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To the creditor as addressed

Our ref 32549560_1

7 May 2018

Dear Sir/Madam

Brierty Limited (In Liquidation)
ACN 095 459 448 ("the Company")

I refer to the appointment of Hayden White, Clint Joseph and I, Matthew Woods as joint and several Voluntary Administrators of the Company on 6 September 2017 and our subsequent appointment as joint and several Liquidators of the Company on 7 February 2018.

This report has been prepared pursuant to Section 70-40 of the Insolvency Practice Rules (Corporation) 2016, which requires that the following information be provided to creditors within three (3) months of a company entering liquidation:

- an update on the estimated values of assets and liabilities;
- an update on the progress of the liquidation and possible recovery actions; and
- the likelihood of a dividend being paid in the liquidation.

1. Update on the progress of the liquidation

1.1 Overview

This report should be read in conjunction with our previous reports to creditors dated 30 January 2018 and 7 February 2018.

As previously reported, the Company was based in Western Australia and its business segments included civil contracting, mining and residential land development.

A brief description of the operations of the Company can be found in our report to creditors dated 30 January 2018.

Our investigations to date indicate the Company's failure is primarily the result of:

- the significant losses incurred on its North West Coastal Highway project;
- working capital strain due to the losses incurred on a number of civil contracting projects, resulting in increased creditors and a large number of payment arrangements being made with a number of trade creditors; and
- difficulty in securing new contracts as a result of the market's concerns regarding the Company's financial circumstances and a highly competitive market.

To address its financial difficulties, the Company borrowed funds from its Directors on an unsecured basis, restructured its financing facilities, and sought to raise additional capital from investors (which was unsuccessful). However, the funding procured and the restructuring of its financing facilities were insufficient to address the three dot points above, which culminated in the Company's failure.

Since our appointment as Liquidators on 7 February 2018, we have:

- undertaken a sale of business campaign for the Company's wholly-owned subsidiary, Bellamack Pty Ltd;
- verified employee entitlements for approximately 250 staff employed by the Company;
- provided employee entitlement data to the Department of Employment;
- undertaken further investigations into the Company's dealings and affairs (Section 2); and
- progressed our investigations into possible claims, offences committed and courses of action (Section 2).

Details of the likelihood of a dividend and our future courses of action are outlined in Sections 5 and 7 of this report, respectively.

As outlined in our report to creditors dated 30 January 2018, the Directors of the Company completed a Report as to Affairs (**RATA**) during the Voluntary Administration, which was lodged with the Australia Securities and Investments Commission (**ASIC**).

1.2 Assets and Liabilities

Please refer to Appendix A for an overview of the estimated assets and liabilities of the Company.

2. Investigations undertaken and possible recoveries

2.1 Insolvent trading

As set out in our report to creditors dated 30 January 2018, our preliminary view is that the Company may have been insolvent from at least 16 May 2017, but more likely by 1 July 2017, when it had insufficient funds to meet its debts as and when they fell due. The basis for this view, in summary is:

- the loss incurred by the North West Coastal Highway project placed significant stress on the Company's cash flows from approximately February 2016;
- there was a material increase in the value of overdue debts to trade suppliers;
- the Company had difficulty procuring new work, given the market concerns around its financial viability; and
- following 16 May 2017, the Company was unable to raise funds or negotiate alternative arrangements with secured creditors to meet its working capital deficiency.

Since our appointment as Liquidators, the further investigations conducted strengthen the Liquidators' view that the Company was likely insolvent by 16 May 2017, due to the large volume of correspondence reviewed throughout the further investigations, indicating that the Company did not have sufficient liquidity from May 2017 to meet creditor payments as and when they fell due.

We have based our investigations and opinions on the information obtained from:

- books and records, including electronic records and emails;
- board papers;
- management financial accounts;
- publicly available information (e.g. ASIC, ASX); and
- discussions with Directors, Management, staff, suppliers and other parties.

While our investigations are significantly advanced, further investigations are required to determine whether it is in the creditors' interest to commence proceedings. In order to commence proceedings against the Company's Directors for trading whilst insolvent, as Liquidators, we must first obtain funding to fund the costs of the proceedings. We are currently considering various options for funding. Should funding be obtained and in the event a successful insolvent trading claim is made, it would be recoverable against the Company's Directors pursuant to Section 588M of the *Corporations Act 2001* (**the Act**).

2.2 Voidable transactions and other claims

We provide the following update on our investigations in relation to voidable transactions and other claims.

Unfair preference payments review

- We have identified 23 creditors that may have received payment of a preferential nature from 17 May 2017 to 6 September 2017 ("review period"), totalling approximately \$9.6 million. We have also undertaken work to consider the recoverability of this amount, including but not limited to:
 - Considering the transactions between the Company and each of the 23 creditors against the requirements of Section 588FA of the Act, and the defences which may be available to each creditor under Section 588FG of the Act, including:
 - whether the creditor received no benefit from the transaction; and
 - whether the creditor received the monies in good faith.

We have also undertaken investigations regarding potential preferential payments to statutory bodies. These investigations are ongoing, but have included the review of internal documentation of the statutory bodies available to the Liquidators in accordance with the relevant privacy legislation.



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Statutory declarations review

We have conducted further detailed analysis of the statutory declarations for the Lakelands Stage 66 and Mandurah Road intersection and the Perth Stadium projects. This analysis includes:

- vouching of transactions captured in the Company's accounting system against the original invoice document;
- comparing project-specific Accounts Payable reports dated immediately prior to, and following, the statutory declarations being made by the Company's representative;
- considering the payment profile of the projects being reviewed to test whether the statutory declaration process advised by the Company's Management was adhered to.

The results of our further analysis have been conveyed to the relevant authorised Company representative, and we await a reply as at the date of this report.

Other claims

As set out in our previous report, we have identified possible voidable transactions involving the Directors and these investigations are ongoing.

2.3 Offences and reporting to ASIC

At the conclusion of our investigations into the Company's dealings and affairs, and possible offences committed by officers of the Company, we will submit a report of our findings with ASIC pursuant to Section 533 of the Act.

Creditors should be aware that this report pursuant to Section 533 of the Act is not available to the public. Subject to the findings disclosed in our report, ASIC may request the Liquidators to undertake further investigations.

3. Sale of business

As outlined in our report to creditors dated 30 January 2018, Bellamack Pty Ltd (**Bellamack**) is a wholly-owned subsidiary of the Company, established in 2009 as a special purpose vehicle to operate a joint venture with the Northern Territory Government in relation to the multi-staged development of large englobo land holdings in Palmerston, Northern Territory.

Bellamack is not in liquidation, however, as Brierty owns 100% of the issued capital in Bellamack, the Liquidators can deal with and realise that interest.

The Liquidators have prepared and completed an Expressions of Interest campaign for the sale of Bellamack and/or its assets, and are currently liaising with various interested parties who expressed an interest regarding the submission of formal binding offers for Bellamack and/or its assets. This process is due to close on 11 May 2018.

The net proceeds to be recovered from the sale of Bellamack are non-circulating assets and accordingly, are subject to the secured creditor's registered security interest.



Further details of the above sale campaign are provided in our report dated 30 January 2018.

4. Receipts and payments

Please refer to Appendix B for a summary of all receipts and payments in the liquidation to date.

5. Likelihood of a dividend

The Liquidators' estimate of the return to creditors (priority, secured and unsecured) is as follows:

Estimated return for creditors		
	Low (cents per \$)	High (cents per \$)
Priority Creditors (Employees)	0.64	0.64
Secured Creditors	Not disclosed	Not disclosed
Unsecured Creditors	Nil	Undetermined

The estimated return does not reflect potential recoveries that may be achieved from various claims and actions identified in Section 2 and that is why the high scenario value is undetermined. Whilst investigations have progressed and the quantum of claims can be estimated, the possible returns from same are unknown due to the size and complexity of the legal proceedings and the unpredictability of litigation costs. We will provide creditors with an update on the outcome of our investigations and any change in the likelihood of a dividend being paid to creditors in our next report.

The estimated return to priority creditors includes any dividends payable to the Department of Employment for payment of employee entitlements.

6. Cost of the liquidation

During the second meeting of creditors of the Company held on 7 February 2018, creditors approved our retrospective remuneration for work completed and our prospective remuneration to be completed during the voluntary administration and liquidation, up to a capped amount.

Should further work than was originally anticipated be required in completing the liquidation, we may write to you again and ask that you further approve our remuneration for the additional work required in completing the liquidation. If we do, we will provide you with detailed information so that you can understand what tasks we have undertaken and the costs of those tasks.

7. What happens next?

We will proceed with the liquidation, including the following tasks:

- attend to stakeholder queries and provide assistance to employees where possible;
- liaison with the Department of Employment with respect to the verification and distribution of employee entitlements;

- declare and distribute a partial priority dividend following a distribution by the Department of Employment;
- engage with the Committee of Inspection (**Committee**) members and prepare updates to creditors;
- hold meetings of the Committee as required;
- realise the remaining assets;
- complete thorough investigations into the Company's dealings and affairs;
- report findings to ASIC pursuant to the Act;
- pursue recovery of any voidable transactions;
- distribute recoveries made in accordance with the priority provisions of the Act; and
- attend to all statutory lodgements.

At this stage, we are unable to provide an expected date of finalisation of the liquidation due to:

- the size and complexity of the Company; and
- the density of books and records to be investigated in relation to possible claims.

We will provide a further update in this regard in future reports to creditors.

8. Where can you get more information?

The Australian Restructuring Insolvency and Turnaround Association (**ARITA**) provides information to assist creditors with understanding liquidations and insolvency.

This information is available from ARITA's website at arita.com.au/creditors. ASIC also provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at asic.gov.au (search for "insolvency information sheets").

Should you require further information please email brierty@kpmg.com.au.

Yours faithfully



Matthew Woods
Joint and Several Liquidator

Enclosures:

Appendix A – Summary of estimated assets and liabilities
Appendix B – Receipts and payments schedule



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Appendix A

Summary of estimated assets and liabilities		
\$000	Low	High
Circulating Assets		
Cash at bank	-	-
Debtors	3,764	3,764
Share of JV bank accounts	341	341
Inventory	1,054	1,054
Administrators' trading receipts	3,158	3,158
Other recoveries	837	837
Estimated Circulating Asset recoveries	9,154	9,154
Non-Circulating Assets		
Interest in Bellamack	Not disclosed	Not disclosed
Plant and equipment (net of financier claims)	16,981	18,277
Estimated Non-Circulating Assets	Not disclosed	Not disclosed
Total estimated assets	Not disclosed	Not disclosed
Liabilities		
Secured Creditor Claims	(36,659)	(36,659)
Priority Creditor (Employee) Claims	(7,120)	(7,120)
Unsecured Creditor Claims	(22,209)	(22,209)
Total estimated liabilities	(65,988)	(65,988)



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Appendix B

Brierty Limited (In Liquidation) Receipts and payments schedule	
Receipts	
Funds received from VA	20,389,247
Dry hire income	1,614,814
Sale of plant and equipment	1,910,698
Other receipts	6,911
Total Receipts	23,921,670
Payments	
Advertising expenses	(17,388)
Advisory fees	(11,275)
Appointee fees and disbursements	(2,301,675)
Bank charges	(58)
BAS payments	(278,228)
Demobilisation expenses	(118,586)
Deregistration fees	(39)
HP finance payments	(1,665,285)
HSBC fees	(3,699)
Insurance	(52,958)
Legal fees	(336,176)
Payroll tax	(54,773)
Printing and stationery expenses	(1,117)
Rent	(4,821)
Secured creditor distribution	(6,000,000)
Share registry costs	(1,485)
Subcontractor fees	(11,919)
Utilities	(14,786)
Wages and salaries	(14,612)
Total payments	(10,888,879)
Closing cash at bank	13,032,790