



Gognos Holdings Limited ACN 129 570 181
(Gognos)
Dynamic Agri Tech Limited ACN 060 891 796
(DAT)
(Both in Liquidation)
(collectively, the Companies)
Statutory Report to Creditors

We refer to our initial information for creditors dated 31 August 2018 in which we advised you of our appointment as Liquidators and your rights as a creditor in the Liquidations.

The purpose of this report is to:

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

1. Update on the progress of the Liquidations

1.1 *Background*

Below is a brief summary of Gognos and DAT's trading history:

- Jamie Harris and I were appointed as Liquidators of Gognos and DAT on 25 September 2017. An immediate stay was placed on the Liquidators' appointment and the Liquidators had no ability to exercise their powers in relation to the Companies until 3 August 2018. Between 25 September 2017 and 3 August 2018 the Companies did not trade;
- Gognos and DAT were not trading at our appointment on 25 September 2017;
- In her judgement delivered on 25 September 2017, Honourable Justice Bowskill (**Her Honour**) ordered that Gognos and DAT be wound up on just and equitable grounds;
- In determining whether the Companies be wound up, Her Honour found that there was a well-founded and justified lack of confidence in the conduct and management of Gognos and DAT, such as to give rise to a real risk to the public interest;
- In her judgement, Her Honour stated that she was satisfied on the evidence that Gognos and DAT had contravened and continued to contravene important provisions of the *Corporations Act 2001* (**the Act**) "aimed at ensuring the affairs of companies are appropriately regulated for the protection of shareholders and the public";
- The business of DAT was, or was intended to be the manufacture and distribution of an animal fodder production system. In her judgement, Her Honour stated that she accepted that the fodder production system was real and that those involved were enthusiastic about it and its potential;
- DAT intended to list on the Australian Securities Exchange (**ASX**);
- Gognos' business was to solely to raise funds, by way of issuing shares to members of the public; and act as an advisor for DAT in an initial public offering (**IPO**);
- Gognos' investors were advised that DAT would shortly list on the ASX and each share purchased in Gognos would be converted into three DAT shares upon its listing;
- In September 2010, DAT lodged a prospectus with the Australian Securities and Investments Commission (**ASIC**) stating its intention to list on the ASX through an IPO;
- Between November 2010 and August 2011, ten supplementary prospectuses were lodged with ASIC seeking an extension of the time required to raise the minimum subscription in order list;



- On 6 October 2011, after being unable to raise the minimum subscription, DAT withdrew its application to list on the ASX;
- DAT reportedly received numerous sales orders for its fodder production system however we understand only one fodder machine was sold by DAT;
- DAT obtained assurances from overseas investors to subscribe for its shares however no funds were ever received;
- As at 30 September 2015, Her Honour noted Gognos had raised \$7,717,975 from 115 shareholders for 25,098,568 shares on issue; and
- Funds raised by Gognos were used to fund DAT's operations and the development of the animal fodder production system.

We are continuing our investigations into Gognos and DAT's affairs prior to our appointment.

1.2 *Estimated Assets*

Gognos

The Liquidators identified two Commonwealth Bank of Australia bank accounts with a net overdrawn balance of approximately \$500. Accordingly, no funds have been recovered from the Gognos bank accounts.

Gognos has unpaid share capital of \$119,700. Investigations to determine the value of unpaid capital payable by individual shareholders and the likelihood of a recovery from these shareholders are continuing.

With the exception of unpaid share capital, I am yet to identify any further assets held by Gognos after conducting searches of all publically available databases. At this stage and without further information becoming available, the Liquidators do not anticipate any asset realisations in the liquidation of Gognos.

DAT

DAT is the ultimate holding company of Dynamic Agri Tech Finance Pty Ltd (**DATF**) and Dynamic Fodder Pty Ltd (**Fodder**). From the Liquidators' investigations to date, no assets have been identified in DATF or Fodder, at the date of this report.

The Liquidators' investigations indicate that capital funds were raised by Gognos and loaned to DAT and DATF through deposits into a bank account in the name of Fodder. The financial and operational undertakings of DAT, DATF and Fodder were conducted through Fodder. Investigations indicate that DAT did not hold a bank account, at any time prior to our appointment. From a search of the ASIC register, no external administrator has been appointed over DATF or Fodder at the date of this report.

DAT has unpaid share capital of \$13,778,846.92 owing from Gognos. As Gognos is currently in Liquidation, I do not anticipate there will be any recovery of DAT's unpaid share capital.

I am yet to identify any other assets held by DAT after conducting searches of all publically available databases. At this stage and without further information becoming available, the Liquidators do not anticipate any asset realisations in the Liquidation of DAT.

1.3 *Estimated Liabilities*

Set out below is a summary of Gognos and DAT's estimated liabilities based on investigations conducted by the Liquidators to date and the RATAs completed by the directors.



Gognos

Gognos – Estimated Liabilities				
Category	RATAs received (\$)		Liquidators' total estimate	
	Michael Zwar	Gary Lissa	Value (\$)	Number
Secured creditors as at 25 September 2017	-	-	-	-
Secured creditors as at 3 August 2018	-	-	-	-
Priority creditors as at 25 September 2017	-	-	-	-
Priority creditors as at 3 August 2018	-	-	-	-
Unsecured creditors as at 25 September 2017	466,282.00	771,709.58	826,262.00	3
Unsecured creditors as at 3 August 2018	466,282.00	910,374.18	826,262.00	3

DAT

DAT – Estimated Liabilities						
Category	RATAs received (\$)				Liquidators' total estimate	
	Michael Zwar	Gary Lissa	Matthew O'Leary	Russel Manfield	Value (\$)	Number
Secured creditors as at 25 September 2017	-	-	-	-	-	-
Secured creditors as at 3 August 2018	-	-	-	-	-	-
Priority creditors as at 25 September 2017	-	-	-	-	-	-
Priority creditors as at 3 August 2018	-	-	-	-	-	-
Unsecured creditors as at 25 September 2017	0	Unknown	Unknown	0	4,285,301.39	18
Unsecured creditors as at 3 August 2018	0	Unknown	Unknown	0	4,285,301.39	18

The Liquidators have been provided with insufficient records to confirm the accuracy of the number of creditors for Gognos and DAT.

The Liquidators have identified a series of potential creditors in their statutory investigations and have written to these parties during the course of the Liquidations.

Based on our investigations to date, the Liquidators have not identified any priority or secured creditors in the liquidations of Gognos and DAT.



1.4 *Investigations*

We have commenced our statutory investigations into the affairs of Gognos and DAT and summarise the status of these investigations below:

- in her judgement, Her Honour stated that the directors of both Gognos and DAT may have breached their directors duties, obligations and responsibilities imposed on them pursuant to Sections 180-184, 250N, 286, 292, 314 and 319 of the Act. The Liquidators' investigations support Her Honour's findings;
- investigations with respect to the directors' conduct prior to the stay on proceedings and appointment of the Liquidators are ongoing; and
- investigations with respect to insolvent trading and voidable transactions (including unfair preference payments) are ongoing.

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

We anticipate our statutory investigations will be finalised within three months from the date of this report, following which we will report our findings to ASIC.

1.5 *Books and Records*

Following the stay being lifted, the Liquidators made a series of requests to the directors of Gognos and DAT to complete RATAs as at 25 September 2017 and 3 August 2018. Additionally, I requested the directors provide me with the books and records of Gognos and DAT.

I have received RATAs from all but one of the directors of the Companies and have sent a follow-up demand requesting the immediate completion of the RATAs. I expect to receive the RATAs shortly. If I do not receive the outstanding RATAs, I will seek assistance from ASIC to obtain compliance.

1.6 *Outstanding Matters*

The following matters remain outstanding for the Liquidations:

- finalisation of investigations with respect to potential insolvent trading, the conduct of the directors and voidable transactions (including unfair preference payments) and recovery actions (if available);
- investigations and potential recovery actions into the unpaid share capital of Gognos; and
- lodgement of our Section 533 report, which reports the outcome of our statutory investigations to ASIC.

2. **Receipts and payment to date**

The Liquidators have not entered into any transactions during the course of the Liquidations and there are no reportable receipts and payments for either Gognos or DAT to disclose to creditors.

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 Liquidations;
- 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 and unsecured creditor claims, and
- the volume of enquiries by creditors and other stakeholders.



Based on information available to us at this time, we consider it unlikely that a dividend may be payable to creditors with admitted claims in the Liquidations.

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 respective Liquidation and is used to determine all claims against Gognos and DAT.

4. Cost of the Liquidations

As previously advised in our initial information to creditors, we have estimated that our total remuneration for each Liquidation will be approximately \$15,000 to \$30,000 (excluding GST).

I note that remuneration can only be paid from available funds in the Liquidations. In the absence of asset realisations or recoveries, it is anticipated that the Liquidators will not be paid any portion of their estimated remuneration from the available funds.

5. What happens next?

We will proceed with the Liquidations, which will include:

- completing our investigations into Gognos and DAT's affairs and conduct of the directors prior to our appointment;
- if identified, pursuing any viable claims for statutory recovery actions; and
- completing our statutory reporting to the corporate insolvency regulator, ASIC.

If we receive a request for a meeting that complies with the guidelines set out in the initial information provided to you, we will hold a meeting of creditors.

We may write to you again with further information on the progress of the Liquidations.

We expect to have completed the Liquidations within 12 months from the date of this report.

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.
- ASIC at www.asic.gov.au (search for "insolvency information sheets").

If you have any queries, please contact Madison Maurer on (07) 3333 9853. For further information about this engagement, please refer to the website www.mcgrathnicol.com/creditors/gognos-holdings-limited-dynamic-agri-tech-limited/.

Dated: 29 October 2018

Michael John Hill
Liquidator

Enclosures:

- 1 Proof of Debt (Form 535) (x2)
- 2 Proof of Debt Guidance Notes
- 3 ARITA Information Sheet – Offences, Recoverable Transactions and Insolvent Trading

FORM 535
FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)
 Gognos Holdings Limited
 (In Liquidation)
 ACN 129 570 181
(Gognos)

To the Liquidator of Gognos

1. This is to state that Gognos was on 25/09/2017 and still is, justly and truly indebted to _____
 of _____
 for \$ _____

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:

Date	Drawer	Acceptor	Amount \$c	Due Date

3. I am employed by the creditor and authorised in writing by the creditor to make this statement.
 I am the creditor's agent authorised in writing to make this statement in writing.
 I make this claim personally.

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

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

<input type="checkbox"/>	I nominate to receive electronic notifications of documents in accordance with Section 600G of the Corporations Act at the following email address: Email: _____
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Dated this _____ day of _____ 20____

Signature

Occupation

Address

Return email

(Attach documentation such as copies of invoices in support of your claims)

FORM 535
FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)
 Dynamic Agri Tech Ltd
 (In Liquidation)
 ACN 060 891 796
 (DAT)

To the Liquidator of DAT

1. This is to state that DAT was on 25/09/2017 and still is, justly and truly indebted to _____
 of _____
 for \$ _____

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:

Date	Drawer	Acceptor	Amount \$c	Due Date

3. I am employed by the creditor and authorised in writing by the creditor to make this statement.
 I am the creditor's agent authorised in writing to make this statement in writing.
 I make this claim personally.

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

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

<input type="checkbox"/>	I nominate to receive electronic notifications of documents in accordance with Section 600G of the Corporations Act at the following email address: Email: _____
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Dated this _____ day of _____ 20____

Signature

Occupation

Address

Return email

(Attach documentation such as copies of invoices in support of your claims)



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.
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.

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.

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. It will only be necessary to satisfy the court that there was a breach on the balance of probabilities. There is no time limit on when the transaction occurred.

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.