



Data Republic Pty Ltd (In Liquidation)
ACN 602 442 044
(Data Republic)

Statutory Report to Creditors

We refer to our appointment as liquidators (**Liquidators**) of Data Republic at the second meeting of creditors on 11 June 2021. The purpose of this report is to provide you with an update on the progress of the liquidation, including updated estimates of the returns to creditors.

This report is to be read in conjunction with our Administrators' report to creditors pursuant to 75-225 of the *Insolvency Practice Rules (Corporations) 2016* (Cth) dated 4 June 2021 and supplementary report dated 10 June 2021 (together, **Administrators' Report**).

Defined terms in this report are consistent with those in the Administrators' Report.

1. Update on the progress of the liquidation

1.1 Sale process

As previously advised, Data Republic executed an asset sale agreement (**ASA**) with IXUP Limited on 4 June 2021. Both parties have now completed their obligations under the ASA and the sale is finalised. The \$3.0m consideration has been received in full.

1.2 Research and Development (R&D) refund

The R&D claim has been prepared for lodgement. The claim has been finalised at \$1.4m, which represents a material increase on the \$515,000 estimated in the Administrators Report.

Commencing with the 2021 financial year, AusIndustry updated the process for lodging R&D claims. This new platform has delayed lodgement of the claim as we have had to request access to the platform manually via the ATO, who has yet to respond to this request. We continue to follow up the ATO and will lodge the claim as soon as possible. We understand refunds are generally received between two to four months following lodgement of the R&D claim. Accordingly, if the claim is approved, we expect to receive the refund by 31 December 2021.

1.3 Distribution to priority creditors

In the Administrators' Report to Creditors, we foreshadowed making a first and final dividend to priority (employee) creditors shortly after Data Republic entered liquidation. This distribution was paid on 16 August 2021 and all employee entitlements have now been paid in full.

2 Updated estimated returns to creditors

As outlined below, we estimate a return to unsecured creditors of between 48 to 100 cents in the dollar. This compares to the estimate of 56 to 76 cents in the Administrators Report. The low estimate has decreased due to the identification of further potential creditor claims (refer 2.8 below). The high side estimate has increased due to an increased in the R&D refund amount (refer 1.2 above and 2.2 below).

The key variable between the low and high estimate is the quantum of the R&D refund anticipated to be received.



Data Republic Pty Ltd - estimated return to creditors

\$'000	Note	ERV	
		Low	High
Recoveries			
Cash on hand	2.1	1,610	1,610
R&D refund	2.2	-	1,400
Bank guarantee refunds	2.3	200	300
Voidable transactions	2.4	-	-
Insolvent trading	2.4	-	-
Cost of realisation			
Net residual expenses	2.5	(165)	(151)
Further liquidator fees (subject to approval)	2.6	(95)	(130)
Estimated future legal costs	2.7	(10)	(5)
Estimated amount available to creditors		1,540	3,024
Unsecured creditors			
Trade creditors	2.8	(1,010)	(660)
Convertible note holders	2.9	(2,201)	(2,201)
Total estimated unsecured creditor claim		(3,211)	(2,860)
<i>Estimated dividend to unsecured creditors (cents/\$)</i>		<i>48</i>	<i>100</i>
Estimated surplus to shareholders		-	164

2.1 Cash on hand

- This represents cash at bank as at 6 September 2021 (following the priority creditor distribution that occurred on 16 August 2021).

2.2 R&D refund

- The low scenario assumes the R&D claim is rejected and therefore no recovery.
- The high scenario assumes the full value (\$1.4m) of the R&D claim is recovered.

2.3 Bank guarantees

- The low scenario (\$200,000) assumes the full recovery from a credit card facility bank guarantee (\$100,000) and a 50% recovery (\$100,000) from a leased property bank guarantee. The leased property bank guarantee recovery estimate is based on a 50% return to the landlord via a dividend (i.e. per our low side estimate to unsecured creditors), which accordingly would result in the landlord drawing upon the bank guarantee to recover the other 50% of its pre-appointment claim.
- The high scenario (\$300,000) reflects the full recovery of the credit card (\$100,000) and leased property (\$200,000) guarantees.
- We have secured the return of the credit card bank guarantee and are currently liaising with Data Republic's former landlord regarding the recovery of the leased property guarantee.

2.4 Voidable transactions and insolvent trading

- Consistent with what was initially detailed in Section 9.2 of our Administrators' Report dated 4 June 2021, our further investigations have not identified any potential voidable transactions nor any insolvent trading. As further detailed in section 3 below, we have now submitted our findings to ASIC outlining that our investigations have not uncovered any director misconduct, voidable transactions, or any insolvent trading. As a consequence there are no recoveries to pursue.



2.5 *Net residual expenses*

- Both the high and low scenarios reflect residual amounts payable in relation to software application expenses (c.\$2,000), PAYG (c.\$228,000) due to the ATO, offset by amounts due from IXUP (c.\$80,000). The low scenario also reflects a contingency (c.\$15,000) for any unforeseen expenses.

2.6 *Liquidators' Remuneration*

- Further details are outlined at section 6.

2.7 *Estimated future legal costs*

- We have allowed a small contingency for future legal advice should any creditor queries arise during the proof of debt adjudication process that require same.

2.8 *Trade creditors*

- The high scenario reflects creditor amounts as at 6 May 2021 based on Data Republic's books and records and proof of debts received. The low scenario reflects the inclusion of a proof of debt subsequently received from Google for \$350,000 which was not reflected in Data Republic's books and records. Noting that Google's claim relates to an unpaid amount claiming to be owing from September 2019, we are investigating the validity of this claim and will resolve the matter with Google prior to formalising the unsecured creditor distribution.

2.9 *Convertible notes*

- Both the high and low scenarios are based on outstanding amounts due on the convertible notes and accrued interest as at 6 May 2021.

3 **Investigations undertaken**

Consistent with our findings in the Administrators' Report, our further investigations have confirmed that Data Republic did not become insolvent until the date of our appointment. Our investigations also concluded that there was no indication of any of the following, each of which require the liquidator to prove insolvency to bring a recovery action:

- insolvent trading;
- unfair preferences; or
- uncommercial transactions

Our further investigations also confirmed that there were no potential claims for unfair loans and unreasonable director related transactions.

We have completed our review of potential misconduct by the directors, such as breaches of the statutory duties owed by directors to act with care and diligence and in good faith. We have not identified any actionable misconduct.

We have completed all investigations and lodged a report with ASIC confirming that we have not identified any evidence to support any allegations of misconduct by the directors or potential claims regarding the above matters.

4 **Receipts and payment to date**

Enclosed are details of all receipts and payments in the liquidation to 6 September 2021.

5 **Likelihood of a distribution**

As outlined above, priority creditors have been paid in full. Furthermore, we estimate that unsecured creditors should receive between 48 to 100 cents in the dollar, the key variables being the receipt of the full R&D claim, recovery of bank guarantees and the validity of the Google claim.

Due to the uncertainty surrounding the quantum and timing of the R&D refund, we intend to make an interim distribution to creditors of approximately 35 cents in the dollar by 31 October 2021. A final distribution will be made following the outcome of the R&D claim.



Creditors will shortly receive notice of the interim distribution and if they have not already done so, will be asked to lodge a proof of debt. Proofs of debt formalises creditor claims in the liquidation and is used to determine all claims against Data Republic for the purposes of paying the dividend.

6 Cost of the liquidation

Our prospective fees for the cost of this liquidation were approved at the second meeting of creditors at an initial amount of \$100,000. Our costs in the liquidation to date have now exceeded \$170,000 due to the following factors:

- the transfer of technology and software applications to IXUP became protracted due to the complexity involved and the requirement to maintain customer services during the transfer period (which in turn reduced claims against the Company);
- providing additional transitional support to IXUP in relation to employees and customers to minimise customer claims against Data Republic in order to maximise creditor returns;
- dealing with customer queries relating to post sale service levels;
- a drawn out process to recover the credit card facility bank guarantee;
- dealing with creditor claims and queries received after the commencement of the liquidation;
- investigating employee entitlement discrepancies and liaising with employees to resolve same;
- closing out residual post completion issues with IXUP took longer than expected; and
- difficulties in lodging the R&D claim requiring numerous contact with AusIndustry and the ATO.

We will provide a remuneration report to creditors including a request for further fee approval. At this stage we expect to request another \$95,000 to \$130,000 in fees to finalise the liquidation, taking the total fees of the liquidation to between \$195,000 and \$230,000 (ex GST). This estimate is subject to change pending the work required to finalise the liquidation.

7 What happens next?

Remaining tasks include:

- process the interim distribution;
- prepare a remuneration report to creditors;
- realise the remaining assets, including the R&D claim and bank guarantees;
- resolve the Google claim;
- process a final distribution to creditors and potentially shareholders; and
- lodge all statutory documents required to finalise the liquidation.

If we receive a request for a meeting that complies with the required guidelines we will hold a meeting of creditors.

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

We expect to have completed this liquidation within 3 to 6 months, noting this timeframe is largely dependent on receipt of the R&D refund and any delays in adjudicating upon creditor claims.



8 **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 Stuart Ball on (+61) 497 787 738. For further information about this engagement, please refer to the website www.mcgrathnicol.com/creditors.

Dated: 10 September 2021

Robert Smith
Liquidator

Enclosures:

1. List of receipts and payments
2. ARITA Information Sheet – Offences, Recoverable Transactions & Insolvent Trading



Receipts and payments for period 11 June 2021 to 6 September 2021

Receipts	\$
Transfer from Administrators	4,649,748
Sale of business	110,000
Pre-appointment debtors	16,079
Bank fees and interest	44
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Total receipts	4,775,872
Payments	\$
Priority distribution	(1,224,195)
Appointee fees and disbursements	(614,778)
Employees	(467,638)
BAS (GST and PAYG)	(457,727)
Trading expenses	(263,201)
Legal and consulting fees	(129,330)
Insurance	(9,141)
Other expenses	(42)
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Total payments	(3,166,052)
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Net receipts (payments)	1,609,820

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.