

**IN THE MATTER OF PRIMESPACE PROPERTY INVESTMENT LIMITED
(IN LIQUIDATION)**

SUPREME COURT OF NSW PROCEEDINGS No. 2016/107316

PLAINTIFFS' OUTLINE OF SUBMISSIONS

Introduction

- 1 These submissions are prepared in accordance with the orders made by Justice Brereton on 25 July 2016. They are in support of the interlocutory process filed in these proceedings on 12 July 2016.

- 2 The first and second plaintiffs, Messrs Fraser and McGrath respectively (**the Liquidators**), were appointed as the liquidators of the third plaintiff, Primespace Property Investment Ltd (In Liq) (**PPIL**), by a resolution of creditors passed pursuant to s. 439C of the *Corporations Act 2001* (Cth) (**the Act**) on 28 May 2015. PPIL's business was to act as the responsible entity and trustee of various funds and trusts, including those which form what the Liquidators describe as 'the Prime Access Group'. The structure of the Prime Access Group forms Annexure A to the affidavit of Mr Fraser sworn on 6 April 2016 (**the Liquidator's First Affidavit**).

- 3 Relevantly, for the purposes of this application, PPIL is:
 - (a) the trustee of the Primespace Northbourne Trust (**PSNT**), the primary purpose of which was to fund and manage the development of approximately 230 residential apartments known as the IQ Smart Apartments for sale (the Liquidator's First

Affidavit at [13]). A copy of the relevant trust deed is behind tab 5 of exhibit SF1 to the Liquidator's First Affidavit;

- (b) the responsible entity and trustee of the Prime Access Property Fund (**PAPF**), the core business of which is financing property investment and development activities (Liquidator's First Affidavit at [8]). A copy of the relevant trust deed is behind tab 3 of exhibit SF1 to the Liquidator's First Affidavit;
- (c) the trustee of the Primespace Property Trust No. 3 (**PSPT3**), which sits outside the Prime Access Group and was established to purchase and redevelop the Hub Shopping Centre in Burpengary QLD (the affidavit of Mr Fraser sworn on 12 July 2016 (**the Liquidator's Second Affidavit**) at [8]);
- (d) the former trustee of the IQ Investment Trust (**IQIT**), which was established for the primary purpose of raising additional equity required for PSNT to develop the IQ Smart Apartments development (see the Liquidator's First Affidavit at [22]). PPIL was the trustee of the IQIT between 21 December 2012 and 1 October 2015, when it was replaced by IQIT Nominees Pty Ltd (Liquidator's First Affidavit at [24] and [25]).

4 By this application, the Liquidators seek:

- (a) a direction from the Court pursuant to one or more of ss. 479(3) and 511 of the Act, or s. 63 of the *Trustee Act 1925* (NSW) that they would be justified in distributing the funds held by PPIL in its capacity as trustee of PSNT to pay the reasonable costs and expenses of investigating and responding to the claims made by Canberra Finance Group Pty Ltd (**CFG**) against PPIL (as trustee of

PSNT) in Supreme Court of NSW Proceedings No. 120251 of 2016
(**the CFG Proceedings**);

- (b) a direction pursuant to one or more of ss. 479(3) and 511 of the Act, or s. 63 of the Trustee Act, that they would be justified in distributing the funds held by PPIL in its capacity as the responsible entity and trustee of PAPF to pay the reasonable costs and expenses of investigating the circumstances in which PPIL issued convertible notes pursuant to Convertible Note Subscription Agreements during 2011, and of taking appropriate steps to prosecute any claim which is found to arise; and
- (c) approval of the payment of the Liquidators' remuneration for the voluntary administration and winding up of PPIL from the trust assets of each of PSNT, PAPF, PSPT3 and IQIT in the amounts that the Liquidators consider most accurately reflect the proportion of work attributable to each of those funds.

These issues are considered in turn below.

Directions

Applicable principles

- 5 PPIL is subject to a creditors' voluntary winding up and therefore the most direct source of power by which the Liquidators may seek directions from the Court is under s. 511 of the Act. Directions may also be sought pursuant to s. 479(3) of the Act by virtue of ss. 506(1)(b) and 511 (*Warne v GDK Financial Solutions Pty Ltd* (2006) 233 ALR 181 at [63] to [64] and [82]). In the circumstances of this application, there is no material difference between the manner in which the Court would

determine an application under either of these sections and the Liquidators rely upon them both.

- 6 There is a substantial body of authority which considers the preconditions for the giving of directions by the Court under these provisions (see for example the analysis of Ward J (as her Honour then was) in *Re Purchas (as Liquidator of Astarra Asset Management Pty Ltd) (In Liq)* [2011] NSWSC 91 with respect to s. 511). To broadly summarise the reasons of Greenwood J in *Re Owen* (2014) 225 FCR 541, directions under s. 511 of the Act may be given about an issue of law, substance, procedure, power, proprietary or reasonableness (at [41] and [44]). It is settled law that a direction under the Act will protect a liquidator who has disclosed the material facts to the Court from personal liability for breach of duty (see for example *Re GB Nathan & Co Pty Ltd (In Liq)* (1991) 24 NSWLR 674 at 679 per McLelland J).
- 7 To the extent necessary, the Liquidators' application is alternatively brought under s. 63 of the Trustee Act. The Court will provide directions under this section to resolve legitimate doubts held by a trustee as to the proper course of action with a view to protecting the trust and those entitled to it. This application is more directly for the protection of the Liquidators than the beneficiaries and an order under s. 63 therefore may not be strictly required in these proceedings.
- 8 The need for directions in this liquidation arises because, apart from a project management role for the IQ Smart Apartments joint venture which ceased prior to the liquidation, PPIL carried out no substantive business activities outside of its role as trustee and responsible entity of the various funds (the Liquidator's Second Affidavit at [9] to [13]). PPIL has no substantive assets in its own capacity. As at 30 June 2016, the total

sum held by it to which it was beneficially entitled was the amount of \$585.54 (the Liquidator's Second Affidavit at [37]). The activities of PPIL are now restricted to identifying, getting in and realizing the assets of the various trusts (Liquidator's Second Affidavit at [14]).

9 The principles relevant to the payment of costs and expenses by the liquidator of a trustee from trust assets were recently considered by Brereton J in *Re Independent Contractor Services (Aust) Pty Ltd (In Liq) (No 2)* (2016) 305 FLR 222. For current purposes, they can be summarised as follows:

- (a) a trustee is entitled to resort to and apply trust assets for the discharge of liabilities incurred in the authorised conduct of the trust (at [11]);
- (b) this indemnity is secured by an equitable lien over the trust assets which arises by operation of law and confers a proprietary interest in the trust property and has priority over the claims of beneficiaries (at [11]);
- (c) upon the liquidation of a trustee, its right of indemnity and lien vests in its liquidator (at [11]);
- (d) as such, the Liquidators' right to indemnity depends on the general law relating to a trustee's right of indemnity (at [28]);
- (e) the indemnity is confined to expenses which are "properly" or "reasonably" incurred by the trustee, which has been held to mean "not improperly incurred" (at [12]);
- (f) an insolvency petitioner stands in a fiduciary relationship with the creditors and must act with the same care as a prudent

business person would act in their own affairs at their own cost and risk (at [29]); and

(g) the Liquidators bear the onus of justifying their reasonable disbursements.

10 In the usual course, liquidators will also perform work in the context of incurring disbursements for which they are entitled to be paid their reasonable remuneration. The authorities support the general proposition that, in circumstances such as those currently before the Court, the Liquidators are entitled to be paid their remuneration, whether for administering the trust assets or for general liquidation work, out of trust funds because PPIL does not hold assets in its own right (see the authorities cited and analysed by Brereton J in *Re North Food Catering Pty Limited* [2014] NSWSC 77 at [9] to [17]). Again, the onus is upon the Liquidators to justify the quantum of their reasonable remuneration.

11 In light of these principles, it is often appropriate for liquidators to seek the Court's direction about whether a particular course that they propose to take in the liquidation is reasonable in advance of incurring disbursements and performing work (as was the case in *Re Independent Contractor Services*). In *Re Owen*, Greenwood J gave directions under s. 511 about the question of which of two possible courses of action that were available to the liquidators in proceedings should be taken. His Honour took the view that the issue was amenable to directions, and the Court's power was engaged, because a question of proprietary and reasonableness arose (at [45]). In the same way, it is appropriate for directions to be made in respect of the two issues which have arisen in PPIL's liquidation that are detailed below.

- 12 In practical terms, the position is analogous to those of trustees who seek approval before proceedings are commenced (see *Macedonian Orthodox Community Church St Petka Inc. v His Eminence Petar Diocesan Bishop of Macedonian Orthodox Diocese of Australia and New Zealand* (2008) 237 CLR 66 at [70] to [71]). Although, as the interests of the beneficiaries are not directly in issue, directions under the Corporations Act are sufficient in the current circumstances.

The CFG Transactions

- 13 The first issue arises from a loan from CFG to finance the development of the Summer Centre Orange development. The relevant facts are set out in some detail by Mr Fraser at paragraphs [48] to [76] of his Second Affidavit. The critical aspects can be summarised as follows.
- (a) On about 18 December 2012, CFG entered into the Loan Agreement, Guarantee Deed and Call Option Deed detailed at [49]. In exchange for CFG lending \$1.2 million for the project, PPIL, as the responsible entity of PAPF, guaranteed the loan. By the Call Option Deed, CFG obtained an option to purchase four apartments in the IQ Smart Apartment development at their list price with an apparent right to offset the outstanding loan amount against the purchase.
 - (b) A First Supplemental Deed was entered into on about 28 March 2013 in relation to a further advance of \$300,000 (at [50]). A Deed of Variation was also entered in about 27 May 2014 with respect to an additional amount of \$450,000 (at [51]).

- (c) PSNT was not a party these transactions, although Australian Executor Trustees Limited (AETL) was a party to the Call Option Deed in its capacity as custodian of PSNT.
- (d) As Mr Fraser deposes at [52] of his Second Affidavit, on about 27 May 2014 a Second Supplemental Deed was entered into which included PPIL as a party in its capacity as trustee of PSNT. The purported effect of the Second Supplemental Deed included that PPIL as trustee of PSNT was a guarantor under the Guarantee Deed and that CFG was authorized to set off its indebtedness under the Call Option Deed against the indebtedness of PPIL as trustee of PSNT under the Guarantee Deed.
- (e) CFG purported to exercise its option after the appointment of administrators and in its Notice of Exercise of Option also purported to set off the purchase price of the units against the amount owed to it under the transaction documents referred to above (at [54]).
- (f) If this set off is valid, then PPIL, in its capacity as trustee of PSNT, will not receive any sale proceeds from CFG for the sale of the units, which is estimated to be a total amount of \$2,347,500 (at [55]). Furthermore, if the Second Supplemental Deed validly made PPIL a guarantor in its capacity as trustee of PSNT, then PSNT would ultimately bear that liability (at [56]).
- (g) The Liquidators have formed preliminary views and obtained preliminary advice which include that:
 - (i) PPIL may have been in breach of its duties as trustee of PSNT;

- (ii) the directors of PPIL may have breached their directors' duties; and
 - (iii) CFG may have been knowingly concerned in such breaches (see [57] and [58] of the Liquidator's Second Affidavit).
- (h) The Liquidators have formed the view that, given the lack of information from the directors (at [59] to [62]), creditors' interests would be served by conducting the examinations under Part 5.9 of the Act which are identified at [63] of the Liquidator's Second Affidavit. To this end, a draft application for the issue of examination summons has been prepared. The estimated total cost of conducting the examinations and obtaining counsel's advice following the examinations about potential proceedings is approximately \$200,000 (at [64]).
- (i) CFG has commenced proceedings in this Court which seek the relief set out at [69] of the Liquidator's Second Affidavit. This relief is predicated upon PPIL being a party to the transaction documents in its capacity as trustee of PSNT and CFG being entitled to set off its indebtedness for the purchase against the amounts owed to it under those documents.
- (j) Although the Liquidators and AETL were ordered to file a defence in the CFG Proceedings, the proceedings have now been adjourned to 15 September 2016. The Liquidators' position is that the examinations referred to above should occur before they determine what course to take in those proceedings. This will include considering advice from counsel and any conflict issues that arise between PPIL, PSNT and PAPF – including in relation to any debt owed to PSNT by PPIL arising from any negligence or

breach of duty pursuant to clause 15.1(3) of the PSNT Trust Deed (see the Liquidator's Second Affidavit at [70] and [75] and tab 5 of Exhibit SF1 to the Liquidator's First Affidavit).

(k) The disbursements to be incurred in relation to this issue include amounts payable pursuant to the indemnity rights of AETL, which are considered at [71] to [73] of the Liquidator's Second Affidavit.

14 In this context, the Liquidators seek directions from the Court that they would be justified in utilising funds held by PPIL on PSNT's behalf to conduct the examinations referred to above, to obtain an opinion from counsel to determine the course that PPIL should take in the CFG Proceedings and to bring any claims about the purported addition of PSNT as a party to the transaction documents if so advised. The Liquidators also seek a direction from the Court that they would be justified in taking any necessary or incidental steps in relation to the CFG Proceedings in the interim.

Convertible Notes Issue

15 Another issue which has arisen in the liquidation relates to the Subscription Agreements entered into between 20 April and 11 May 2011 by which PPIL, as RE of PAPF, sought to raise approximately \$5 million by issuing convertible notes in PAPF for the purpose of the development of the IQ Smart Apartments (the Liquidator's Second Affidavit at [77]).

16 It is not necessary to set out the terms of the Subscription Agreements here (a copy of a Subscription Agreement is at tab 21 of Exhibit SF2 to Mr Fraser's Second Affidavit and some of the important terms are

summarised at [78]). It is sufficient to observe that the Federal Court of Australia has held that there is no genuine dispute that the terms of those agreements make PPIL personally liable for the amount owing under the notes (in the context of an application to set aside creditors' statutory demands issued after the winding up of PPIL triggered the default provisions under the Subscription Agreements) (see the Liquidator's Second Affidavit at [79] to [80]). The Liquidators estimate PPIL's liability in this regard to be \$23.7 million as at 30 June 2016 with interest continuing to accrue (Liquidator's Second Affidavit at [81]).

17 The Liquidators have obtained preliminary legal advice about this issue and have formed the view that PPIL may have a reasonable basis for making a claim against its former lawyers on the basis that PPIL should not have been a party to the Subscription Agreements in its personal capacity and should not have had any personal liability under them (the Liquidator's Second Affidavit at [82]). An amount of \$30,959.94 in legal fees has been incurred by the Liquidators in relation to this issue, but is yet to be paid (Liquidator's Second Affidavit at [86]).

18 Before a concluded view can be reached about the merits of any solicitors' negligence claim, however, it is necessary to fully understand the circumstances surrounding entry into the Subscription Agreements and the instructions that were given by PPIL. For this reason, the Liquidators consider that it would be prudent to conduct examinations of at least the director, Mr McDonald, and possibly of the relevant lawyers, to ascertain what instructions were given and in what context. The Liquidators propose to subsequently obtain counsel's advice about the likely success of any proceedings against PPIL's former solicitors and to instigate proceedings if appropriate.

19 PPIL does not, however, hold funds in its own capacity to conduct such examinations, or to prosecute any claim against its former lawyers. The PAPF Trust Deed is at tab 3 of exhibit SF1 to the Liquidator's First Affidavit. As set out at paragraph [84] of the Liquidators' Second Affidavit, that deed provides that the Trustee is entitled to be indemnified out of the assets of PAPF in respect of, amongst other things:

- (a) all liabilities incurred by the Trustee arising in or about or in connection with the Fund and the Assets (clause 20.1(1)(a)); and
- (b) all costs incurred by the Trustee in investigating any demand and taking or defending any action or other proceeding in relation to anything done or omitted to be done concerning the Fund (clause 20.1(i)(c)).

20 As PPIL's debt to the noteholders was incurred in the course of acting as trustee and for the purpose of raising funds for the PAPF unit trust, it appears that the PAPF Trust Deed permits the funds held by PPIL on behalf of PAPF to be used to pay the costs and expenses of investigating the potential claim against PPIL's former solicitors (including examinations under Part 5.9 of the Act), of seeking counsel's advice as to the merits of proceeding and, depending upon that advice, of pursuing claims that have been identified. The Liquidators seek directions that they would be justified in taking this course of action; and also that they would be justified in paying the legal costs already incurred (as referred to above) from the funds held by PPIL as the trustee of PAPF.

Approval of remuneration

Applicable principles

21 The authorities support the following general principles with respect to the approval of the Liquidators' remuneration.

- (a) Where, as in the circumstances currently before the Court, the company has no assets other than trust assets, the Liquidators are entitled to be paid their remuneration, whether for administering the trust assets or for general liquidation work, out of the trust assets (*Re North Food Catering Pty Ltd* at [17]).
- (b) In approving the liquidators' remuneration the Court is exercising its inherent equitable jurisdiction to allow remuneration out of trust assets in connection with the administration of a trust fund (*Re Independent Contractor Services* at [31]).
- (c) The Court treats the work done in administering the trust as an incident of the liquidation, and approaches the application for remuneration as analogous to one by an official liquidator for approval of remuneration (*supra*).
- (d) Liquidators are entitled to their reasonable remuneration and bear the onus of establishing that the remuneration claimed is fair and reasonable. Regard is to be had to the factors listed in s. 473(10) of the Act and its statutory analogues (*Re Independent Contractor Services* at [32]).
- (e) The Court's task in applying the various factors and ultimately fixing reasonable remuneration is not a true exercise of discretion. As analysed by the Full Court of the Federal Court in *Templeton v*

ASIC (2015) 108 ACSR 545, the Court is applying a legal norm and in that application it identifies and evaluates various indicia (per Besanko, Middleton and Beach JJ at [23]). The language of “discretion” is inapposite to this process.

- (f) Each case turns on its own facts, and there is no one manner in which the Court determines whether the remuneration claimed is reasonable. The Court’s usual approach is articulated in the decision of the Full Court of Western Australia in *Venetian Nominees Pty Ltd v Conlon* (1998) 20 WAR 96 which identified the initial task of the Court as being to consider whether prima facie the liquidator has made out a case for determination of the amounts claimed (per Kennedy and Ipp JJ at p. 102). Their Honours stated that, where the external administrator seeks to substantiate the reasonableness of the remuneration claimed by way of time costing, to commence the proceedings the liquidator will ordinarily provide the Court with a statement of account reflecting in appropriate itemised form details of the work done, the identity of the persons who did the work, the time taken for doing the work, and the remuneration claimed accordingly (at p. 103). Furthermore, sufficient detail should be provided to enable the court to determine whether the amounts claimed are reasonable.
- (g) Proportionality is a well recognised factor in considering the question of reasonableness (the authorities are usefully summarised in *Macks v Maka* (2015) 110 ACSR 279 per Judge Bochner at [52] to [66]). Davis J summarised the issue in *Thackray v Gunns Plantations Ltd* (2011) 85 ACSR 144 at [64] in this way (citations omitted):

The court is looking for evidence of overcharging. Excessive charging may be indicated if there is a lack of proportionality between the cost of the work done relative to the value of the services provided. But there is no universal approach applicable in all circumstances by which the “reasonableness” of remuneration claimed or expenses incurred should be measured. The size, importance and complexity of the tasks performed are all factors to be taken into account. What is needed is sufficient information for the court and any objector to have a clear view about what was done so that an assessment can be made about the reasonableness of the claim.

- (h) The factors to be considered under the umbrella of proportionality can generally be described as an amalgam of the factors identified in ss. 473(10)(c)(d)(e) and (h) of the Act.
- (i) The “value” of a liquidator’s work includes the benefit to creditors and beneficiaries in having their position resolved; and to the community of not permitting assets to remain unproductively in the hands of a defunct company for long periods (see for example *Warner, Re GTL Tradeup Pty Ltd (In Liq)* (2015) 104 ACSR 633 at [70] per Farrell J). Indeed “value” to creditors can be measured in a number of different ways, not just by reference to the return to creditors, or by reference to the actual cost to the liquidators (*Macks v Maka* at [58]). Not all necessary work results in a return to creditors, but that does not mean that it does not add “value”; or that remuneration for it is not reasonable or justified even at the price of a more limited return to creditors (*Warner* at [71]).
- (j) Once a Liquidator has put sufficient information before the Court to enable it to consider whether prima facie the liquidator has

made out a case for determination of the amounts claimed, it is an appropriate course to assess reasonableness at a relatively general level and then apply any appropriate discounts to the time charged by the liquidator; including by reference to the concept of proportionality (see for example *Templeton v ASIC* at [60] per Besanko, Middleton and Beach JJ). As *Templeton v ASIC* illustrates, any such discounts (such as to the hourly rate) must be properly assessed and justified.

- (k) Relatively complex issues arise where a trustee cannot, with accuracy, apportion the expenses of an external administration between various trusts. The maxim that equality is equity can provide a basis for apportionment, including, where appropriate, on a pro rata basis (see the authorities referred to in *Re MF Global Australia Ltd (In Liq) (No 2)* [2012] NSWSC 1426 at [11] per Black J).

22 PPIL is no longer the trustee of IQIT. In this regard the authorities support the proposition that where a trustee is removed and replaced, the outgoing trustee retains a right of indemnity from the trust assets, secured by an equitable charge over them, for its liabilities incurred by reason of acting as trustee (see for example *Re Stansfield DIY Wealth Pty Ltd (In Liq)* (2014) 291 FLR 17 at [10] per Brereton J). For this reason, the position with respect to IQIT for the purposes of this application is no different to that of the other trusts being considered.

Application

23 It is readily appreciated from the matters set out in Mr Fraser's affidavits the Liquidator's First and Second Affidavits that the process of identifying, getting in and realising the assets of the entities for which PPIL is a trustee has been extremely complicated.

24 The Liquidators have placed before the Court sufficiently detailed records to evidence that the remuneration sought to be approved is reasonable. The relevant parts of the s. 439A Report (for the period 23 April 2015 to 15 May 2015) are at tab 2 of exhibit SF1 to the Liquidator's First Affidavit and the remuneration reports for the remainder of the administration (16 to 28 May 2015) and for the liquidation to 24 June 2016 are at tab 24 of exhibit SF2 to the Liquidator's Second Affidavit. Mr Fraser details the Liquidators' methodology at [88] to [123] of his Second Affidavit. It is not necessary to restate all of the Liquidators' analysis here but the following matters are noteworthy.

- (a) There is a complexity to attributing work performed between the various trusts. Work that the Liquidators consider cannot be apportioned directly to the trusts' individual billing codes is described by Mr Fraser in his Second Affidavit as PPIL Time (at [93]). This issue should be considered in the context of Mr Fraser's view that most of the PPIL Time during the administration and liquidation has been for the benefit of or focused on PSNT, for reasons including that PSNT's 38.74% holding in the IQ Smart Apartment joint venture is the main asset of the Prime Access Group (see paragraph [96] of the Liquidator's Second Affidavit).
- (b) For the liquidation period, the Liquidators consider that a fair and reasonable method of attributing PPIL Time is to do so in the same proportion as the amount of time recorded directly against each trust during the period (see Mr Fraser's analysis at [98] to [100] of his Second Affidavit).
- (c) The position is more complicated for the administration period as no time was directly recorded against PAPF, PSPT3 or IQIT for

the reasons set out by Mr Fraser at [103] of his Second Affidavit. After consideration of alternative methods of allocating PPIL Time during this period (for example by using the proportions of direct time billed during the liquidation for the administration period – see [104] to [107] of Mr Fraser’s Second Affidavit), the Liquidators’ view is that allocation should occur by reference to work directly attributed to the Trusts, with a small lump sum amount being allocated to IQIT and PSPT3 as an allowance for work done which they benefited from (the Liquidator’s Second Affidavit at [114] and [115]).

- (d) At the second meeting on 28 May 2015, the creditors approved the administrators’ remuneration in the amount of \$260,615 (Liquidator’s Second Affidavit at [101]). At this time the future remuneration of the liquidators was also approved in the amount of \$154,922 (at [117]). Mr Fraser caused payment of the administrators’ remuneration to be drawn down in the amount of \$178,468.51 on 10 November 2015 in the circumstances set out at [109] and [110] of his Second Affidavit.

25 Taking into account the relatively insubstantial errors identified by the Liquidator’s Second Affidavit at [108], [112] and [113], the remuneration sought to be approved by the Liquidators is as follows:

- (a) For the administration period 23 April 2015 to 28 May 2015:
 - (i) from the funds held as trustee of PAPF the amount of \$16,460.85;
 - (ii) from the funds held as trustee of PSNT the amount of \$214,037.65;

- (iii) from the funds held as trustee of PSPT3 the amount of \$3,000; and
 - (iv) from the funds held in trust for IQIT the amount of \$3,000.
- (b) For the liquidation period 28 May 2015 to 24 June 2016:
- (i) from the funds held as trustee of PAPF the amount of \$10,740.14;
 - (ii) from the funds held as trustee of PSNT the amount of \$318,601.89;
 - (iii) from the funds held as trustee of PSPT3 the amount of \$57,956.65; and
 - (iv) from the funds held in trust for IQIT the amount of \$6,361.14.

26 The Liquidators propose that PAPF and PSNT bear a third each of the costs of this application; and that PSPT3 and IQIT bear a sixth each.

Dated: 18 August 2016

**Vanessa Whittaker
Counsel for the Plaintiffs**