arrested by the New South Wales police force and charged with 48 fraud offences. The Liquidators understand Mr Dawson is still in police custody.

### 1.4 *Estimated assets*

The Liquidators have not received any books and records of Orphans Asia and have had to rely on searches of available public information and information provided by third parties to understand the assets of Orphans Asia as at the date of their appointment, which are detailed below.

Estimated assets			
Description	At appointment (\$)	Liquidators' estimate (\$)	ROCAP (\$)
Cash at bank	1,236.51	1,236.51	Unknown
<b>Total assets</b>	<b>1,236.51</b>	<b>1,236.51</b>	<b>Unknown</b>

The Liquidators identified one pre-appointment account in the name of Orphans Asia. The Liquidators have requested this account be closed and the closing balance be transferred to the Orphans Asia liquidation bank account.

At this stage and without further information becoming available, the Liquidators do not anticipate any further asset recoveries in the liquidation of Orphans Asia.

### 1.5 *Estimated liabilities*

Due to the lack of any books and records available, the Liquidators are unable to identify the extent of the liabilities of Orphans Asia. Investigations to date indicate there were various intercompany transactions between Orphans Asia, SASPW and PWK although amounts are yet to be quantified. No creditors have contacted the Liquidators in relation to Orphans Asia to date.

The Liquidators have insufficient evidence to indicate any secured creditors and the Personal Properties and Securities Register search results indicate no party has registered a security interest against Orphans Asia.

Accordingly, the Liquidators are unable to estimate Orphans Asia's liabilities at the date of this report.

### 1.6 *Investigations*

The Liquidators have commenced their statutory investigation into Orphans Asia's affairs using information made available by third parties and intend to lodge a section 533 report with ASIC shortly. Our investigations to date indicate the following:

- it appears Mr Dawson breached the director duties, obligations and responsibilities imposed on him pursuant to sections 180 to 184 of the *Corporations Act 2001 (the Act)*;
- it appears Mr Dawson breached sections 286 and 364 of the Act in respect of maintaining books and records to correctly record and explain Orphans Asia's transactions and financial position and performance; and
- the books and records were insufficient to establish insolvent trading and whether there are any voidable transactions (including unfair preference payments).



At this stage, we are unable to comment on whether there will be potential recoveries available for the benefit of creditors.

The Liquidators have submitted an Assetless Administration Fund (**AAF**) funding request with ASIC for PWK to conduct further investigations. The Liquidators will await ASIC's response before determining whether to submit an AAF funding request with ASIC for Orphans Asia.

## **2. Receipts and payment to date**

There have been no receipts and payments in the liquidation to date. The Liquidators are aware of a pre-appointment bank account with credit funds although the bank has not yet transferred the closing balance to the liquidation bank account.

## **3. Likelihood of a dividend**

A number of factors will affect the likelihood of a dividend being paid to creditors, including:

- the size and complexity of the liquidation;
- the amount of assets realisable and the costs of realising those assets;
- the statutory priority of certain claims and costs;
- the value of various classes of claims including secured, priority and unsecured creditor claims, and
- the volume of enquiries by creditors and other stakeholders.

Based on information available to us at this time, and absent any unforeseen issues, we consider it unlikely that a dividend may be payable to creditors with admitted claims in the liquidation.

If a dividend is going to be paid, you will be contacted before that happens and, if you have not already done so, you will be asked to lodge a proof of debt. This formalises the record of your claim in the liquidation and is used to determine all claims against Orphans Asia.

## **4. Cost of the liquidation**

As previously advised in the initial information to creditors, the Liquidators estimated that the total remuneration for the liquidation of Orphans Asia would be approximately \$75,000 (GST exclusive). However, remuneration can only be paid from available funds in the liquidation. We do not get paid if there are insufficient asset realisations and/or recoveries.

## **5. What happens next?**

We will proceed with the liquidation, which will include:

- recovering any further available property;
- determining whether to submit an AAF funding request with ASIC;
- finalising our investigations into SASPW's affairs;
- if identified, pursuing any viable claims for statutory recovery actions; and
- completing our reporting to the corporate insolvency regulator, ASIC.

The Liquidators estimate it may take more than one year to finalise the liquidation due to the complex nature of the investigations and ASIC's requirements.



**6. Where can you get more information?**

You can access information which may assist you on the following websites:

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

If you have any queries, please contact Ned Stevens on (07) 3333 9805. For further information about this engagement, please refer to the website [www.mcgrathnicol.com/creditors](http://www.mcgrathnicol.com/creditors).

Dated: 30 June 2021

Michael John Hill  
*Liquidator*

Enclosures:

- 1 Proof of Debt (Form 535) (if required)
- 2 Proof of Debt Guidance Notes (if required)
- 3 ARITA Information Sheet – Offences, Recoverable Transactions & Insolvent Trading

**FORM 535**  
FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

ACN  
"the Company"

To the Liquidator/Administrator of the Company

1. This is to state that the Company was on \_\_\_\_\_, and still is, justly and truly indebted to:  
\_\_\_\_\_ (name of creditor)  
of \_\_\_\_\_ (address of creditor)  
for \$ \_\_\_\_\_ and \_\_\_\_\_ cents (GST inclusive) GST amount \_\_\_\_\_

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

2. 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 \$c	Due Date

3. Select which of the below applies (choose one):

- The creditor is a company and I am signing as a director of the company
- The creditor is a company and I am signing as an authorised representative/duly constituted attorney of the company
- I am an individual and I am signing in my personal capacity (which includes employees)
- The creditor is a sole trader and I am signing as the proprietor
- The creditor is a partnership and I am signing as a partner of the partnership
- I am signing in my personal capacity as a member or contributory of the Company
- Other: \_\_\_\_\_

4. If you are a related party, state your relationship \_\_\_\_\_

5. Is this debt claimed on the basis of an assignment? Yes  No   
If so, what consideration was paid for the debt? \_\_\_\_\_

This debt was incurred for the consideration stated and the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Signature ..... Dated .....

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

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

I nominate to receive electronic notifications of documents in accordance with Section 600G of the Corporations Act at the following email address

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



## **Proof of Debt Guidance Notes**

(Please read carefully before filling in Form 535 or Form 536)

It is a creditor's responsibility to prove their claim to our satisfaction.

When lodging claims, creditors must ensure:

- the proof of debt form is properly completed in every particular; and
- evidence, as set out under "Information to support your claim", is attached to the Form 535 or Form 536.

### **Directions for completion of a Proof of Debt**

1. Insert the full name and address of the creditor.
2. Under "Consideration" state how the debt arose, for example "goods sold to the company on \_\_\_\_\_".
3. Under "Remarks" include details of any documents that substantiate the debt (refer to the section "Information to support your claim" below for further information).
4. Where the space provided for a particular purpose is insufficient to contain all the information required for a particular item, please attach additional information.

### **Information to support your claim**

Please note that unless you provide evidence to support the existence of the debt, your debt is not likely to be accepted. Detailed below are some examples of debts creditors may claim and a suggested list of documents that should accompany a proof of debt to substantiate the debt.

#### **Trade Creditors**

- Invoice(s) and statement(s) showing the amount of the debt; and
- Advice(s) to pay outstanding invoice(s) (optional).

#### **Guarantees/Indemnities**

- Executed guarantee/indemnity;
- Notice of Demand served on the guarantor; and
- Calculation of the amount outstanding under the guarantee.

#### **Judgment Debt**

- Copy of the judgment; and
- Documents/details to support the underlying debt as per other categories.

#### **Deficiencies on Secured Debt**

- Security Documents (eg. mortgage);
- Independent valuation of the secured portion of the debt (if not yet realised) or the basis of the creditor's estimated value of the security;
- Calculation of the deficiency on the security; and
- Details of income earned and expenses incurred by the secured creditor in respect of the secured asset since the date of appointment.

#### **Loans (Bank and Personal)**

- Executed loan agreement; and



- Loan statements showing payments made, interest accruing and the amount outstanding as at the date of appointment.

#### **Tax Debts**

- Documentation that shows the assessment of debts, whether it is an actual debt or an estimate, and separate amounts for the primary debt and any penalties.

#### **Employee Debts**

- Basis of calculation of the debt;
- Type of Claim (eg. wages, holiday pay, etc);
- Correspondence relating to the debt being claimed; and
- Contract of Employment (if any).

#### **Leases**

- Copy of the lease; and
- Statement showing amounts outstanding under the lease, differentiating between amounts outstanding at the date of the appointment and any future monies.

# Creditor Information Sheet

## Offences, Recoverable Transactions and Insolvent Trading



### Offences

**A summary of offences under the Corporations Act that may be identified by the administrator:**

180	Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.
181	Failure to act in good faith.
182	Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of the officer's position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.
198G	Performing or exercising a function or power as an officer while a company is under administration.
206A	Contravening a court order against taking part in the management of a corporation.
206A, B	Taking part in the management of corporation while being an insolvent, for example, while bankrupt.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of an auditor.
314-7	Failure to comply with requirements for the preparation of financial statements.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to the administrator.
588G	Incurring liabilities while insolvent
588GAB	Officer's duty to prevent creditor-defeating disposition
588GAC	A person must not procure a company to make a creditor-defeating disposition
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.
596AB	Entering into an agreement or transaction to avoid employee entitlements.

### Recoverable Transactions

#### **Preferences**

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under the Corporations Act.

#### **Creditor-defeating disposition**

Creditor-defeating dispositions are the transfer of company assets for less than market value (or the best price reasonably obtainable) that prevents, hinders or significantly delay creditors' access to the company's assets in liquidation. Creditor-defeating dispositions are voidable by a liquidator.

### **Uncommercial Transaction**

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to the benefit or detriment to the company; the respective benefits to other parties; and any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

### **Unfair Loan**

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only must be entered into before the winding up began.

### **Arrangements to avoid employee entitlements**

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person or from members of a corporate group (Contribution Order).

### **Unreasonable payments to directors**

Liquidators have the power to reclaim '*unreasonable payments*' made to directors by companies prior to liquidation. The provision relates to payments made to or on behalf of a director or close associate of a director. The transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

### **Voidable charges**

Certain charges over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six months of its creation.

## **Insolvent trading**

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they did so expect;
- they did not take part in management for illness or some other good reason; or
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

**Important note:** This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.

**Queries about the voluntary administration should be directed to the administrator's office.**