



LCL Holdings Pty Ltd (In Liquidation)
ACN 165 096 944
(LCL)

Statutory Report to Creditors

We refer to our initial information for creditors dated 29 November 2021 in which we advised you of our appointment as liquidator 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

We understand from the books and records received to date that LCL was incorporated on 1 August 2013 for the purposes of (i) acting as trustee for the Lim Family Trust (**Trust**), and (ii) constructing and developing the following properties (**Properties**):

- Unit 2, 88 Norwood Road, Rivervale WA 6103;
- Unit 3, 88 Norwood Road, Rivervale WA 6103; and
- Unit 4, 88 Norwood Road, Rivervale WA 6103.

A search of public registers confirms LCL as the registered proprietor of the Properties.

On 16 July 2017, LCL entered into a building contract with Royal Construction and Design Pty Ltd (**Royal**) to develop 88 Norwood Road, Rivervale. Royal filed a winding up application on 22 October 2021, which resulted in our appointment on 2 November 2021.

1.2 Liquidators' actions to date

On appointment, the Liquidators attended to all statutory reporting obligations stipulated by the Corporations Act 2011 (*Cth*) (**Act**), and issued correspondence to LCL's sole director, Leng Lim, (**Director**) requesting (among other matters) (i) completion of a Report on Company Activities and Property (**ROCAP**) of LCL, and (ii) delivery of LCL's books and records.

Despite numerous requests, the Director had not complied with the Liquidators' requests for a ROCAP and LCL's books and records. These requests are in contravention of the Act and the Director has generally failed to assist the Liquidators to progress the liquidation. Accordingly, the Liquidators referred the matter to Australian Securities and Investments Commission (**ASIC**) and requested their assistance. With the assistance of ASIC, the Director has now provided some books and records of LCL and has purportedly posted a ROCAP to our offices. The Liquidators are yet to receive the completed ROCAP.

In addition, the Liquidators have issued requests for books and records to LCL's pre-appointment accountant and solicitor. These requests have resulted in the provision of some additional books and records including tax returns, bank statements and draft financial statements.

Shortly after our appointment, the Director informed the Liquidators that (i) he was unaware of the winding up application against LCL, (ii) had sought legal representation in this matter, and (iii) intended to make an application to Court to set aside or permanently stay the winding up application pursuant to section 482 of the Act (**Directors' Application**). Notwithstanding numerous discussions with the Director and his solicitors, the Liquidators are yet to receive the Directors' Application. The Liquidators understand that a final affidavit and report is being prepared before the Directors' Application can be filed. The Liquidators will inform creditors further on this matter should the Directors' Application be filed and served.



On 2 December 2021, the Director's solicitors advised that LCL had been removed as trustee for the Trust and the Director had been appointed as replacement Trustee, effective 3 November 2021. Accordingly, the Liquidators filed an application with the Supreme Court of Western Australia (**Court**) seeking to appoint the Liquidators as Receivers over the Trust's assets on 21 January 2022 (**Liquidators' Application**). The application is scheduled to be heard by the Court on 8 February 2022.

Subject to both the Directors' Application and the outcome of the hearing regarding the Liquidators' Application, the Liquidators' intend to progress with the liquidation in the ordinary course as follows:

- engage a valuer to conduct valuations of the Properties;
- seek marketing proposals for the realisation of the Properties;
- investigate the affairs of LCL; and
- subject to sufficient funds being available, pay a dividend to creditors.

As an interim measure the Liquidators have lodged caveats over the Properties, limiting the Director's ability to deal with the Properties whilst the Liquidators' Application is heard at Court.

The timing of a dividend is subject to realisation of the assets and adjudication of creditor's claims. We will write to creditors separately if a dividend is payable in the liquidation of LCL.

2 Estimated assets and liabilities

As noted at section 1.2, the Liquidators are yet to receive a completed ROCAP and all of LCL's books and records. Notwithstanding, the Liquidators provide creditors with the following details regarding LCL's assets and liabilities.

Summary of financial position as at 2 November 2021 - LCL Holdings Pty Ltd (In Liquidation)

\$	Section	ROCAP	Book value LCL as at 30 Jun-17 ¹	Book value Trust as at 30 Jun-21 ²	Liquidators' estimate
Assets					
Cash on hand	2.1.1		-	68,047	N/A
Trade debtors	2.1.2		-	-	N/A
GST receivable	2.1.3	N/A	-	102,966	N/A
Property	2.1.4		-	1,467,666	N/A
Plant & Equipment	2.1.5		-	296	N/A
Related party loans receivable	2.1.6		-	-	N/A
Right of indemnity	2.1.7		-	-	1,291,711
Total assets			-	1,638,975	1,291,711
Liabilities					
Petitioning creditors' costs	2.2.1		-	-	(5,503)
Priority creditors	2.2.2		-	-	N/A
Secured creditor	2.2.3		-	(1,253,006)	(1,247,440)
Trade creditors	2.2.4	N/A	-	-	(38,768)
Unsecured loan	2.2.4		(249)	-	N/A
Unpaid present entitlements	2.2.5		-	(8,566)	N/A
Statutory liabilities	2.2.6		-	-	N/A
Related party loans payable	2.2.7		-	(377,393)	N/A
Total liabilities		N/A	(249)	(1,638,965)	(1,291,711)
Net assets / (liabilities)		N/A	(249)	10	-



Notes:

- 1) The amounts included in this column are sourced from the latest financial statements for LCL in its own capacity provided by the Director being the financial year ending 2017.
- 2) The amounts included in this column are sourced from the draft financial statements for LCL in its capacity as trustee of the Trust provided by LCL's accountant for the financial year ending 2021.

2.1 **Assets**

To date, the Liquidators have identified cash and property as LCL's assets.

2.1.1 *Cash*

On appointment, Bankwest confirmed they held an offset account with a balance of \$67,948 in the name of "LCL Holdings Pty Ltd as trustee for the Lim Family Trust". There are no other bank accounts held by LCL.

The Liquidators intend to liaise with Bankwest further regarding these funds in the event the Liquidators' Application is successful.

2.1.2 *Trade debtors*

The financial statements available did not disclose any amounts owing from trade debtors.

2.1.3 *GST receivable*

The draft financial statements of the Trust disclose \$102,966 of GST owing to LCL in its capacity as trustee of the Trust as at 30 June 2021. The Liquidators note that LCL was not registered for GST prior to 2 November 2021 in either its own capacity or as trustee of the Trust.

The Liquidators intend to investigate this potential refund further in the event the Liquidators' Application is successful.

2.1.4 *Property*

As noted at section 1.1, LCL is the registered proprietor of the Properties. As discussed at section 1.2, the Liquidators intend to proceed with realisation of the Properties for the benefit of creditors subject to filing of the Director's Application and the outcome of the Liquidators' Application. Until such time, the Liquidators are unable to provide creditors with an estimated realisable value for the Properties. Notwithstanding, the draft financial statements prepared for LCL in its capacity as trustee of the Trust disclose property valued at circa \$1.4 million.

2.1.5 *Plant and equipment*

The financial statements prepared for LCL in its capacity as trustee of the Trust disclose plant and equipment of \$296 dollars with respect to the purchase of a camera.

The Liquidators intend to investigate this potential asset further in the event the Liquidators' Application is successful.

2.1.6 *Related party loans receivable*

The financial statements do not disclose any related party loans receivable.

2.1.7 *Right of indemnity*

Pending the result of the Liquidators' Application and given the replacement of LCL as trustee, there is only one current known asset of LCL which is included in the table at section 2, at a total of \$1,291,711. This amount comprises LCL's right of indemnity against trust assets, on account of liabilities incurred by LCL in its former capacity as trustee of the Trust. This is a right that is available to all former trustees of trusts when they are removed at a time there are outstanding liabilities incurred by them. The Liquidators note however this amount is subject to revision once a fuller understanding of the assets of the trust is determined, as the Liquidators have limited



information regarding the ability of the current trustee, by claiming against the assets of the trust, to respond to this right of indemnity.

2.2 ***Liabilities***

To date, the Liquidators have identified the following liabilities of LCL.

2.2.1 *Petitioning creditors' costs*

As stipulated by the Act, the Liquidators are required to repay the petitioning creditors' costs totalling \$5,503 as a priority.

2.2.2 *Priority creditors*

The financial statements do not evidence amounts owing to priority creditors. The Liquidators understand LCL was not an employing entity in its own capacity or as trustee of the Trust.

2.2.3 *Secured creditor*

Bankwest have confirmed an outstanding variable home loan of circa \$1.2 million in the name of "LCL Holdings Pty Ltd as trustee for the Lim Family Trust" secured via mortgages registered over the Properties.

A search of the PPSR register confirms there are no other security interests lodged against LCL.

2.2.4 *Trade creditors*

The financial statements do not disclose any amounts owing to trade creditors, other than an unsecured loan of \$249. To date, no creditors (other than the petitioning creditor and Bankwest) of LCL have contacted the Liquidators. Accordingly, the Liquidators estimate the total trade creditor liability to be \$38,768 being the amount owing to the petitioning creditor (excluding costs from the winding up application).

2.2.5 *Unpaid present entitlements*

The draft financial statements for LCL in its capacity as trustee of the Trust disclose amounts of \$8,566 as owing to the Director, a beneficiary of the Trust by way of unpaid present entitlements.

2.2.6 *Statutory creditors*

The Liquidators confirmed that no amounts are currently owing to the Australian Taxation Office however LCL (both in its own capacity and as trustee of the Trust) has outstanding tax lodgements for the financial years from 2018 to 2021. Completion of these outstanding lodgements may result in a liability payable to the Australian Taxation Office. No other statutory bodies have reported any funds owing by LCL.

2.2.7 *Related party loans payable*

The draft financial statements for LCL in its capacity as trustee of the Trust disclose a loan of \$377,393 owing to the Director. The Liquidators have not been provided with any loan documentation and cannot comment on the nature of the loan.

3 **Liquidators' investigations**

A key role of the Liquidators is to conduct investigations into LCL's financial position and affairs and to pursue any claims or liquidator recovery actions that may provide a return to creditors. Typically, these claims can include insolvent trading, unfair preferential payments, creditor defeating dispositions, uncommercial transactions, unfair loans, unreasonable director related transactions and breaches of director's duties, common law and fiduciary duties.

Notwithstanding the limited books and records available to the Liquidators, the Liquidators will continue their investigations into LCL's affairs, including:

- requesting books and records from various parties, including the external accountant;
- investigating and quantifying any potential insolvent trading claim against the Director; and
- investigating and identifying any voidable transactions.



3.1 *Insolvent trading*

The Liquidators are yet to complete their investigations of whether the LCL traded while insolvent and, if so, the quantum of this potential claim. The Liquidators will progress these investigations on receipt of the balance of the books and records of LCL.

Before a court can order a director to pay compensation for an insolvent trading claim, the liquidator must first establish that:

- the person was a director at the time the company incurred the debts that are subject of the insolvent trading claim;
- the company was insolvent at the time the debts were incurred or became insolvent as a result of incurring the debt;
- at the time of incurring the debt, the director had reasonable grounds for suspecting that the company was insolvent or would become insolvent by incurring the debt;
- the person was a director of the company at the time the company incurred the debts that are the subject of the claim; and
- the debt subject of the claim was wholly or partly unsecured and the creditors to whom the debts are owed suffered loss and damage.

3.2 *Voidable transactions*

The Liquidators are yet to complete their investigations to determine if there are any potential recoveries available to the Liquidators for voidable transactions. The Liquidators will progress these investigations on receipt of the balance of the books and records of LCL.

The types of voidable transactions under Part 5.7B of the Act which the Liquidators will investigate are summarised below:

- Unfair preference claims: transactions between LCL and its creditors, resulting in an unsecured creditor receiving a greater amount than it would have received in a winding up. These transactions must have occurred when LCL was insolvent or have caused LCL to become insolvent;
- Uncommercial transactions: being transactions which a reasonable person in the place of LCL would not have entered into, taking into account the benefits and the detriment to LCL the respective benefits to the other parties involved and any other related matters. These transactions must have occurred when LCL was insolvent or have caused LCL to become insolvent;
- Unfair loans: being a loan agreement where the interest or charges are considered to be extortionate. Unfair loans made to LCL at any time prior to the Liquidators' appointment may potentially be overturned by the Liquidators, whether or not LCL was insolvent when the loan was entered into (or any time thereafter);
- Unreasonable director related transactions: being transactions made to or on behalf or for the benefit of the director, or a close associate, which a reasonable person in the place of LCL would not have entered into, taking into account the benefits and the detriment to LCL, the respective benefits to the other parties involved and any other related matters and whether or not LCL was insolvent when the transaction was entered into (or subsequently became insolvent); and
- Creditor defeating disposition: being a disposition of property of a company for less consideration than the market value of the property (or the best price which was reasonably obtainable for the property) which had the effect of preventing the property from becoming available for the benefit of LCL's creditors in the winding up.

4 **Receipts and payment to date**

There have been no receipts and payments to date.



5 Likelihood of a dividend

A number of factors will affect the likelihood of a dividend being paid to creditors, including:

- whether the Directors' Application is filed and is successful;
- the outcome of the Liquidators' Application;
- 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.

The Liquidators are unable to comment on the likelihood of a dividend at this time due to the uncertain nature of the Liquidators' Application.

Due to material limitations experienced in the Liquidators' investigations to date (due to the lack of books and records), the Liquidators cannot provide an estimate of likely returns from liquidator recovery actions.

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 LCL.

6 What happens next?

We will proceed with the liquidation, which will include:

- realising any assets (subject to the Liquidators' Application);
- recovering any further available property;
- completing our investigations into LCL's affairs;
- if identified, pursuing any viable claims for statutory recovery actions; and
- completing our reporting to ASIC, the corporate insolvency regulator.

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 Antoine Cleuet on (08) 6363 7635 or via email at acleuets@mcgrathnicol.com. For further information about this engagement, please refer to the website www.mcgrathnicol.com/creditors.



Dated: 1 February 2022

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