



BDM Asia Pacific Pty Ltd (In Liquidation)
ACN 127 643 529
(BDM)

Statutory Report to Creditors

We refer to our initial information for creditors dated 15 April 2021 in which we advised you of our appointment as 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.

A further general report to creditors of BDM, CFS Private Wealth Pty Ltd (In Liquidation) (**CFS**), and Combined Financial Services Pty Ltd (In Liquidation) (**Combined**) has been issued jointly with this report. Creditors should read and consider the general report in conjunction with this report.

1. Update on the progress of the liquidation

1.1 Background and trading history

Set out below is a brief summary of BDM's background:

- Anthony Connelly and I were appointed as Liquidators of CFS and Combined on 18 January 2019 pursuant to court order QUD255/2018. CFS and Combined are entities associated with BDM. BDM, along with CFS and Combined form the CFS Group.
- Based on the limited information available, it appears that the CFS Group operated as a financial planning business. We understand that the CFS Group advised clients, including self-managed superannuation funds to transfer funds to the CFS Group. Investor funds appear to have been used to pay the CFS Group and the former director's (Graeme Miller) business and personal expenses.
- BDM was incorporated on 20 September 2007 and had a registered office and principal place of business of 27/32 Turbot Street, Brisbane, Queensland.
- BDM was deregistered by the Australian Securities and Investments Commission (**ASIC**) pursuant to section 601AB of the *Corporations Act 2001 (Act)* on 13 February 2017 and was reregistered by ASIC on 30 March 2021.
- On 30 March 2021, ASIC appointed Anthony Connelly and I as Liquidators of BDM, pursuant to section 489EA of the Act.
- BDM had no registered directors on our appointment. ASIC's register details Ian Dale and Mr Miller (**Former directors**) as former directors of BDM.



1.2 Estimated assets

1.2.1 Summary

Set out below is a summary of BDM's assets based on our investigations to date:

Estimated assets		
	Director's ROCAP* (\$)	Liquidators' estimate (\$)
Cash at bank	-	209,836
Any other assets	-	Nil
Total assets	-	209,836

* We did not request a Report on Company Activities and Property (ROCAP) from the Former directors. There is no requirement under the Act for the Former directors to complete a ROCAP.

Comments regarding our investigations in relation to BDM's assets are detailed in the below sections.

1.2.2 Cash at bank

We collected \$209,836 from ASIC unclaimed monies. We conducted a bank sweep for BDM on 31 March 2021 and no current bank accounts were identified in BDM's name.

1.2.3 Further asset realisations

Our investigation have not identified any other assets. At this stage and without further information becoming available, we do not anticipate identifying any further assets of BDM.

1.3 Estimated liabilities

1.3.1 Summary

Set out below is a summary of BDM's estimated liabilities based on our investigations to date.

	Director's ROCAP*		Liquidators' estimate	
	Number	Value (\$)	Number	Value (\$)
Priority creditors	-	-	-	-
Unsecured creditors	-	-	38	8,380,986
Total creditors	-	-	38	8,380,986

* We did not request a ROCAP from the Former directors. There is no requirement under the Act for the Former directors to complete a ROCAP.

1.3.2 Priority creditors

No other priority creditors have been identified.

1.3.3 Unsecured Creditors

The estimated liability for unsecured creditors is based on the limited information available. We understand that the actual amount of liabilities of BDM may vary materially. Please refer to the general update to creditors issued with this report for further details regarding the unsecured creditor claims and lodging a claim against the CFS Group.

2 Investigations

2.1 Books and records

There are limited books and records of BDM. These records have only been provided by ASIC following their investigations into the CFS Group. No books and records have been provided by the Former directors.



2.2 Recovery actions

Noting that BDM was deregistered until immediately prior to our appointment, no unfair preference payments have been identified.

We do not have sufficient books and records to determine if BDM traded whilst insolvent.

We have identified individuals who have received funds from BDM to which they may not have been entitled. We have issued instructions to our solicitors to pursue recovery of these amounts. At this time, we are unable to advise on the likelihood of a recovery.

No other recovery actions have been identified.

2.3 Reporting

We have completed our statutory investigations into the affairs of BDM. A summary of the investigations was reported to ASIC on 3 June 2021. On 21 June 2021, ASIC advised that no further investigations were required.

3. Receipts and payment to date

Summarised below are the receipts and payments in the liquidation to 24 June 2021.

Receipts and payments for the period 30 March 2021 to 24 June 2021	
Receipts	Amount (\$)
ASIC unclaimed monies	209,836.22
Interest income	1.38
Total receipts	209,837.60
Payments	
Bank charges	20.00
Total payments	20.00
Cash at bank	209,817.60

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, and absent any unforeseen issues, we consider it likely that a dividend may be payable to creditors of BDM 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 BDM.

Please refer to the general report to creditors for further details regarding lodging a claim.



5. Cost of the liquidation

In the initial information to creditors, we estimated our total remuneration for the liquidation would be approximately \$20,000 to \$40,000. We now estimate that our remuneration for the Liquidation will be \$50,000 to \$70,000 (excluding GST). The increase from my previous estimate is because additional time spent/to be spent:

- reviewing the books and records provided by ASIC to identify potential recovery actions;
- assessing numerous creditor claims to determine each creditor has a claim against BDM and the value of that claim;
- reviewing and adjudicating on creditor claims;
- assessing and determining the appropriate strategy to enable a timely return to creditors; and
- pursuing a recovery from individuals which our investigations have identified may have received funds to which they are not entitled.

We have not been paid any remuneration to date and no approval is currently sought from creditors. We expect to seek creditor approval for our remuneration in the coming months.

6. What happens next?

We will proceed with the liquidation, which will include:

- pursuing the recovery of the funds from individuals which our investigations have identified may have received funds to which they are not entitled, as noted in section 2.2 of this report;
- assisting creditors to determine if they are a creditor of BDM, CFS, or Combined;
- adjudicating on proofs of debt lodged in the liquidation; and
- proceeding with a dividend distribution to creditors.

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

We expect to have completed this liquidation within 12 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 Mahin Chaudhary on (07) 3333 9832. For further information this engagement, please refer to the McGrathNicol website: <https://www.mcgrathnicol.com/creditors/bdm-asia-pacific-pty-ltd/>

Dated: 30 June 2021

Jamie Harris
Liquidator

Enclosure:

- 1 ARITA Information Sheet – Offences, Recoverable Transactions & Insolvent Trading

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.