

# Report to Creditors

under Insolvency Practice Rule 70-40

## Talon Construction Group Pty Ltd (In Liquidation)

**ACN 124 131 497**

5 February 2021

Peter Krejci  
Liquidator

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**BRI Ferrier**

The logo for BRI Ferrier, featuring the company name in a bold, sans-serif font. The text is white and set against a dark grey rectangular background. A green diagonal line runs from the bottom right corner of the grey box towards the top right corner.

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## 1 EXECUTIVE SUMMARY

As you are aware, I was appointed Liquidator of Talon Construction Group Pty Ltd (In Liquidation) (“the Company”) by a special resolution passed at a duly convened meeting held on 6 November 2020 pursuant to Section 491 of the Corporations Act 2001 (“the Act”).

This report has been prepared in accordance the Rule 70-40 of the Insolvency Practice Rules (Corporations) 2016 (“IPR”). I provide hereunder a summary of the conduct of the Liquidation over the past three (3) months.

The Director, Mr Richard Smith, established the Company in February 2007 and operated as a builder of various property construction projects in New South Wales. I understand that the Company employed up to twenty (20) employees at its peak and engaged subcontractors on each project. In or around early 2019, the Director made the decision to cease taking on new work and gradually terminated all employees (other than himself) as the remaining projects completed. The Company continued minimal trading until September 2020, in which the Company was only undertaking rectification works on previously completed projects.

The Director has advised that, as a result of construction works on Park Street and Thomas Street in Wollongong NSW 2500 (together “the Wollongong Properties”), the developers of the Wollongong Properties are debtors of the Company in respect of funds held in retention. However, this has been disputed by the developers (and subsequently, partial owners), who instead have claimed that there are significant rectification works required. Recently, the owners of the Wollongong Properties have made separate applications to the NSW Civil & Administrative Tribunal (“NCAT”) in respect of these claims. The Company was without funds to defend the NCAT proceedings and accordingly, I was appointed Liquidator of the Company on 6 November 2020.

At the time of my appointment, the Company had minimal assets on hand, represented by cash at bank totalling \$4K. I have yet to recover the cash at bank funds due to difficulties in timely responses from the bank. The debtor balances of \$121K in respect of the Wollongong Properties were written off in the Company’s accounts during FY2020, however my enquiries in relation to the recoverability of the debtor balances and the counter claims are ongoing. I have not identified any other assets that may be realised for the benefit of creditors.

The known liabilities of the Company are in the order of \$250K, represented by Trade Creditors of \$1.5K, the Australian Taxation Office (“ATO”) for \$4K and related party loans of \$244K. The potential claims relating to the Wollongong Properties have not yet been quantified and are therefore contingent liabilities at this stage.

I have conducted my investigations into the affairs of the Company which indicate that the Company may have been insolvent from around June 2019 and incurred only a minor amount of debt after that point. Considering the minimal value of debts incurred after the insolvency date and recent legislation introduced by the Australian Federal Government in response to the COVID-19 global pandemic, I do not believe there is an insolvent trading claim that can be pursued.

At this stage, I have not identified any other voidable recoveries or claims that can be pursued.

In the near term, I intend to report my findings with ASIC pursuant to Section 533(1) of the Act based on my investigations to date. The report is confidential and is not available to creditors.

**Based on information to date, any return to creditors is contingent on successfully recovering the debtor claims. However, I understand these are disputed debts and subject to counter claims. The costs of the Liquidation will exceed the anticipated cash at bank recovery and I am not aware of any further asset realisations or voidable recoveries to be made for the benefit of creditors. Accordingly, unless significant recoveries are made from the debtor claims, there will not be any dividends to any class of creditors in this Liquidation.**

**Should any creditor or interested party have any relevant information that they wish to provide me, they are requested to contact my office before 5 March 2021. Otherwise, absent any substantive new information, I intend to finalise the Liquidation within the next six (6) months to nine (9) months.**

### 1.1 PREVIOUS REPORTS TO CREDITORS

This report should be read in conjunction with my Initial Report to Creditors dated 20 November 2020 (“the First Report”). Information in the First Report will not be repeated unless required.

### 1.2 PREVIOUS MEETINGS OF CREDITORS

No meetings of creditors have been held to date. I note that creditors approved my remuneration up to \$26K (plus GST) by proposal, in lieu of a meeting.

### 1.3 DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES

I refer to the Declaration of Independence, Relevant Relationships and Indemnities enclosed in the First Report and note that there have been no changes to same.

### 1.4 DISCLAIMER

This Report and the statements made herein are based upon available books and records, information provided by the Company’s Director, Advisors and from my own enquiries. Whilst I have no reason to doubt the accuracy of the information provided or contained herein, I reserve the right to alter my opinions or conclusions should the underlying data prove to be inaccurate or materially change after the date of this Report.

In considering the options available to Creditors and in formulating my opinions, I have necessarily made forecasts and estimates of asset realisations and recoveries and the ultimate quantum of Creditors’ claims against the Company where appropriate. These forecasts and estimates may change in due course as Creditors’ claims are made and adjudicated upon. Whilst the forecasts and estimates are the Liquidator’s best assessment in the circumstances, Creditors should note that the Company’s ultimate deficiency, and therefore the outcome for Creditors could differ from the information provided in this Report.

Neither the Liquidator nor any member or employee of BRI Ferrier accepts responsibility in any way whatsoever to any person in respect of any errors in this Report arising from incorrect information provided to me, or necessary forecasts, estimates and assessments made for the purposes of these Reports.

## 2 STATUTORY INFORMATION

The following is a summary of the Company's statutory and business details obtained from the ASIC database, the Personal Property Securities Register ("PPSR") database, and the Company's records:

### 2.1 COMPANY DETAILS

<b>Company Name</b>	Talon Construction Group Pty Limited
<b>Registered Address</b>	Mazars (NSW) Pty Ltd Level 12 90 Arthur Street North Sydney NSW 2060
<b>Principal Place of Business</b>	261 Jamberoo Mountain Road Jamberoo NSW 2533
<b>Incorporation Date</b>	26 February 2007
<b>A.C.N</b>	124 131 497
<b>A.B.N</b>	13 124 131 497

### 2.2 COMPANY OFFICE HOLDERS

Name	Position	App Date	Cease Date
Richard Warren Smith	Director	26/02/2007	Current
Shani Gwen Smith	Director	15/03/2013	10/05/2017
Richard Warren Smith	Secretary	25/08/2008	Current

### 2.3 SHAREHOLDINGS

Name	Share Class	No. of Shares	Fully Paid Up	Status
Christmas River Pty Ltd	ORD	2	Yes	Current

### 2.4 REGISTERED SECURITY INTERESTS

A search of the PPSR database indicates that there are nineteen (19) registered security interests against the Company, as set out below:

Registration Number	Secured Party	Start Date	Collateral
201202290056050	Stoddart Group Pty Ltd	29/12/2012	Commercial - Other Goods
201203080085694	Big River Group Pty Ltd	8/03/2012	Commercial - Other Goods
201204120043456	Bradnam's Windows and Doors Pty Ltd	12/04/2012	Commercial - Other Goods
201311160010039	Clifton Brick Manufacturers Pty Ltd	16/11/2013	Commercial - Other Goods
201311160010245	Clifton Brick Manufacturers Pty Ltd	16/11/2013	Commercial - Other Goods
201405300024378	Redstar Equipment Pty Ltd	30/05/2014	Commercial - Other Goods
201410230011097	Infrabuild Trading Pty Ltd	23/10/2014	Commercial - Other Goods
201504130124717	Tradelink Pty Ltd	13/04/2015	Commercial - Other Goods
201508200068560	AFS Systems Pty Ltd	20/08/2015	Commercial - Other Goods
201612230034715	CSR Building Products Limited	23/12/2016	Commercial - Other Goods
201703070015289	Mesh & Bar Pty Ltd	7/03/2017	Commercial - Other Goods
201710230014054	ASI JD MacDonald Pty Ltd	23/10/2017	Commercial - Other Goods
201805290018681	Metal Manufactures Pty Ltd	29/05/2018	Commercial - Other Goods
201805290019250	Metal Manufactures Pty Ltd	29/05/2018	Commercial - Other Goods
201811060058639	Coates Hire Operations Pty Ltd	6/11/2018	Commercial - Other Goods
201811060058747	Coates Hire Operations Pty Ltd	6/11/2018	Commercial - Motor Vehicle
201909040015534	WGC Crane Group Pty Ltd	4/09/2019	Commercial - Motor Vehicle
201909040015547	WGC Crane Group Pty Ltd	4/09/2019	Commercial - Other Goods
202011090023078	AFS Systems Pty Ltd	9/11/2020	Commercial - Other Goods

Correspondence has been issued to the parties requesting further documentation and inviting them to prove their claims, if any. As at the date of this Report, I have received responses from nine (9) parties, all of which have confirmed removal of the relevant security interest. I am not aware of any assets/equipment in the Company's possession or any claims owed to the above parties.

## 2.5 RELATED PARTIES AND ASSOCIATES

A directorship search has been undertaken for the Company's Director. My searches indicate that the Director holds the following Officer roles in other entities:

Name	A.C.N	Position	App Date	Cease Date
OFD Units Pty Ltd	104 520 461	Director & Secretary	28/04/2003	25/09/2006
Calzah Pty Ltd	061 928 434	Director & Secretary	18/10/1993	Current
Christmas River Pty Ltd	123 140 018	Director	15/12/2006	Current
Class Holdings Pty Ltd	095 873 359	Director	12/02/2001	19/03/2001
Class Realty Pty Ltd	088 907 617	Director & Secretary	2/08/1999	9/01/2008
Havenwood Tiny Homes Pty Ltd	646 056 484	Director & Secretary	20/11/2020	Current
Morrissey Constructions Pty Ltd	088 907 706	Director & Secretary	2/08/1999	16/03/2005
Oak Flats Developments Pty Ltd	102 409 094	Director & Secretary	4/10/2002	11/04/2005
Talon Lock Enterprises Pty Ltd	063 717 359	Director	2/03/1994	5/01/2011
Upper Class Developments Pty Ltd	057 000 290	Director & Secretary	26/10/1992	23/01/2011
Upper Class Extensions Pty Ltd	050 100 617	Director	21/09/1990	30/12/2001
Upperclass Group Pty Ltd	088 848 702	Director & Secretary	28/07/1999	9/01/2008
William Campbell Foundation	083 497 796	Director	30/11/2007	18/10/2012
152 Taren Point Rd Pty Ltd	100 388 387	Director	30/04/2002	12/05/2005

### 3 COMPANY BACKGROUND AND EVENTS LEADING TO MY APPOINTMENT

The following information was obtained from the Company's books and records, enquiries of officers, staff and documentation provided to the Liquidator:

- The Company was incorporated on 26 February 2007 and operated as a builder of various property construction projects in New South Wales. The Company acted as trustee of The Talon Construction Group Unit Trust and did not trade in its own capacity, rather the business was traded under this trust.
- The Company employed up to twenty (20) employees at its peak as well as engaging subcontractors on each project.
- In or around early 2019, the Company ceased taking on building works contracts and wound down its remaining projects. The Company continued minimal trading until September 2020, in which the Company was only undertaking rectification works on previously completed projects.
- The Director has advised that, as a result of construction works on the Wollongong Properties, the developers of the Wollongong Properties are debtors of the Company in respect of funds held in retention, totalling circa \$121K.
- However, this has been disputed by the developers (and subsequently, partial owners), who instead have claimed that there are significant rectification works required.
- Recently, the owners of the Wollongong Properties made separate applications to the NCAT in respect of these claims. The Company was without funds to defend the NCAT proceedings and accordingly, the Director took steps to liquidate the Company. I was subsequently appointed Liquidator on 6 November 2020.

### 4 REASONS FOR FAILURE

As discussed above, the Director has advised the reasons for failure were the following:

- Failure to recover debts owed in relation to the Wollongong Properties;
- NCAT dispute applications made by the developers of the Wollongong Properties, which the Company did not have the funds to adequately defend.

I agree with the above comments and my enquiries have not identified any additional reasons for failure.

### 5 HISTORICAL FINANCIAL INFORMATION

I have reviewed the Company's financial statements for the financial periods FY2017 to FY2019, and the Company's management accounts for FY2020 and the part year ended 6 November 2020.

#### 5.1 COMPARATIVE BALANCE SHEETS

Attached as **Annexure "1"** is a comparative analysis of the Balance Sheets for the abovementioned periods.

I make the following commentary on the comparative Balance Sheets:

- Trade Receivables of \$121K as at 30 June 2019 relate to the retention claims owed by the respective Owners of the Wollongong Properties, which were subsequently written off as bad debts during FY2020. The recoverability (set off against alleged counter claims relating to defective work) is ongoing.
- Plant & Equipment during FY2017 to FY2019 mainly included leased equipment, which were progressively returned to the lessors during FY2020 as the remaining projects wound down.
- The downward trend in assets and liabilities (with the exception of related party loan liabilities) is reflective of the winding down of the Company where funds from related parties were used to discharge liabilities.
- The claims by the Owners of the Wollongong Properties were not included in the accounts, as these were contingent liabilities and the Company disputed their claims.
- Whilst the Company appears to have significant net asset deficiency in recent reporting periods, the majority of the deficiency relates to the related party loan liabilities.

## 5.2 COMPARATIVE PROFIT AND LOSS STATEMENTS

Attached as **Annexure "1"** is a comparative analysis of the Profit and Loss Statements for the abovementioned periods.

I make the following commentary on the comparative Profit and Loss Statements:

- Again, the general downward trend in income and expenses is reflective of the winding down of the Company.
- The Company's major expenses were employee-related expenses, which is significantly reduced from FY2018 onwards as the Company gradually terminates employees in the winding down process.
- The Company was incurring losses from FY2018, however it should be noted that a large portion of these losses relate to the bad debt expenses in FY2019 and FY2020.

## 6 REPORT ON COMPANY ACTIVITIES AND PROPERTY

I received a completed Report on Company Activities and Property ("ROCAP") for the Company from the Director on 25 November 2020. Below is a summary of the ROCAP, incorporating my comparative views as to the realisable value:

Talon Construction Group Pty Ltd (In Liquidation) A.C.N. 124 131 497 Summary of Director's Report on Company Activities and Property				
	Report Reference	Book Value as at 6/11/2020 (\$)	Director's ERV (per ROCAP) (\$)	Liquidator's ERV as at 6/11/2020 (\$)
<b>Assets</b>				
Cash and Cash Equivalents	6.1.1	6,931	-	3,931
Debtors	6.1.2	-	-	Unknown
<b>Total Assets</b>		<b>6,931</b>	<b>-</b>	<b>3,931</b>
<b>Liabilities</b>				
Secured Creditors	6.2.1	-	-	-
Priority Creditors	6.2.2	-	-	-
Unsecured Creditors				
Trade Creditors	6.2.3	2,886	1,100	1,533
Australian Taxation Office	6.2.4	4,122	-	4,122
Wollongong Properties	6.2.5	-	-	Unknown
Related Party Loan - Richard & Shani Smith	6.2.6	143,824	143,824	143,824
Related Party Loan - Christmas River Pty Ltd ATF Christmas River Trust	6.2.6	100,575	100,575	100,575
<b>Total Liabilities</b>		<b>251,407</b>	<b>245,499</b>	<b>250,054</b>
<b>Estimated Net Asset / (Deficiency)</b>		<b>(244,476)</b>	<b>(245,499)</b>	<b>(246,123)</b>

## 6.1 ASSETS

### 6.1.1 Cash and Cash Equivalents

On appointment, I contacted major financial institutions notifying them of the Liquidation and requesting information regarding any other bank accounts held in the name of the Company. I understand that the Company maintained an account with St George Bank, who have confirmed that the Company's bank account is frozen. However, to date, St George Bank have not been responsive to my requests for confirmation of the balance of the account or transfer of the funds into my control. I am not aware of any issues and anticipate the funds will be recovered in full.

The Company's books include credit cards in the Director's personal name, not the Company and as such, should not have been reported in the Company's books.

No further bank accounts have been identified based on responses received to date.

### 6.1.2 Debtors

Debtor balances of \$121K in respect of the Wollongong Properties were written off in the Company's accounts during FY2020. Subsequently, the developers of the Wollongong Properties commenced NCAT applications against the Company, claiming that significant rectification works are required on the Wollongong Properties.

The Director has included these debtor claims in the ROCAP with a nil recoverable value, however my enquiries into the recoverability of the debtor claims and the potential set-off from the alleged counter claims are ongoing. Creditors will be kept apprised if there are any material developments in recovery, however, it appears unlikely these will be recovered in full.

## 6.2 LIABILITIES

### 6.2.1 Secured Creditors

Please refer to Section 2.4 above in respect to my commentary for Secured Creditors. I have not identified any Secured Creditors to date.

### 6.2.2 Priority Creditors

At the time of my appointment, I am not aware that the Company employed any staff other than the Director and his wife to complete administrative work. To date, I have not received any claims from Priority Creditors (employees).

If there are any other outstanding entitlements, employees are eligible to apply to the Federal Government, which has established a safety net scheme known as the Fair Entitlements Guarantee scheme ("FEG"). FEG is administered by the Attorney-General's Department for eligible employees who have been terminated as a result of their employer's insolvency and are owed entitlements.

To obtain further information, please contact my office or alternatively, please visit the FEG website at <https://www.ag.gov.au/industrial-relations/fair-entitlements-guarantee/Pages/default.aspx>.

### 6.2.3 Unsecured Creditors

My comments in relation to the known Trade Creditors are as follows:

- The claims lodged by trade creditors in the liquidation to date relate to expenses incurred in the ordinary course of the business, being utilities and accounting fees.
- As noted in Section 6.1.1, the Company's books (incorrectly) included credit cards held in the Director's personal name, and as such, there should be no outstanding debt owed by the Company.

Should creditors who have not already done so, wish to lodge their claim with this office, please complete the Formal Proof of Debt form, attached as **Annexure "2"**, and return same together with documentary evidence to support your claim.

### 6.2.4 Australian Taxation Office

The Company's books reported a liability owed to the ATO in respect of GST debt for \$4K, however I note that the ATO have not lodged a claim in the Liquidation to date. I understand that there are outstanding tax lodgements, which may change the liability to the ATO if lodged.

### 6.2.5 Wollongong Properties

As noted in Section 6.1.2, proceedings were recently commenced in the NCAT against the Company, claiming that significant rectification works are required on the Wollongong Properties. These proceedings were stayed against the Company upon my appointment, and in this regard, I note that the proceedings relating to the Park Street property were dismissed.

The proceedings relating to the Thomas Street property have also joined the developer of the project as the second respondent and I understand the proceedings are continuing against the developer, who may

subsequently have a claim against the Company depending on the outcome of the proceedings. The developer has indicated that such a claim may be in the quantum of \$500K.

As at the date of this report, there have been no documents provided substantiating the above claims.

### 6.2.6 Related Party Loans

We understand that the related party loans from Christmas River Pty Ltd and from Richard Smith and Shani Smith personally were used to provide working capital to the Company in order to discharge trading expenses.

## 7 DEFICIENCY STATEMENT

Attached as **Annexure "3"** is a copy of the Deficiency Statement.

I estimate that the net deficiency to creditors to be in the order of \$346K, before the costs of the Liquidation. The deficiency to creditors is represented by the following:

Summary of Deficiency	Amount (\$)
Accumulated Losses	344,486
Loss on Realisation of Assets	3,000
Overreported Liabilities	<u>(1,353)</u>
<b>Estimated Net Deficiency</b>	<b><u>346,133</u></b>

The majority of the deficiency relates to the historical accumulated losses from the trading of the business, however as mentioned previously, a large portion of the losses relate to the bad debts expense.

## 8 INVESTIGATIONS

### 8.1 BOOKS AND RECORDS (S286)

Section 286 of the Act provides that:

"A company, registered scheme or disclosing entity must keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited."

The failure to maintain books and records in accordance with Section 286 of the Act may allow a Liquidator to presume the company was insolvent throughout the period the books were not maintained (Section 588E of the Act).

My preliminary view is that the Company has kept sufficient books and records to meet the requirements of Section 286 of the Act.

## 8.2 RISK OF LITIGATION ACTIONS GENERALLY

Part 5.7B of the Act gives Liquidators the right to commence certain legal proceedings to recover money, property or other benefits for the benefit of the Unsecured Creditors of a company.

Creditors should note that recovery actions:

- have the potential to increase the pool of funds available to Creditors;
- are usually expensive, lengthy and have unpredictable outcomes;
- should not be commenced unless defendants have the financial resources to satisfy any judgement; and
- must be funded out of the Company's existing assets or, where such assets do not exist, by Creditors or by external litigation funders (who are likely to require a significant share of the proceeds of any judgement as a condition of funding the litigation).

## 8.3 PROVING INSOLVENCY

Recovery actions under Part 5.7B of the Act, including unfair preferences, uncommercial transactions and insolvent trading, require the Liquidators to demonstrate that the Company was insolvent at the time of the transaction. Proving insolvency may be a complex, lengthy and costly exercise.

## 8.4 INSOLVENCY ANALYSIS & INSOLVENT TRADING

My assessment has been based on the information available to me from the Company's records, from information provided by the Director and on the basis of separate investigations of the Company's affairs. Based on my investigations, it is my preliminary view that the Company may have been insolvent from approximately June 2019.

I provide below the basis of my view:

### 8.4.1 Insolvency Analysis

- A working capital analysis is generally based on a review of the Company's financial records and management accounts to determine whether there were sufficient current assets to meet current liabilities, including any adjustments to the reported current assets and current liabilities.
- The working capital analysis has been based on a review of the Company's records reconciled to 6 November 2020, which shows that the Company had insufficient working capital from June 2019 onwards. A summary is shown below.

Working Capital Analysis	As at 30/06/2017 (\$)	As at 30/06/2018 (\$)	As at 30/06/2019 (\$)	As at 30/06/2020 (\$)	As at 6/11/2020 (\$)
Current Assets	2,538,502	1,621,091	141,183	39,515	3,931
Current Liabilities	2,036,633	502,082	201,743	85,600	4,008
<b>Net Working Capital</b>	<b>501,869</b>	<b>1,119,009</b>	<b>(60,560)</b>	<b>(46,085)</b>	<b>(78)</b>
<b>Current Asset Ratio</b>	<b>1.25</b>	<b>3.23</b>	<b>0.70</b>	<b>0.46</b>	<b>0.98</b>

- However, it should be noted that the Company was winding down its trading from early 2019 and appears to have been funded by related party loans.

### 8.4.2 Indicators of Insolvency

In addition, I have observed the following which are indicators of insolvency:

- The Company was experiencing difficulties with recovering receivables relating to retentions for the Wollongong Properties, resulting in bad debt write off; and
- Accumulated trading losses of \$345K at appointment, however a significant portion of the losses related to the bad debt write off totalling \$337K.

### 8.4.3 Insolvent Trading Claim

Based on the available information, it would appear that the Company was insolvent from in or around June 2019, and remained insolvent thereafter. Determining the value of an insolvent trading claim will generally involve a forensic review of the debts incurred after the date on which it can be maintained that the Company was insolvent. My investigations indicate that an insolvent trading claim may be valued at around \$5K, as detailed below.

Insolvent Trading Calculation	Amount (\$)
Trade Creditors incurred from June 2019 onwards	5,655
<b>Estimated Total Insolvent Trading Claim</b>	<b>5,655</b>

I note the following in respect of my preliminary assessment:

- The contingent claims in relation to the Wollongong Properties have not been included as these are not debts incurred in the ordinary trading of the business.
- The trade creditors debt is based on a review of debts incurred after June 2019 that remain outstanding, which appear to have been minimal.

Considering the minor value of the debts incurred and the conduct of the Directors in winding down the Company, I do not believe there is an insolvent trading claim that could be pursued.

I also note that in response to the COVID-19 global pandemic, the Australian Federal Government introduced legislation under Section 588GAAA of the Act, which granted temporary relief for directors from their duty to prevent insolvent trading for a period of six (6) months from 25 March 2020. Accordingly, the Director may be able to rely on this provision for debts incurred in the ordinary course of business, which may eliminate any insolvent trading claim.

## 8.5 VOIDABLE TRANSACTIONS

Voidable transactions include transactions such as unfair preferences, uncommercial transactions, unfair loans, unreasonable director related transactions and circulating security interests created within six (6) months before the relation-back day, which is the date of the filing of the winding up application.

These transactions usually relate to the period six (6) months prior to the date of my appointment however in certain circumstances this period can be extended to four (4) years in relation to transactions with related entities.

### 8.5.1 Unfair Preferences

An unfair preference results when the Company and a Creditor are parties to a transaction(s) and the Creditor receives more than it would receive if the transaction(s) are set aside, and the Creditor proved for the debt in the winding up. If it is ultimately determined that certain payments are potentially recoverable as unfair preferences, it would be necessary to establish:

- that the Company was insolvent at the time the payments were made; and
- that the recipient had reasonable grounds to suspect that the Company was insolvent at that time or would become insolvent as a result of the payment.

The clawback provisions available to the Liquidator relate only to payments to unrelated parties made within six (6) months from the date of my appointment, if the Company is insolvent at that time, as the Relation Back Period ("RBP").

I have not identified any unfair preference payments.

### 8.5.2 Uncommercial Transactions (S588FB)

A transaction is considered uncommercial if it is made at a time when the Company is insolvent and it may be expected that a reasonable person in the Company's circumstances would not have entered into the transaction having regard to:

- The benefits or detriment to the Company of entering into the transaction; and
- The prospective benefits to other parties to the transaction.

I have not identified any uncommercial transactions.

### 8.5.3 Unfair Loans (S588FD)

A loan is unfair if it is made to a Company at extortionate interest rates or the charges in relation to the loan are extortionate. In considering whether interest and charges are extortionate, regard must be had to the following:

- Risk the lender is exposed to;
- Value of the security;
- Term;

- Repayment schedule; and
- Amount of loan.

I have not identified any unfair loans.

#### **8.5.4 Discharge of Related Party Debts (S588FH)**

A transaction is considered to have discharged a related party's debt if funds from the Company are used to pay that Creditor which has had the effect of discharging, to the extent of a particular amount, a liability (whether under a guarantee or otherwise) of a related entity the Company.

I have not identified any such payments.

#### **8.5.5 Transactions for the Purpose of Defeating Creditors (S588FE)**

Transactions involving the removal or concealment of assets of the Company for the purpose of preventing the Liquidators from realising their value are voidable transactions and are recoverable by Liquidators. These actions may constitute fraud by the director or any other person.

I have not identified any such transactions.

#### **8.5.6 Unreasonable Director Related Transactions (S588FDA)**

A transaction is an unreasonable Director-related transaction of the Company if:

- The transaction is a payment, a conveyance, transfer or disposition of property, the issue of securities, or incurring of an obligation to make a payment, disposition or issue by the Company.
- The transaction is to a Director or close associate of the Director or for their benefit.
- A reasonable person in the Company's circumstances would not have entered into the transaction having regard to the benefit or detriment to the Company or other parties involved in the transaction.

I have not identified any unreasonable director-related transactions.

#### **8.5.7 Circulating Security Interests Created Within Six Months before the Relation-Back Day (S588FJ)**

A circulating security interest in property of the company created within six months before the relation-back day may be void against a Liquidator. However, circulating security interests that are created within this period for consideration paid at or after the date of creation remains valid.

I have not identified any such security interests that may be void as against a liquidator.

## **8.6 REPORTING TO ASIC**

I am required to complete an investigation into the Company's affairs and, if offences are identified, or if the Company is unable to pay its Creditors more than fifty (50) cents in the dollar, lodge a report with ASIC pursuant to Section 533 of the Act.

In the near term, I intend to submit a confidential report to the ASIC pursuant to Section 533(1) of the Act, detailing my investigations into the affairs of the Company and the conduct of the Director. The report is confidential and is not available to creditors.

## 9 ESTIMATED RETURN TO CREDITORS

Based on information to date, any return to creditors is contingent on successfully recovering the debtor claims. However, I understand these are disputed debts and subject to counter claims. The costs of the Liquidation will exceed the anticipated cash at bank recovery and I am not aware of any further asset realisations or voidable recoveries to be made for the benefit of creditors. Accordingly, unless significant recoveries are made from the debtor claims, there will not be any dividends to any class of creditors in this Liquidation.

## 10 LIQUIDATOR'S RECEIPTS AND PAYMENTS

There have been no receipts or payments made during the Liquidation to the date of this report.

## 11 LIQUIDATOR'S REMUNERATION

By way of proposals in lieu of a meeting, creditors approved my remuneration in respect of the Liquidation for \$26K (plus GST). Unless, I am provided with further substantial information that would impact the liquidation, I estimate the total cost of the administration will be approximately \$30K, which is largely consistent with my estimate of costs as disclosed in my Initial Remuneration Notice dated 20 November 2020. At this stage, I do not intend to seek approval from creditors for further remuneration.

If further significant work is required in respect of the debtor claims, resulting in recoveries, then I will report to creditors and seek additional remuneration approval.

For Creditors' information, ASIC information sheets that relate to specific circumstances once an insolvency practitioner is appointed to a Company and approval of remuneration can be found at the following websites:

- <https://asic.gov.au/regulatory-resources/insolvency/insolvency-information-for-directors-employees-creditors-and-shareholders/>
- [https://www.arita.com.au/ARITA/Insolvency\\_help/Insolvency-explained.aspx](https://www.arita.com.au/ARITA/Insolvency_help/Insolvency-explained.aspx)

## 12 TASKS REQUIRED IN THE LIQUIDATION

As detailed above, I anticipate that the following matters will be dealt with during the Liquidation moving forward:

- Recovery of minor cash at bank funds held with St George Bank;
- Continue enquiries regarding retention funds and alleged counter claims for the Wollongong Properties;

- Preparation and lodgement of my confidential report with ASIC pursuant to Section 533(1) of the Act;
- Await clearance from ASIC following lodgement or otherwise liaise with ASIC;
- Conduct further investigations, if necessary;
- Correspondence with creditors;
- Statutory lodgements; and
- Finalisation.

Should any creditor or interested party have any relevant information that they wish to provide me, they are requested to contact my office before 5 March 2021. In the event that the debtor recoveries are not successful, then I anticipate the Liquidation could be finalised within the next six (6) to nine (9) months. In those circumstances, this will likely be the final communication to creditors in this Liquidation.

### 13 CREDITORS' RIGHTS

Pursuant to Clauses 70-40, 70-45, 75-15, 85-5, 90-24 and 90-35 of the Insolvency Practice Schedule (Corporations) and Rule 70-30 of the Insolvency Practice Rules (Corporations) 2016, I am required to give certain information to creditors as to their rights in the administration.

Accordingly, I attach as **Annexure "4"** further information regarding 'Creditor Rights in Liquidations'.

### 14 FURTHER INFORMATION

I attached as **Annexure "5"** an ASIC information sheet entitled "Insolvency information for directors, practitioners, employees, creditors and investors". This publication provides basic information about the different types of external administrations, including Liquidation, and reference to further sources of information available on the ASIC website at [www.asic.gov.au](http://www.asic.gov.au).

ARITA has issued a creditor information sheet "Offences, Recoverable Transactions and Insolvent Trading" providing further information about voidable transactions. This information sheet is attached as **Annexure "6"**.

Please note that I am not required to publish notices in the print media. ASIC maintains an online notices page for external administrators to publish notices in respect of the Company. Creditors are encouraged to visit <https://insolvencynotices.asic.gov.au> throughout the liquidation to view any notices which may be published by the Liquidator in respect of the Company. These notices include:

- notices relating to appointments
- notices of meetings of creditors
- notices calling for proofs of debt and intention to declare dividends

## 15 QUERIES

The BRI Ferrier staff member responsible for this matter is as follows:

- ▲ BRI Contact: Mr Chris Garvey
- ▲ Phone: (02) 8263 2300
- ▲ Email: [cgarvey@brifnsw.com.au](mailto:cgarvey@brifnsw.com.au)
- ▲ Mailing: GPO Box 7079, Sydney NSW 2001
- ▲ Facsimile: (02) 8263 2399

Yours faithfully,

**TALON CONSTRUCTION GROUP PTY LIMITED (IN LIQUIDATION)**



**PETER KREJCI**

Liquidator

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The logo for BRI Ferrier features the company name in white, bold, sans-serif font on a dark grey rectangular background. A green triangle is positioned at the bottom right corner of the grey rectangle, pointing towards the top right.

**BRI Ferrier**

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**Talon Construction Group  
Pty Ltd  
(In Liquidation)  
ACN 124 131 497**

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**Annexure "1"  
Comparative Financial Statements**

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## Talon Construction Group Pty Ltd

A.C.N. 124 131 497

## Balance Sheet

For the Financial Years Ended 30 June 2017 to Part Year Ended 6 November 2020

	As at 30/06/2017 (\$)	As at 30/06/2018 (\$)	As at 30/06/2019 (\$)	As at 30/06/2020 (\$)	As at 6/11/2020 (\$)
<b>ASSETS</b>					
<b>Current Assets</b>					
Cash and Cash Equivalents	36,309	56,947	2,966	39,515	3,931
Trade & Other Receivables	1,044,290	124,864	121,284	-	-
Inventory	1,427,347	1,417,282	-	-	-
Plant & Equipment	28,655	21,998	16,933	-	-
Other Assets	1,901	-	-	-	-
<b>Total Current Assets</b>	<b>2,538,502</b>	<b>1,621,091</b>	<b>141,183</b>	<b>39,515</b>	<b>3,931</b>
<b>TOTAL ASSETS</b>	<b>2,538,502</b>	<b>1,621,091</b>	<b>141,183</b>	<b>39,515</b>	<b>3,931</b>
<b>LIABILITIES</b>					
<b>Current Liabilities</b>					
Priority Creditors:	-	-	3,244	-	-
Unsecured Creditors:					
Trade Creditors	1,056,682	420,977	63,527	77,101	(114)
Australian Taxation Office	277,888	81,105	134,972	8,499	4,122
Income in Advance	702,062	-	-	-	-
<b>Total Current Liabilities</b>	<b>2,036,633</b>	<b>502,082</b>	<b>201,743</b>	<b>85,600</b>	<b>4,008</b>
<b>Non-Current Liabilities</b>					
Related Party Loan - Christmas River Pty Ltd	-	402,985	(80,651)	59,302	100,575
Related Party Loan - Richard & Shani Smith	-	-	-	93,824	143,824
<b>Total Current Liabilities</b>	<b>-</b>	<b>402,985</b>	<b>(80,651)</b>	<b>153,126</b>	<b>244,399</b>
<b>TOTAL LIABILITIES</b>	<b>2,036,633</b>	<b>905,067</b>	<b>121,092</b>	<b>238,726</b>	<b>248,407</b>
<b>NET ASSETS</b>	<b>501,869</b>	<b>716,024</b>	<b>20,091</b>	<b>(199,211)</b>	<b>(244,477)</b>
<b>EQUITY</b>					
Settlement Sum	100,010	100,010	100,010	100,010	100,010
Reserves	401,859	616,014	(79,919)	(299,221)	(344,487)
<b>TOTAL EQUITY</b>	<b>501,869</b>	<b>716,024</b>	<b>20,091</b>	<b>(199,211)</b>	<b>(244,477)</b>

**Talon Construction Group Pty Ltd**  
**A.C.N. 124 131 497**  
**Comparative Profit and Loss Statements**  
**For the Financial Years Ended 30 June 2017 to Part Year Ended 6 November 2020**

	Year ended 30/06/2017	Year ended 30/06/2018	Year ended 30/06/2019	Year ended 30/06/2020	Period ended 6/11/2020
	(\$)	(\$)	(\$)	(\$)	(\$)
<b>Income</b>	6,720,464	7,400,981	1,599,224	636,818	-
Less: Cost of Sales	(5,361,820)	(6,699,205)	(1,783,688)	(635,311)	(40,193)
<b>Gross Profit</b>	<b>1,358,644</b>	<b>701,776</b>	<b>(184,463)</b>	<b>1,507</b>	<b>(40,193)</b>
<b>Other Income</b>	53	-	1,329	4,262	-
<b>Expenses</b>					
Accounting Fees	14,500	6,639	16,900	8,381	1,000
Advertising	2,937	4,470	1,668	4,096	-
Bad Debts Written Off	-	25,342	216,118	121,284	-
Bank Charges	2,776	664	234	392	120
Borrowing Costs	1,901	1,901	-	-	-
Depreciation	8,787	6,657	5,065	8,907	-
Electricity	(53)	-	3,180	-	-
Entertainment Expenses	364	-	-	-	-
Filing Fees	498	-	263	-	-
Fines & Penalties	104	-	-	-	-
Insurance	7,713	23,480	23,394	2,739	-
Interest Paid	2,789	1,097	718	319	-
Legal Costs	2,883	8,636	35,492	4,927	-
Licensing Fees	182	1,259	231	534	121
Loss on sale of non-current assets	-	-	-	26	-
Motor Vehicle Expenses	21,053	20,391	16,245	13,467	793
Office Equipment	7,395	845	1,600	1,642	-
Payroll Tax	-	4,381	-	-	-
Postage	570	-	-	-	-
Rates & Taxes	468	1,015	495	-	-
Rent	-	-	-	11,541	-
Repairs & Maintenance	12,312	856	4,522	1,297	139
Staff Training & Welfare	13,046	3,245	3,654	4,889	-
Subscriptions	90	-	-	-	166
Sundry Expenses	7,288	1,841	5,953	4,150	1,180
Superannuation Contribution	69,005	75,077	9,657	-	-
Telephone	5,190	7,646	5,047	4,818	1,554
Tools & Equipment Purchases	14,169	5,382	-	331	-
Wages	767,303	831,869	109,301	-	-
Workers Compensation	(6,433)	12,814	(4,524)	31,332	-
<b>Total Expenses</b>	<b>956,837</b>	<b>1,045,508</b>	<b>455,213</b>	<b>225,071</b>	<b>5,073</b>
Profit / (Loss) Before Income Tax	401,859	(343,732)	(638,347)	(219,302)	(45,266)
Income Tax Expense	-	-	-	-	-
<b>Profit / (Loss) After Income Tax</b>	<b>401,859</b>	<b>(343,732)</b>	<b>(638,347)</b>	<b>(219,302)</b>	<b>(45,266)</b>

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**Talon Construction Group  
Pty Ltd  
(In Liquidation)  
ACN 124 131 497**

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**Annexure "2"  
Formal Proof of Debt with Request  
to Receive Electronic  
Communications**

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FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Liquidator of Talon Construction Group Pty Ltd (In Liquidation) ACN 124 131 497

1. This is to state that the company was, on 6 November 2020 <sup>(1)</sup> and still is, justly and truly indebted to<sup>(2)</sup> (full name):

.....  
(‘Creditor’)

.....  
of (full address)

for \$.....dollars and.....cents.

Particulars of the debt are (please attach documents to support your claim e.g. purchase orders, invoices, interest schedules):

Date	Consideration <sup>(3)</sup> state how the debt arose	Amount \$ (Incl. GST)	Remarks <sup>(4)</sup> 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 manner of satisfaction or security for the sum or any part of it except for the following: .....

Insert particulars of all securities held. Where the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, specify them in a schedule in the following form:

Date	Drawer	Acceptor	Amount \$ c	Due Date

I am **not** a related creditor of the Company <sup>(5)</sup>

I am a related creditor of the Company <sup>(5)</sup>  
relationship: .....

3A.<sup>(6)\*</sup> I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

3B.<sup>(6)\*</sup> I am the creditor's agent authorised to make this statement in writing. I know that the debt was incurred and for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

<input type="checkbox"/>	<p>I authorise the External Administrators' (whether as Voluntary Administrators/Deed Administrators/Liquidators) on behalf of the Company and his or her employees and agents to send and give electronic notification of documents in accordance with Section 600G of the Corporations Act 2001 to the following email address:</p> <p>Contact Name: .....</p> <p>Email Address: .....</p>
--------------------------	--

DATED this.....day of.....2020

NAME IN BLOCK LETTERS .....

Occupation.....

Address.....

Signature of Signatory .....

**OFFICE USE ONLY**

POD No:		ADMIT ( <b>Voting / Dividend</b> ) - Ordinary	\$
Date Received:		ADMIT ( <b>Voting / Dividend</b> ) – Preferential	\$
Entered into CORE IPS:		Reject ( <b>Voting / Dividend</b> )	\$
Amount per CRA/RATA	\$	Object or H/Over for Consideration	\$
<b>Reason for Admitting / Rejection</b>			
PREP BY/AUTHORISED		<b>TOTAL PROOF</b>	\$
DATE AUTHORISED / /			

### Proof of Debt Form Directions

- \* Strike out whichever is inapplicable.
- (1) Insert date of Court Order in winding up by the Court, or date of resolution to wind up, if a voluntary winding up.
- (2) Insert full name and address (including ABN) of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor.
- (3) Under "Consideration" state how the debt arose, for example "goods sold and delivered to the company between the dates of ....."; "moneys advanced in respect of the Bill of Exchange".
- (4) Under "Remarks" include details of vouchers substantiating payment.
- (5) Related Party / Entity: Director, relative of Director, related company, beneficiary of a related trust.
- (6) If the Creditor is a natural person and this proof is made by the Creditor personally. In other cases, if, for example, you are the director of a corporate Creditor or the solicitor or accountant of the Creditor, you sign this form as the Creditor's authorised agent (delete item 3A). If you are an authorised employee of the Creditor (credit manager etc), delete item 3B.

### Annexures

- A. If space provided for a particular purpose in a form is insufficient to contain all the required information in relation to a particular item, the information must be set out in an annexure.
- B. An annexure to a form must:
  - (a) have an identifying mark;
  - (b) and be endorsed with the words:
    - i) "This is the annexure of *(insert number of pages)* pages marked *(insert an identifying mark)* referred to in the *(insert description of form)* signed by me/us and dated *(insert date of signing)*; and
  - (c) be signed by each person signing the form to which the document is annexed.
- C. The pages in an annexure must be numbered consecutively.
- D. If a form has a document annexed the following particulars of the annexure must be written on the form:
  - (a) the identifying mark; and
  - (b) the number of pages.
- E. A reference to an annexure includes a document that is with a form.

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**Talon Construction Group  
Pty Ltd  
(In Liquidation)  
ACN 124 131 497**

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**Annexure "3"  
Deficiency Statement**

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Talon Construction Group Pty Ltd (In Liquidation)				
A.C.N. 124 131 497				
Summary of Director's Report on Company Activities and Property				
	Book Value as at 6/11/2020 (\$)	Director's ERV (per ROCAP) (\$)	Liquidator's ERV as at 6/11/2020 (\$)	
<b>Assets</b>				
Cash and Cash Equivalents	6,931	-	3,931	
Debtors	-	-	Unknown	
<b>Total Assets</b>	<b>6,931</b>	<b>-</b>	<b>3,931</b>	
<b>Liabilities</b>				
Unsecured Creditors				
Trade Creditors	2,886	1,100	1,533	
Australian Taxation Office	4,122	-	4,122	
Wollongong Properties	-	-	Unknown	
Related Party Loan - Richard & Shani Smith	143,824	143,824	143,824	
Related Party Loan - Christmas River Pty Ltd ATF Christmas River Trust	100,575	100,575	100,575	
<b>Total Liabilities</b>	<b>251,407</b>	<b>245,499</b>	<b>250,054</b>	
<b>Estimated Net Asset / (Deficiency)</b>	<b>(244,476)</b>	<b>(245,499)</b>	<b>(246,123)</b>	<b>246,123</b>

Talon Construction Group Pty Ltd (In Liquidation)			
A.C.N. 124 131 497			
Deficiency Statement			
		Amount (\$)	Amount (\$)
<b>Deficiency of Assets to Liabilities</b>			246,123
<b>Add:</b> Loss of Reserves		100,010	
<b>Estimated Total Deficiency of Assets to meet Liabilities</b>			<b>346,133</b>
These losses are represented by:			
<b>a) Accumulated Profits</b>			
Accumulated Loss as at 30 June 2020		299,221	
Current Year Loss as at 6 November 2020		45,265	
			<b>344,486</b>
<b>b) Estimated Loss on Realisation of Assets disclosed in ROCAP</b>			
	Book Value as at 6/11/2020 (\$)	Liquidator's ERV as at 6/11/2020 (\$)	Loss on Realisation (\$)
<b>Asset</b>			
Cash and Cash Equivalents	6,931	3,931	3,000
Debtors	-	Unknown	Unknown
<b>Total</b>	<b>6,931</b>	<b>3,931</b>	<b>3,000</b>
<b>c) Decrease in Creditor Claims disclosed in Balance Sheet</b>			
	Book Value as at 6/11/2020 (\$)	Liquidator's ERV as at 6/11/2020 (\$)	Unreported Liabilities (\$)
<b>Liabilities</b>			
Secured Creditors	-	-	-
Priority Creditors	-	-	-
Unsecured Creditors	-	-	-
Trade Creditors	2,886	1,533	(1,353)
Australian Taxation Office	4,122	4,122	-
Wollongong Properties	-	Unknown	-
Related Party Loan - Richard & Shani Smith	143,824	143,824	-
Related Party Loan - Christmas River Pty Ltd ATF Christmas River Trust	100,575	100,575	-
<b>Total</b>	<b>251,407</b>	<b>250,054</b>	<b>(1,353)</b>
<b>Deficiency as Above</b>			<b>346,133</b>

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**Talon Construction Group  
Pty Ltd  
(In Liquidation)  
ACN 124 131 497**

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**Annexure "4"  
ARITA Information Sheet – Creditor  
Rights in Liquidations**

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# Creditor Rights in Liquidations

As a creditor, you have rights to request meetings and information or take certain actions:



## Right to request a meeting

In liquidations, no meetings of creditors are held automatically. However, creditors with claims of a certain value can request in writing that the liquidator hold a meeting of creditors.

A meeting may be requested in the first 20 business days in a creditors' voluntary liquidation by  $\geq 5\%$  of the value of the debts held by known creditors who are not a related entity of the company.

Otherwise, meetings can be requested at any other time or in a court liquidation by:

- $> 10\%$  but  $< 25\%$  of the known value of creditors on the condition that those creditors provide security for the cost of holding the meeting
- $\geq 25\%$  of the known value of creditors
- creditors by resolution, or
- a Committee of Inspection (this is a smaller group of creditors elected by, and to represent, all the creditors).

If a request complies with these requirements and is 'reasonable', the liquidator must hold a meeting of creditors as soon as reasonably practicable.

## Right to request information

Liquidators will communicate important information with creditors as required in a liquidation. In addition to the initial notice, you should receive, at a minimum, a report within the first three months on the likelihood of a dividend being paid.

Additionally, creditors have the right to request information at any time. A liquidator must provide a creditor with the requested information if their request is 'reasonable', the information is relevant to the liquidation, and the provision of the information would not cause the liquidator to breach their duties.

A liquidator must provide this information to a creditor within 5 business days of receiving the request, unless a longer period is agreed. If, due to the nature of the information requested, the liquidator requires more time to comply with the request, they can extend the period by notifying the creditor in writing.

## Requests must be reasonable.

### They are not reasonable if:

Both meetings and information:

- (a) complying with the request would prejudice the interests of one or more creditors or a third party
- (b) there is not sufficient available property to comply with the request
- (c) the request is vexatious

Meeting requests only:

- (d) a meeting of creditors dealing with the same matters has been held, or will be held within 15 business days

Information requests only:

- (e) the information requested would be privileged from production in legal proceedings
- (f) disclosure would found an action for breach of confidence
- (g) the information has already been provided
- (h) the information is required to be provided under law within 20 business days of the request

If a request is not reasonable due to (b), (d), (g) or (h) above, the liquidator must comply with the request if the creditor meets the cost of complying with the request.

Otherwise, a liquidator must inform a creditor if their meeting or information request is not reasonable and the reason why.

Specific queries about the liquidation should be directed to the liquidator's office.

## Right to give directions to liquidator

Creditors, by resolution, may give a liquidator directions in relation to a liquidation. A liquidator must have regard to these directions, but is not required to comply with the directions.

If a liquidator chooses not to comply with a direction given by a resolution of the creditors, they must document their reasons.

An individual creditor cannot provide a direction to a liquidator.

## Right to appoint a reviewing liquidator

Creditors, by resolution, may appoint a reviewing liquidator to review a liquidator's remuneration or a cost or expense incurred in a liquidation. The review is limited to:

- remuneration approved within the six months prior to the appointment of the reviewing liquidator, and
- expenses incurred in the 12 months prior to the appointment of the reviewing liquidator.

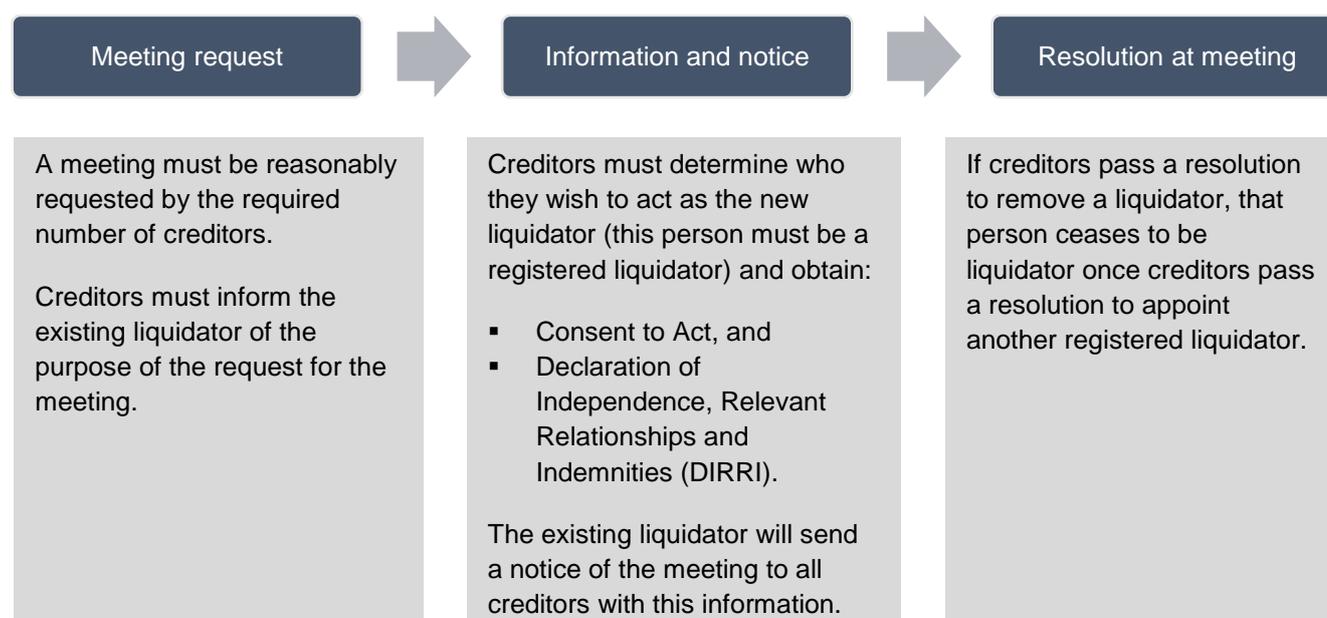
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

An individual creditor can appoint a reviewing liquidator with the liquidator's consent, however the cost of this reviewing liquidator must be met personally by the creditor making the appointment.

## Right to replace liquidator

Creditors, by resolution, have the right to remove a liquidator and appoint another registered liquidator.

For this to happen, there are certain requirements that must be complied with:



**For more information, go to [www.arita.com.au/creditors](http://www.arita.com.au/creditors).  
Specific queries about the liquidation should be directed to the liquidator's office.**

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**Talon Construction Group  
Pty Ltd  
(In Liquidation)  
ACN 124 131 497**

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**Annexure "5"  
ASIC Information Sheet**

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**ASIC**

Australian Securities & Investments Commission

## Insolvency information for directors, employees, creditors and shareholders

This information sheet (INFO 39) lists ASIC's information sheets for directors, employees, creditors and shareholders affected by a company's insolvency.

We have produced these with endorsement from the Australian Restructuring Insolvency & Turnaround Association (ARITA).

The information sheets give a basic understanding of the three most common company insolvency procedures – liquidation, voluntary administration and receivership – as well as the independence requirements for external administrators and approving external administrator remuneration. There is also a glossary of commonly used insolvency terms.

### List of information sheets

- [INFO 41](#) Insolvency: A glossary of terms
- [INFO 42](#) Insolvency: A guide for directors
- [INFO 43](#) Insolvency: A guide for shareholders
- [INFO 45](#) Liquidation: A guide for creditors
- [INFO 46](#) Liquidation: A guide for employees
- [INFO 54](#) Receivership: A guide for creditors
- [INFO 55](#) Receivership: A guide for employees
- [INFO 74](#) Voluntary administration: A guide for creditors
- [INFO 75](#) Voluntary administration: A guide for employees
- [INFO 84](#) Independence of external administrators: A guide for creditors
- [INFO 85](#) Approving fees: A guide for creditors

### Where can I get more information?

Further information is available from the [ARITA website](#). The ARITA website also contains the [ARITA Code of Professional Practice for Insolvency Practitioners](#).

This is **Information Sheet 39 (INFO 39)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

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**BRI Ferrier**

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**Talon Construction Group  
Pty Ltd  
(In Liquidation)  
ACN 124 131 497**

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**Annexure "6"  
ARITA Information Sheet –  
Offences, Recoverable Transactions  
and Insolvent Trading**

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# Creditor Information Sheet

## Offences, Recoverable Transactions and Insolvent Trading



### Offences

**A summary of offences under the Corporations Act that may be identified by liquidators or administrators:**

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) / 475(9) / 497(4) / 530A – 530B	Failure by directors to assist, deliver records and provide information.
438C(5) / 477(3) / 530B	Failure to assist, deliver up books and records and provide information.
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 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.