



Seawest International Pty Ltd (In Liquidation)
ACN 009 428 004
(Seawest)

Statutory Report to Creditors

We refer to our initial information for creditors dated 9 February 2018 in which we advised you of our appointment as liquidators of Seawest (**Liquidators**) 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 Background and Trading history

Seawest was incorporated on 19 July 1993, having its registered office at Unit 8, 24 Parkland Road, Osborne Park WA 6017 and its principal place of business listed as the director's personal address. The Liquidators understand that the Seawest business operated from a leased premises at 4 Kalmia Road, Bibra Lake WA 6163. Seawest's sole director is Mr Glenn Hawes.

Seawest was a marine services company operating predominantly in the north-west of Western Australia. We understand that Seawest operated as the trading company in a group of related entities.

Investigations to date indicate that Seawest ceased trading in or around August 2017. Prior to this date we understand Seawest operated a marine services business with prior year revenues of circa \$6.8 million in FY15, \$4.4 million in FY16 and \$4.6 million in FY17 (per management accounts).

Seawest did not employ at the date of the Liquidators' appointment. We understand that employment services were provided by a related entity, Marine Manning Services Pty Ltd (**Marine Manning**), an entity now also in liquidation. We also understand that Seawest held no tangible assets at the date of the Liquidators' appointment.

In carrying out its day to day operations Seawest utilised marine vessels and a number of motor vehicles and trailers provided by related entities, Renbec Pty Ltd (**Renbec**) and Villioso Pty Ltd (**Villioso**) (now both in liquidation) respectively under informal hire arrangements.

1.2 Estimated assets and liabilities

Mr Hawes has completed a Report as to Affairs (**RATA**) setting out Seawest's financial position. A summary of the RATA and our view on realisable values is as follows:

Summary of Financial Position and Director's RATA			
\$	Notes	Director's RATA ERV	Liquidators' ERV
Assets	1.2.1	-	-
Total		-	-
Liabilities			
Priority employee creditors	1.2.2	-	-
Secured creditors	1.2.3	-	(6,876,039)
Partly secured creditors	1.2.4	(828,000)	-
Unsecured creditors	1.2.5	(5,532,536)	(5,532,536)
Statutory creditors (ATO)	1.2.6	-	(15,062,883)
Total		(6,360,536)	(27,471,459)
Net assets / (liabilities)		(6,360,536)	(27,471,459)



1.2.1 *Assets*

Mr Hawes' RATA reported nil assets. Both Seawest management accounts (current and historical) and prior year financial statements indicate Seawest held significant assets, including trade debtors, marine vessels and plant and equipment.

In relation to trade debtors, an outstanding balance of circa \$32,000 was reported in management accounts as at the date of appointment. It has since been confirmed all outstanding pre-appointment debtors of Seawest are subject of a garnishee order in favour of the ATO, which remains in force. Accordingly, no amounts in relation to pre-appointment debtors are expected to be recovered by the liquidators.

Investigations are continuing in relation to other balance sheet assets recorded in management accounts and prior year accountant prepared financial statements, in particular vessels historically owned by Seawest. It appears all historically owned vessels have been since transferred to related and/or third party entities (refer investigations section).

1.2.2 *Priority employee creditors*

Mr Hawes' RATA reported nil employee related liabilities on the basis that Seawest was not the employing entity within the Seawest Group. We understand that all employees who participated in Seawest operations were employed directly by Marine Manning. Mr Hawes advises these labour services were provided to Seawest via an informal service arrangement between Marine Manning and Seawest. This requires further investigation.

1.2.3 *Secured creditors*

Commonwealth Bank of Australia Limited (**CBA**) holds a valid and enforceable PPSR registration over all present and after-acquired property of Seawest subject to a General Security Agreement (**GSA**). Whilst a formal proof of debt has not been provided at this time, we understand CBA is owed circa \$0.8 million in relation to historical lending facilities. In addition to the security of all present and after-acquired property of Seawest, the CBA debt is secured in general by a combination of guarantees from related asset holding entities, Renbec and Villioso, and real property owned by the Mr Hawes' wife.

Malaga Properties Pty Ltd (**Malaga Properties**) has a registered Purchase Money Security Interest (**PMSI**) against a marine vessel known as Seabus. We understand that \$2.3 million was loaned to Seawest in relation to the construction of Seabus in February 2013. With subsequent lending and the capitalisation of interest and charges, we understand Malaga Properties claims to be owed circa \$6.0 million from Seawest and related entity Renbec (via its guarantee of the Seawest borrowings).

1.2.4 *Partly secured creditors*

Mr Hawes' RATA discloses CBA as a partly secured creditor for \$828,000 (discussed at section 1.2.3 above).

1.2.5 *Unsecured creditors*

Mr Hawes' RATA discloses unsecured creditors totalling circa \$5.4 million, including \$4.1 million owed to related party, Renbec and \$0.9 million owed to related party Villioso as trustee for the G Hawes Family Trust. The Liquidators review of related party claims is ongoing.

The Liquidators have not sought proofs of debt from creditors to date and have not identified any material, unsecured creditors that are not disclosed in the RATA, with the exception of the Australian taxation Office (**ATO**) (as discussed at section 1.2.6 of this report).

1.2.6 *Statutory creditors*

The Deputy Commissioner of Taxation supported a winding up application against Seawest, filed on 29 November 2017 in relation to outstanding Running Balance Account deficits in respect of Business Activity Statement amounts outstanding (PAYG withholding and GST), income tax liabilities and Superannuation guarantee charge debt.

The ATO has submitted a proof of debt to the Liquidators totalling \$15.1 million, the vast majority of which relates to unpaid PAYG withholding tax and superannuation contributions. Following a significant investigation and audit



of Seawest, the ATO (for taxation liability purposes) has deemed Seawest to be the employing entity within the Seawest Group, and therefore responsible for all employee related statutory liabilities.

2 Receipts and payments

There have not been any receipts or payments in the liquidation to date.

3 Investigations

We have obtained books and records in relation to the affairs of Seawest from the company's (i) former principal place of business at Bibra Lake, including an image of the company's computer server, and (ii) external accountant. To the extent that (i) these records are very limited in nature and quantum, and (ii) we are advised by Mr Hawes and the company's external accountant that no other records remain in their possession, the Liquidators have formed the view that Seawest did not fulfil its obligations to keep company records in accordance with section 286 of *the Corporations Act 2001 (The Act)*.

Notwithstanding the above, the Liquidators are continuing their investigations with information at hand and via enquiries with third parties. These investigations to date have been focussed on historical asset transfers between Seawest and related entities, and the identification of potential uncommercial and/or voidable transactions.

4 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, we consider it unlikely that a dividend will be payable to unsecured creditors with admitted claims in the liquidation, and entirely dependent on liquidator recoveries.

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 Seawest.

5 Cost of the liquidation

Due to the liquidation being unfunded to date, we do not intend to seek fee approval at this stage.

In the event funds become available to satisfy our outstanding remuneration, we propose to have our remuneration approved by proposal without convening a meeting. Should this be necessary, we will provide a Remuneration Report to creditors at that time.

6 What happens next?

We will proceed with the liquidation, which will include:

- Further request and recovery of books and records of the company;
- Investigating and recovering any available property;
- completing our statutory investigations into Seawest's affairs pursuant to the Act;
- if identified, pursuing any viable claims for statutory recovery actions; and
- completing our reporting to the corporate insolvency regulator, the Australian Securities and Investments Commission (**ASIC**).

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



The timing of the completion of the liquidation will be dependent on several factors, including the time that may be required to obtain books, records, funds and assets that hold them. We expect to have completed this liquidation within 12 to 24 months.

7 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 Andrew Boys on (08) 6363 7643.

Dated: 11 April 2018

A handwritten signature in black ink, appearing to read 'Rob Kirman'.

Rob Kirman
Liquidator

Enclosures:

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

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

To the Liquidators of Seawest International Pty Ltd (In Liquidation)

1. This is to state that the Company was on 11 January 2018, and still is, justly and truly indebted to:

(full name and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor) for \$_____and_____cents.

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. I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

*3. I am the creditor's agent authorised in writing to make this statement in writing. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

.....
Signature
Occupation:
Address

Dated

Proof of Debt Reference:



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 Rights in Liquidations

As a creditor, you have rights to request meetings and information or take certain actions:



Right to request a meeting

In liquidations, no meetings of creditors are held automatically. However, creditors with claims of a certain value can request in writing that the liquidator hold a meeting of creditors.

A meeting may be requested in the first 20 business days in a creditors' voluntary liquidation by $\geq 5\%$ of the value of the debts held by known creditors who are not a related entity of the company.

Otherwise, meetings can be requested at any other time or in a court liquidation by:

- $> 10\%$ but $< 25\%$ of the known value of creditors on the condition that those creditors provide security for the cost of holding the meeting
- $\geq 25\%$ of the known value of creditors
- creditors by resolution, or
- a Committee of Inspection (this is a smaller group of creditors elected by, and to represent, all the creditors).

If a request complies with these requirements and is 'reasonable', the liquidator must hold a meeting of creditors as soon as reasonably practicable.

Right to request information

Liquidators will communicate important information with creditors as required in a liquidation. In addition to the initial notice, you should receive, at a minimum, a report within the first three months on the likelihood of a dividend being paid.

Additionally, creditors have the right to request information at any time. A liquidator must provide a creditor with the requested information if their request is 'reasonable', the information is relevant to the liquidation, and the provision of the information would not cause the liquidator to breach their duties.

A liquidator must provide this information to a creditor within 5 business days of receiving the request, unless a longer period is agreed. If, due to the nature of the information requested, the liquidator requires more time to comply with the request, they can extend the period by notifying the creditor in writing.

Requests must be reasonable.

They are not reasonable if:

Both meetings and information:

- (a) complying with the request would prejudice the interests of one or more creditors or a third party
- (b) there is not sufficient available property to comply with the request
- (c) the request is vexatious

Meeting requests only:

- (d) a meeting of creditors dealing with the same matters has been held, or will be held within 15 business days

Information requests only:

- (e) the information requested would be privileged from production in legal proceedings
- (f) disclosure would found an action for breach of confidence
- (g) the information has already been provided
- (h) the information is required to be provided under law within 20 business days of the request

If a request is not reasonable due to (b), (d), (g) or (h) above, the liquidator must comply with the request if the creditor meets the cost of complying with the request.

Otherwise, a liquidator must inform a creditor if their meeting or information request is not reasonable and the reason why.

Right to give directions to liquidator

Creditors, by resolution, may give a liquidator directions in relation to a liquidation. A liquidator must have regard to these directions, but is not required to comply with the directions.

If a liquidator chooses not to comply with a direction given by a resolution of the creditors, they must document their reasons.

An individual creditor cannot provide a direction to a liquidator.

Right to appoint a reviewing liquidator

Creditors, by resolution, may appoint a reviewing liquidator to review a liquidator's remuneration or a cost or expense incurred in a liquidation. The review is limited to:

- remuneration approved within the six months prior to the appointment of the reviewing liquidator, and
- expenses incurred in the 12 months prior to the appointment of the reviewing liquidator.

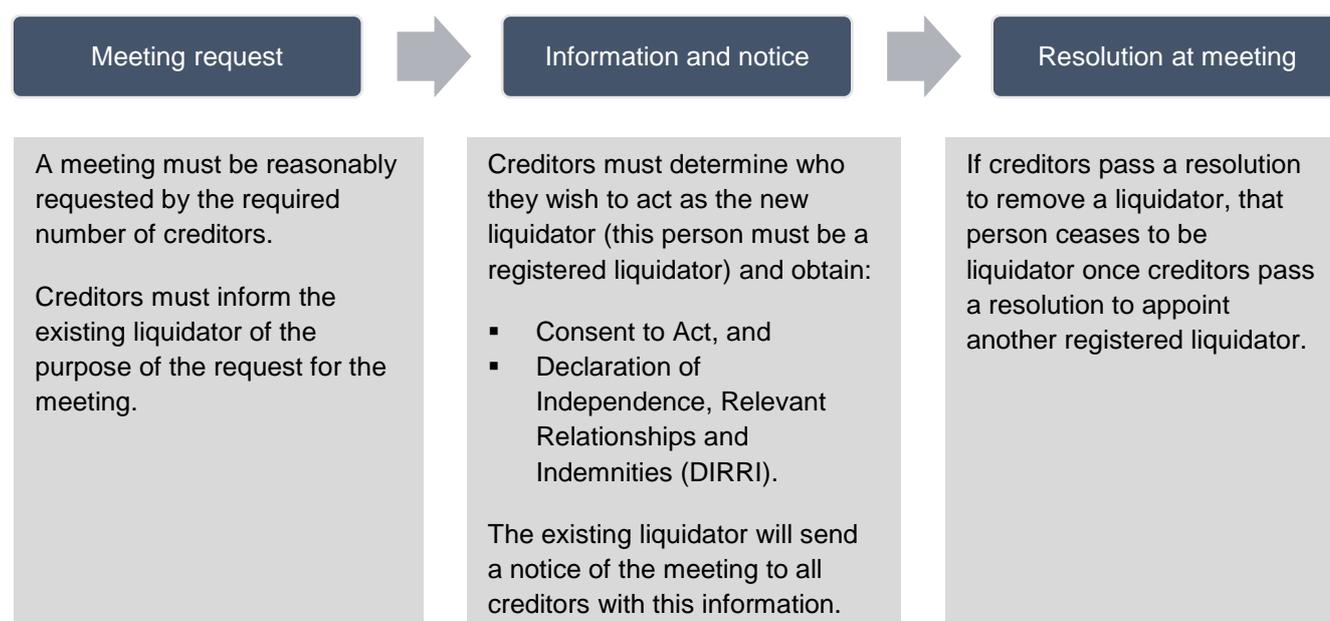
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

An individual creditor can appoint a reviewing liquidator with the liquidator's consent, however the cost of this reviewing liquidator must be met personally by the creditor making the appointment.

Right to replace liquidator

Creditors, by resolution, have the right to remove a liquidator and appoint another registered liquidator.

For this to happen, there are certain requirements that must be complied with:



For more information, go to www.arita.com.au/creditors