



CIMC Rolling Stock Australia Pty Ltd (In Liquidation)

ACN 083 334 696

(RSA)

Update to Creditors

We refer to our appointment as Liquidators of RSA on 3 May 2018 and our Update to Creditors dated 23 July 2019. Set out below is a further update regarding the winding up.

Task	Update
Unfair preference claim – Australian Taxation Office (“ATO”)	<p>On 29 July 2019, the ATO made a without prejudice offer of \$330,000 (Offer) in full and final settlement of the unfair preference claim made by the Liquidators against the ATO.</p> <p>I undertook a detailed review of the Offer, including modelling the range of possible outcomes in relation to the gross claim amount of \$590,746, including the potential for RSA to pursue recovery of the unfair preference claim through litigation. Based on that work, I concluded that accepting the Offer was in the best interests of RSA’s creditors, for reasons that included:</p> <ul style="list-style-type: none">▪ the range of further legal and professional costs that would have been incurred, only some of which would have been recoverable if the proceedings were successful;▪ the inherent risk in pursuing any litigation;▪ the Offer represented certainty of funds recovered for the benefit of RSA’s creditors; and▪ the timely and cost effective manner in which the funds were recovered, compared to the time and costs of the litigation. <p>Accordingly, the Liquidators formally accepted the Offer on 9 August 2018 and the ATO paid the settlement proceeds of \$330,000 to RSA on 12 August 2019.</p>
Unfair preference claim – Freightliner	<p>As previously advised, we have issued formal correspondence to Freightliner detailing the unfair preference claim of \$3.88m.</p> <p>Freightliner requested certain documents to enable it to respond to the claim and agreed to cover the Liquidators’ costs up to \$3,545 (excluding GST) to compile the requested information.</p> <p>We have now provided that information to Freightliner and await Freightliner’s further response to the unfair preference claim.</p> <p>I consider it would be in the interests of RSA’s creditors for the Liquidators to continue to retain solicitors to assist with this matter. This may require the Liquidators to enter into an agreement with solicitors that may require them to provide services that extend beyond a period of three months. An agreement of that nature requires the Liquidators to obtain creditors’ approval.</p>



Task	Update
Notice of Proposal	<p>Accordingly, I enclose a Notice of Proposal for creditors to consider and, if thought fit, approve the Liquidators entering into an agreement that may involve a term or obligations that extend for more than three months.</p> <p>Please complete the notice and return it with any supporting documents by no later than 27 September 2019 for your vote to be counted, by email to pcashman@mcgrathnicol.com.</p> <p>Your claim against RSA must be admitted by the Liquidators for the purposes of voting for your vote to count. If you have not already done so, please submit a Proof of Debt form and supporting documents.</p> <p>To assist you, enclosed is a Proof of Debt, guidance notes and an ARITA proposals information sheet.</p>
Liquidators' remuneration	<p>To date, Liquidators' remuneration totalling \$336,414 (GST exclusive), as set out below, has been approved by creditors and paid to the Liquidators during the liquidation:</p> <ul style="list-style-type: none">▪ \$233,278 (GST exclusive) for the period 3 May 2018 to 7 October 2018;▪ \$63,580 (GST exclusive) for the period 8 October 2018 to 26 April 2019; and▪ \$39,556 (GST exclusive) for the period 27 April 2019 to 26 July 2019, which was less than the maximum amount of \$70,000 (GST exclusive) approved by creditors for that period. <p>We propose to request creditor approval of our remuneration for periods after 26 July 2019 when it becomes clearer whether legal proceedings will be required to recover the Freightliner preference claim.</p>
Estimated time and costs to complete the liquidation	<p>The estimated time and costs to complete the liquidation is subject to whether Freightliner disputes or pays the unfair preference claim. If Freightliner disputes the unfair preference claim, formal legal proceedings may be required to resolve the claim and it is difficult to estimate the time required to resolve the proceedings until the position of Freightliner is clearer.</p> <p>Should legal proceedings be required, we will request an estimate of time and costs from our solicitors, which we will provide to creditors.</p>

If you have any queries, please contact Patrick Cashman on (07) 3333 9828. For further information about this engagement, please refer to the website www.mcgrathnicol.com/creditors/cimc-rolling-stock-australia-pty-ltd/.

Dated: 27 August 2019

Anthony Connelly
Liquidator



Enclosures:

- 1 Notice of Proposal to Creditors #1
- 2 Proof of Debt (Form 535)
- 3 Proof of Debt Guidance Notes
- 4 ARITA Proposals Information Sheet



CIMC Rolling Stock Australia Pty Ltd (In Liquidation)
ACN 083 334 696
(RSA)

Notice of Proposal to Creditors – Three month agreement

Proposal for creditor approval

I request approval of the following resolution:

“That so far as necessary for the beneficial winding up of CIMC Rolling Stock Australia Pty Ltd (In Liquidation), the Liquidators are hereby authorised, pursuant to section 477(2B) of the Corporations Act, to enter any agreements on behalf of CIMC Rolling Stock Australia Pty Ltd (In Liquidation) involving a term or obligation extending more than three months.”

Vote on proposal

Creditors have the option of approving, not approving or objecting to the proposal being resolved without a meeting of creditors. If more than 25% of responding creditors object to the proposal being resolved without a meeting of creditors, a meeting of creditors would be required to be convened to pass the resolution.

Please select the appropriate Yes, No or Object box referred to below:

- Yes I approve the proposal.
- No I do not approve the proposal.
- Object I object to the proposal being resolved without a meeting of creditors.

Your claim against RSA must be admitted for the purposes of voting by the Liquidator for your vote to count. Please select the option that applies:

- I have previously submitted a proof of debt form and supporting documents.
- I have enclosed a proof of debt form and supporting documents with this proposal form.

Creditor details

Name of creditor: _____ ACN/ABN (if applicable): _____

- I am not a related creditor of RSA.
- I am a related creditor of RSA, relationship:

Address: _____

Name of creditor/authorised person: _____

Signature: _____ Date: _____



Reasons for the proposal and the likely impact it will have on creditors if it is passed

If the resolution is passed, the Liquidators will rely upon the resolution to enter into an agreement with the law firm Thomson Geer for work that may be undertaken over a period of more than three months. The work to be undertaken relates to RSA's legal claim against Freightliner Australia Pty Ltd.

Return of forms

Please complete this document and return it with any supporting documents by no later than **27 September 2019** for your vote to be counted, by email to pcashman@mcgrathnicol.com. Completed forms may also be returned using the enclosed prepaid envelope.

If you have any queries, please contact Patrick Cashman on (07) 3333 9828.

Dated: 27 August 2019

Anthony Connelly
Liquidator

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

ACN
(RSA)

To the Liquidator of RSA

1. This is to state that RSA was on 3 May 2018 and still is, justly and truly indebted to _____ of _____ for \$ _____

Date	Consideration (state how the debt arose)	Amount \$	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 \$	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

<p>I nominate to receive electronic notifications of documents in accordance with Section 600G of the Corporations Act at the following email address:</p> <p>Email: _____</p>
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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.

Information sheet: Proposals without meetings

You may be a creditor in a liquidation, voluntary administration or deed of company arrangement (collectively referred to as an external administration).

You have been asked by the liquidator, voluntary administrator or deed administrator (collectively referred to as an external administrator) to consider passing a proposal without a meeting.

This information sheet is to assist you with understanding what a proposal without a meeting is and what your rights as a creditor are.

What is a proposal without a meeting?

Meetings of creditors were previously the only way that external administrators could obtain the views of the body of creditors. However, meetings can be very expensive to hold.

A proposal without a meeting is a cost effective way for the external administrator to obtain the consent of creditors to a particular course of action.

What types of proposals can be put to creditors?

The external administrator is able to put a range of proposals to creditors by giving notice in writing to the creditors. There is a restriction under the law that each notice can only contain a single proposal. However, the external administrator can send more than one notice at any single time.

What information must the notice contain?

The notice must:

- include a statement of the reasons for the proposal and the likely impact it will have on creditors if it is passed
- invite the creditor to either:
 - vote yes or no to the proposal, or
 - object to the proposal being resolved without a meeting, and
- specify a period of at least 15 business days for replies to be received by the external administrator.

If you wish to vote or object, you will also need to lodge a Proof of Debt (POD) to substantiate your claim in the external administration. The external administrator will provide you with a POD to complete. You should ensure that you also provide documentation to support your claim.

If you have already lodged a POD in this external administration, you do not need to lodge another one.

The external administrator must also provide you with enough information for you to be able to make an informed decision on how to cast your vote on the proposal. With some types of proposals, the law or ARITA's Code of Professional Practice sets requirements for the information that you must be provided.

For example, if the external administrator is asking you to approve remuneration, you will be provided with a Remuneration Approval Report, which will provide you with detailed information about how the external administrator's remuneration for undertaking the external administration has been calculated.

What are your options if you are asked to vote on a proposal without a meeting?

You can choose to vote yes, no or object to the proposal being resolved without a meeting.

How is a resolution passed?

A resolution will be passed if more than 50% in number and 50% in value (of those creditors who did vote) voted in favour of the proposal, but only so long as not more than 25% in value objected to the proposal being resolved without a meeting.

What happens if the proposal doesn't pass?

If the proposal doesn't pass and an objection is not received, the external administrator can choose to amend the proposal and ask creditors to consider it again or the external administrator can choose to hold a meeting of creditors to consider the proposal.

The external administrator may also be able to go to Court to seek approval.

What happens if I object to the proposal being resolved without a meeting?

If more than 25% in value of creditors responding to the proposal object to the proposal being resolved without a meeting, the proposal will not pass even if the required majority vote yes. The external administrator will also be unable to put the proposal to creditors again without a meeting.

You should be aware that if you choose to object, there will be additional costs associated with convening a meeting of creditors or the external administrator seeking the approval of the Court. This cost will normally be paid from the available assets in the external administration.

This is an important power and you should ensure that it is used appropriately.

Where can I get more information?

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides information to assist creditors with understanding external administrations and insolvency.

This information is available from ARITA's website at artia.com.au/creditors.

ASIC also provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at asic.gov.au (search for "insolvency information sheets").