



## Notice of Meeting

**Mr Chris Marco, AMS Holdings (WA) Pty Ltd in its own right and as trustee for the AMS Holdings Trust  
(Receivers and Managers Appointed) (In Liquidation) (AMS)  
Together, the Scheme (Receivers and Managers Appointed) (In Liquidation)**

### **NOTICE OF MEETINGS OF CREDITORS OF COMPANY UNDER EXTERNAL ADMINISTRATION**

1. Notice is now given that meetings of the creditors of the Scheme and AMS will be held concurrently at the Duxton Hotel, 1 St Georges Terrace Perth WA 6000 on **10 February 2021 at 10:00 AM (AWST)**.
2. The purpose of the meeting is:
  - a. to provide a general update on recent events;
  - b. outline the proposed realisation strategy for the various asset classes;
  - c. outline the process and estimated timing for an interim distribution to be determined and paid to creditors;
  - d. to consider whether to appoint a committee of inspection and if so, who are to be the committee members; and
  - e. discuss any other activities and legal actions.
3. The effect of Insolvency Practice Rules (Corporations) section 75-85 (entitlement to vote as creditor at meetings of creditors) is:
  - a. A person other than a creditor (or the creditor's proxy or attorney) is not entitled to vote at a meeting of creditors.
  - b. Subject to subsections (c), (d) and (e), each creditor is entitled to vote and has one vote.
  - c. A person is not entitled to vote as a creditor at a meeting of creditors unless:
    - i. his or her debt or claim has been admitted wholly or in part by the external administrator; or
    - ii. he or she has lodged, with the person presiding at the meeting, or with the person named in the notice convening the meeting as the person who may receive particulars of the debt or claim:
      - those particulars; or
      - if required—a formal proof of the debt or claim.
  - d. A creditor must not vote in respect of:
    - i. an unliquidated debt; or
    - ii. a contingent debt; or
    - iii. an unliquidated or a contingent claim; or
    - iv. a debt the value of which is not established;unless a just estimate of its value has been made.



- e. A creditor must not vote in respect of a debt or a claim on or secured by a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor unless he or she is willing to do the following:
    - i. treat the liability to him or her on the instrument or security of a person covered by subsection (f) as a security in his or her hands;
    - ii. estimate its value;
    - iii. for the purposes of voting (but not for the purposes of dividend), to deduct it from his or her debt or claim.
  - f. A person is covered by this subsection if:
    - i. the person's liability is a debt or a claim on, or secured by, a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor; and
    - ii. the person is either liable to the company directly, or may be liable to the company on the default of another person with respect to the liability; and
    - iii. the person is not an insolvent under administration or a person against whom a winding up order is in force.
4. Proofs of debt and proxies must be submitted by 4:00 PM on Tuesday, 9 February 2021 to [MarcolInvestors@mcgrathnicol.com](mailto:MarcolInvestors@mcgrathnicol.com). Please note, all creditors will be required to submit a new proof of debt with relevant documentation to support their claim. Separate proof of debts are required for each of the Scheme and AMS.
5. Should a person, or the proxy or attorney of a person, wish to participate in the meeting using electronic facilities, please call 08 6363 7600 or [MarcolInvestors@mcgrathnicol.com](mailto:MarcolInvestors@mcgrathnicol.com) to obtain the details and give to the convenor, not later than 4:00 PM on Tuesday, 9 February 2021, a written statement setting out:
- a. the name of the person and of the proxy or attorney (if any);
  - b. an address to which notices to the person, proxy or attorney may be sent; and
  - c. a method by which the person, proxy or attorney may be contacted for the purposes of the meeting.

Dated: 27 January 2021

A handwritten signature in black ink, appearing to read 'Rob Brauer', with a long, sweeping underline.

Rob Brauer  
*Liquidator*

McGrathNicol  
GPO Box 9986  
Perth WA 6848  
Australia  
+61 8 6363 7600

**FORM 535**

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

AMS Holdings (WA) Pty Ltd in its own right and as trustee for the AMS Holdings Trust (Receivers and Managers Appointed) (In Liquidation)  
"the Company"

To the Liquidator/Administrator of the Company

1. This is to state that the Company was on 7 December 2020, and still is, justly and truly indebted to:

\_\_\_\_\_ (name of creditor)  
of \_\_\_\_\_ (address of creditor)  
for \$ \_\_\_\_\_ and \_\_\_\_\_ cents (GST inclusive) GST amount \_\_\_\_\_

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. Select which of the below applies (choose one):

- The creditor is a company and I am signing as a director of the company
- The creditor is a company and I am signing as an authorised representative/duly constituted attorney of the company
- I am an individual and I am signing in my personal capacity (which includes employees)
- The creditor is a sole trader and I am signing as the proprietor
- The creditor is a partnership and I am signing as a partner of the partnership
- I am signing in my personal capacity as a member or contributory of the Company
- Other: \_\_\_\_\_

4. If you are a related party, state your relationship \_\_\_\_\_

I nominate to receive electronic notifications of documents in accordance with Section 600G of the Corporations Act at the following email address

Email: \_\_\_\_\_

5. Is this debt claimed on the basis of an assignment? Yes  No

If so, what consideration was paid for the debt? \_\_\_\_\_

The debt was incurred for the consideration stated and the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Signature ..... Dated .....

Name: \_\_\_\_\_

Address: \_\_\_\_\_

**FORM 535**

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

The Chris Marco Scheme (Receivers and Managers Appointed) (In Liquidation)  
 "the Scheme"

To the Liquidator/Administrator of the Scheme

1. This is to state that the Scheme was on 7 December 2020, and still is, justly and truly indebted to:

\_\_\_\_\_ (name of creditor)  
 of \_\_\_\_\_ (address of creditor)  
 for \$ \_\_\_\_\_ and \_\_\_\_\_ cents (GST inclusive) GST amount \_\_\_\_\_

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 Scheme, 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. Select which of the below applies (choose one):

- |  |   |
|--|---|
| <input type="checkbox"/> The creditor is a company and I am signing as a director of the company   | <input type="checkbox"/> The creditor is a partnership and I am signing as a partner of the partnership |
| <input type="checkbox"/> The creditor is a company and I am signing as an authorised representative/duly constituted attorney of the company | <input type="checkbox"/> I am signing in my personal capacity as a member or contributory of the Scheme |
| <input type="checkbox"/> I am an individual and I am signing in my personal capacity (which includes employees)                              | <input type="checkbox"/> Other: _____   |
| <input type="checkbox"/> The creditor is a sole trader and I am signing as the proprietor  |   |

4. If you are a related party, state your relationship \_\_\_\_\_

I nominate to receive electronic notifications of documents in accordance with Section 600G of the Corporations Act at the following email address

Email: \_\_\_\_\_

5. Is this debt claimed on the basis of an assignment? Yes  No

If so, what consideration was paid for the debt? \_\_\_\_\_

The debt was incurred for the consideration stated and the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Signature ..... Dated .....

Name: \_\_\_\_\_

Address: \_\_\_\_\_



## **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.



**PROXY FORM**

**AMS Holdings (WA) Pty Ltd in its own right and as trustee for the AMS Holdings Trust (Receivers and Managers Appointed) (In Liquidation)**

**APPOINTMENT OF PROXY**

I/We (*if a firm, strike out "I" and set out the full name of the firm*) \_\_\_\_\_ of  
\_\_\_\_\_  
(*insert address*)

a creditor of **AMS Holdings (WA) Pty Ltd in its own right and as trustee for the AMS Holdings Trust (Receivers and Managers Appointed) (In Liquidation)** appoint

\_\_\_\_\_  
(*insert name, address and description of the person appointed*)  
or in his or her absence

\_\_\_\_\_  
(*insert name, address and description of the person appointed*)  
as my/our:



general proxy

to vote at the meeting of creditors to be held on 10 February 2021 at 10:00 AM or at any adjournment of that meeting.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 21

Name \_\_\_\_\_

Signature \_\_\_\_\_

Select which of the below applies (choose one):

The creditor is a company and I am signing as a director of the company

The creditor is a partnership and I am signing as a partner of the partnership

The creditor is a company and I am signing as an authorised representative/duly constituted attorney of the company

I am signing in my personal capacity as a member or contributory of The Chris Marco Scheme (In Liquidation)

I am an individual and I am signing in my personal capacity (which includes employees)

Other: \_\_\_\_\_

The creditor is a sole trader and I am signing as the proprietor

**Proxy forms should be completed and returned by no later than 4:00 PM on 9 February 2021.**

RETURN TO: **The Chris Marco Scheme (Receivers and Managers Appointed) (In Liquidation)**  
of care of McGrathNicol  
Address: GPO Box 9986, Perth WA 6848, Australia  
Phone: +61 8 6363 7600  
Fax: +61 8 6363 7699

**PROXY FORM**

**The unregistered scheme operated by Chris Marco (Receivers and Managers Appointed) (In Liquidations)**  
**"The Scheme"**

**APPOINTMENT OF PROXY**

I/We (*if a firm, strike out "I" and set out the full name of the firm*) \_\_\_\_\_ of  
\_\_\_\_\_ (*insert address*)

a creditor of **the Scheme (Receivers and Managers Appointed) (In Liquidation)** appoint

\_\_\_\_\_ (*insert name, address and description of the person appointed*)  
or in his or her absence

\_\_\_\_\_ (*insert name, address and description of the person appointed*)  
as my/our:



general proxy

to vote at the meeting of creditors to be held on 10 February 2021 at 10:00 AM or at any adjournment of that meeting.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 21

Name \_\_\_\_\_

Signature \_\_\_\_\_

Select which of the below applies (choose one):

The creditor is a company and I am signing as a director of the company

The creditor is a partnership and I am signing as a partner of the partnership

The creditor is a company and I am signing as an authorised representative/duly constituted attorney of the company

I am signing in my personal capacity as a member or contributory of The Chris Marco Scheme (In Liquidation)

I am an individual and I am signing in my personal capacity (which includes employees)

Other: \_\_\_\_\_

The creditor is a sole trader and I am signing as the proprietor

**Proxy forms should be completed and returned by no later than 4:00 PM on 9 February 2021.**

RETURN TO: **The Chris Marco Scheme (Receivers and Managers Appointed) (In Liquidation)**

of care of McGrathNicol

Address: GPO Box 9986, Perth WA 6848, Australia

Phone: +61 8 6363 7600

Fax: +61 8 6363 7699



### **Proxy Guidance Notes**

- Insert full name and address of creditor, contributory or member on the top line.
- On the second line, insert the address of the creditor, contributory or member.
- On the next line insert the name of the person you appoint as your proxy. You may insert "the Chairperson of the meeting" if you wish.
- You may appoint an alternate proxy on the fourth line who may act if your first appointed proxy cannot attend the meeting. You may insert "the Chairperson of the meeting" if you wish.
- Make sure you select whether the proxy is a general or special proxy.
- A general proxy is where you leave it to the proxy to decide how to vote on each of the resolutions put before the meeting.
- A special proxy is where you specify how the proxy is to vote on each resolution and the proxy must vote in accordance with that instruction.
- If the proxy is a special proxy, the form must include details of each resolution and whether the proxy holder is to cast their vote in favour or against each resolution or abstain from voting.
- Date and sign the Proxy form, indicating in which capacity you are signing the form. The person signing must be authorised to do so.



**Mr Chris Marco, AMS Holdings (WA) Pty Ltd in its own right and as trustee for the AMS Holdings Trust  
(Receivers and Managers Appointed) (In Liquidation)**

**Together, the Scheme (Receivers and Managers Appointed) (In Liquidation)**

**General Information for Attending and Voting at Meetings of Creditors**

**Time and Place of Meeting**

Pursuant to *Insolvency Practice Rules (Corporations) (IPR) 75-30*, a meeting of creditors must be convened at the time and place the Chairperson believes are convenient for the majority of creditors entitled to receive notice of the meeting.

**Quorum**

Pursuant to IPR 75-105, unless a quorum is present, a meeting must not act for any purpose other than:

- the election of a chairperson; and
- the proving of debts; and the adjournment of the meeting.

A quorum is present if two (2) or more persons are entitled to vote and at least two (2) persons are present at the meeting in person, by proxy or by power of attorney.

A quorum is present if only one (1) person is entitled to vote and that person is present at the meeting in person, by proxy or by power of attorney.

A person who participates in the meeting using electronic facilities is taken to be present in person at the meeting.

A meeting is sufficiently constituted if only one (1) person is present in person, if the person represents personally or by proxy or otherwise a number of persons sufficient to constitute a quorum.

**Chairperson**

Pursuant to IPR 75-50, the external administrator is appointed Chairperson of the meeting. Alternatively, pursuant to IPR 75-50 and IPR 75-152 the external administrator may appoint someone else to act as chairperson of the meeting and authorise that person to use any proxies held by the external administrator on the external administrator's behalf.

**Voting**

Pursuant to IPR 75-85, creditors will not be eligible to vote at the meeting unless they have lodged particulars of their debt or claim prior to or at the meeting.

Accordingly, creditors who intend to vote at the meeting should ensure that they lodge a formal proof of debt with the external administrator prior to or at the meeting.

Pursuant to IPR 75-110, a resolution put to the meeting is to be decided on the voices or by a poll, if one is requested.

A poll may be requested by:

- the chairperson; or
- a person participating and entitled to vote at the meeting.



Pursuant to IPR 75-115, should a poll be requested:

- a resolution is passed if a majority in number and a majority in value vote in favour of the resolution; and
- a resolution is not passed if a majority in number and a majority in value vote against the proposed resolution.

In the event of a deadlock, the chairperson may exercise a casting vote. In such situations, the minutes of the meeting must specify the chairperson's reasons for exercising, or not exercising, their casting vote.

### **Proxies**

Pursuant to IPR 75-150, a person entitled to vote at a meeting may, in writing, appoint an individual as their proxy to attend and vote at the meeting on their behalf.

Accordingly, creditors who are unable to attend the meeting but who wish to be represented should ensure that a validly executed proxy form is lodged with the external administrator prior to the meeting.

### **Corporate Creditors**

Corporate creditors who wish to attend the meeting should note that an individual may only represent them if the corporation validly grants that person a proxy or power of attorney.

### **Committee of Inspection**

Pursuant to IPR 80-5, a person may only serve as a member of a Committee of Inspection if the person is:

- a creditor of the company personally; or
- the attorney of a creditor under a general power of attorney; or
- authorised in writing by a creditor; or
- a representative of the Commonwealth if a FEG claim has been, or the Commonwealth considers a claim is likely to be, made in relation to unpaid employee entitlements.

Corporate creditors who are members of a Committee of Inspection may be represented by an individual authorised in writing by the member to represent the member on the committee.

## Information Sheet: Committees of Inspection

You have been elected to be, or are considering standing for the role of, a member of a Committee of Inspection (COI) in either a liquidation, voluntary administration or deed of company arrangement of a company (collectively referred to as an external administration).

This information sheet is to assist you with understanding your rights and responsibilities as a member of a COI.

### What is a COI?

A COI is a small group of creditors elected to represent the interests of creditors in the external administration. The COI advises and assists the external administrator and also has the power to approve and request certain things – this is discussed in more detail below.

Membership of the COI is a voluntary, unpaid position.

### Who can be elected to a COI?

To be eligible to be appointed as a member of a COI, a person must be:

- A creditor
- A person holding the power of attorney of a creditor
- A person authorised in writing by a creditor; or
- A representative of the Commonwealth where a claim for financial assistance has, or is likely to be, made in relation to unpaid employee entitlements.

If a member of the COI is a company, it can be represented by an individual authorised in writing to act on that creditor's behalf. It also allows the creditor to maintain its representation if a change in the individual is required

A COI usually has between 5 and 7 members, though it can have more, or less, depending on the size of the external administration.

A member of a COI can be appointed by:

- resolution at a meeting of creditors
- an employee or a group of employees owed at least 50% of the entitlements owed to employees of the company
- a large creditor or group of creditors that are owed at least 10% of the value of the creditors' claims,

If an employee or group of employees, or a large creditor or group of creditors, appoints a member to the COI, they cannot vote on the general resolution of creditors to appoint members to the COI. Each of these groups also have the power to remove their appointed member of the COI and appoint someone else.



If you are absent from 5 consecutive meetings of the COI without leave of the COI or you become an insolvent under administration, you are removed from the COI.

## What are the roles and powers of a COI?

A COI has the following roles:

- to advise and assist the liquidator, voluntary administrator or deed administrator (collectively referred to as the external administrator)
- to give directions to the external administrator
- to monitor the conduct of the external administration.

In respect of directions, the external administrator is only required to have regard to those directions. If there is a conflict between the directions of the COI and the creditors, the directions of the creditors prevail. If the external administrator chooses not to comply with the directions of the COI, the external administrator must document why.

A COI also has the power to:

- approve remuneration of the external administrator after the external administrator has provided the COI with a Remuneration Approval Report (a detailed report setting out the remuneration for undertaking the external administration)
- approve the use of some of the external administrator's powers in a liquidation (compromise of debts over \$100,000 and entering into contracts over 3 months)
- require the external administrator to convene a meeting of the company's creditors
- request information from the external administrator
- approve the destruction of the books and records of the external administration on the conclusion of the external administration
- with the approval of the external administrator, obtain specialist advice or assistance in relation to the conduct of the external administration
- apply to the Court for the Court to enquire into the external administration.

An external administrator is not required to convene a meeting of creditors if the request by the COI is unreasonable, or provide requested information if the request is unreasonable, not relevant to the administration or would cause the external administrator to breach their duties.

A request to convene a meeting of creditors is unreasonable if:

- it would substantially prejudice the interests of a creditor or third party
- there are insufficient funds in the external administration to cover the cost of the request
- a meeting of creditors dealing with the same matters has already been held or will be held within 15 business days, or
- the request is vexatious.

If a request for a meeting is reasonable, the external administrator must hold a meeting of creditors as soon as reasonably practicable.

A request for information is unreasonable if:

- it would substantially prejudice the interests of a creditor or third party
- the information would be subject to legal professional privilege
- disclosure of the information would be a breach of confidence
- there are insufficient funds in the external administration to cover the cost of the request
- the information has already been provided or is required to be provided within 20 business days, or
- the request is vexatious.

If the request for information is not unreasonable, the external administrator must provide the requested information within 5 business days, but the law provides for further time in certain circumstances.

An external administrator must inform the COI if their meeting or information request is not reasonable and the reason why.

### How does the COI exercise its powers?

A COI exercises its powers by passing resolutions at meetings of the COI. To pass a resolution, a meeting must be convened and a majority of the members of the COI must be in attendance.

A meeting is convened by the external administrator by giving notice of the meeting to the members of the COI. Meetings of the COI can be convened at short notice.

The external administrator must keep minutes of the meeting and lodge them with ASIC within one month of the end of the meeting.

ASIC is entitled to attend any meeting of a COI.

### What restrictions are there on COI members?

A member of a COI must not directly or indirectly derive any profit or advantage from the external administration. This includes by purchasing assets of the company or by entering into a transaction with the company or a creditor of the company. This prohibition extends to related entities of the member of the COI and a large creditor(s) that appoints a member to the COI.

Creditors, by resolution at a meeting of creditors, can resolve to allow the transaction. The member of the COI or the large creditor(s) that appoints a member to the COI is not allowed to vote on the resolution.

### Where can you 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 [www.arita.com.au/creditors](http://www.arita.com.au/creditors).

ASIC provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at [www.asic.gov.au](http://www.asic.gov.au) (search "insolvency information sheets").