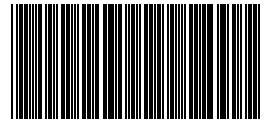




Filed: 21 August 2024 5:32 PM



D000208GSH

Form 2

## ORIGINATING PROCESS – COVERSHEET AND ACKNOWLEDGEMENT

IN THE MATTER OF BIZPAY GROUP LIMITED

### COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2024/00309404

### TITLE OF PROCEEDINGS

First Plaintiff	Jonathon Keenan
Second Plaintiff	Peter Krejci
Number of plaintiffs	3

### FILING DETAILS

Filed for	Jonathon Keenan, Plaintiff 1 Peter Krejci, Plaintiff 2 BIZPAY GROUP LIMITED, Plaintiff 3
Legal representative	Mark Christopher Wilson
Legal representative reference	
Telephone	02 9234 0010
Your reference	2024011

### HEARING DETAILS

This application will be heard at Supreme Court Sydney on 2 September 2024 at 10:00 AM

### ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Originating process (Corporations Law) Other, along with any other documents listed below, were filed by the Court.

Corporations Law Originating Process (Form 2) (2024-08-21 Originating Process.pdf)

Affidavit in Support of Originating Process (2024-08-21 Affidavit of Jonathon Sherwood Keenan.pdf)

[attach.]

IN THE SUPREME COURT OF NEW SOUTH WALES  
DIVISION: EQUITY  
REGISTRY: SYDNEY

No.            of 2024

IN THE MATTER OF BIZPAY GROUP LIMITED (RECEIVERS AND MANAGERS APPOINTED)  
(SUBJECT TO DEED OF COMPANY ARRANGEMENT)

ACN: 633 797 627

**Jonathon Sherwood Keenan and Peter Paul Krejci as joint and several deed administrators of  
Bizpay Group Limited ACN 633 797 627 (Receivers and Managers Appointed) (Subject To Deed of  
Company Arrangement)**

First Plaintiffs

**Bizpay Group Limited ACN 633 797 627 (Receivers and Managers Appointed) (Subject To Deed of  
Company Arrangement)**

Second Plaintiff

## Originating process

### A. DETAILS OF APPLICATION

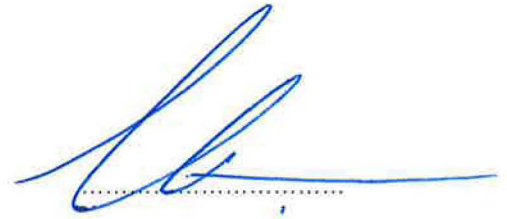
This application is made under section 444GA of the *Corporations Act 2001* (Cth) (the **Act**).

The First Plaintiffs, in their capacities as joint and several deed administrators of Bizpay Group Limited ACN 633 797 627 (Receivers and Managers Appointed) (subject To Deed Of Company Arrangement) (**Bizpay**) seek orders that they have leave to transfer all of the existing shares of the Second Plaintiff, Bizpay, pursuant to section 444GA of the Act from each holder to BP New Start Holding Pty Ltd ACN 675 974 348 (**BP New Start**).

On the facts stated in the supporting affidavits, the First Plaintiffs claims:

1. An order that pursuant to section 444GA of the Act, the First Plaintiffs in their capacity as joint and several deed administrators of Bizpay be granted leave, jointly or severally, subject to satisfaction or waiver of the conditions precedent to completion set out in clause 4 of the deed of company arrangement entered into between the First Plaintiffs (**DOCA**), Bizpay and BP New Start dated 21 March 2024, to transfer all of the issued shares in Bizpay from each shareholder recorded on the register of members of Bizpay to BP New Start for nil consideration.
2. An order that the First Plaintiffs may, jointly or severally, in their capacities as deed administrators under the DOCA, execute one or more transfer forms (including without limitation a master transfer form) or any other documents ancillary or incidental to effect the transfer of the shares in Bizpay to BP New Start referred to in paragraph 1 above.
3. Such further or other orders as this Honourable Court thinks fit.
4. The costs of this application be costs in the administration of the DOCA.

**Date:** 21 August 2024



*Signature of plaintiff or  
plaintiff's legal practitioner*

*Name of Legal practitioner: Mark Wilson*

*PCN: 25502*

*Firm name: W Advisers Pty Limited*

This application will be heard by ..... at ..... at .....\*am/\*pm on .....

**B. NOTICE TO DEFENDANT(S) (IF ANY)**

TO:

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard, and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

**Note.**

Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

**C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY**

Not applicable

**D. FILING**

Date of filing: 21 August 2024

This originating process is filed by Mark Wilson, Solicitor for the First Plaintiffs.

**E. SERVICE**

The First Plaintiffs' address for service is

C/- W Advisers

Level 5, 151 Macquarie Street

Sydney NSW 2000

It is intended to serve a copy of this originating process on ASIC and made available to shareholders of Bizpay.

**Form 1 Affidavit**

(rule 2.1)

IN THE SUPREME COURT OF NEW SOUTH WALES

No. of 2024

DIVISION: EQUITY

REGISTRY: SYDNEY

IN THE MATTER OF BIZPAY GROUP LIMITED (RECEIVERS AND MANAGERS APPOINTED)  
(SUBJECT TO DEED OF COMPANY ARRANGEMENT)

ACN: 633 797 627

**JONATHON SHERWOOD KEENAN AND PETER PAUL KREJCI AS JOINT AND SEVERAL DEED  
ADMINISTRATORS OF BIZPAY GROUP LIMITED ACN 633 797 627 (RECEIVERS AND  
MANAGERS APPOINTED) (SUBJECT TO DEED OF COMPANY ARRANGEMENT)**

First Plaintiffs

**BIZPAY GROUP LIMITED ACN 633 797 627 (RECEIVERS AND MANAGERS APPOINTED)  
(SUBJECT TO DEED OF COMPANY ARRANGEMENT)**

Second Plaintiff

Affidavit of: Jonathon Sherwood Keenan

Address: BRI Ferrier, Level 26/25 Bligh St, Sydney NSW 2000

Occupation: Registered Liquidator


Date: 21 August 2024

**Contents**

1. I, Jonathon Sherwood Keenan, of Novabrif Pty Ltd ACN 643 013 610 (trading as BRI Ferrier) (**BRI Ferrier**) at Level 26, 25 Bligh Street, Sydney NSW 2000, Registered Liquidator, say on oath that:

**Overview**

2. I am a registered liquidator and principal of BRI Ferrier. I have over 20 years' commercial, professional and restructuring experience with expertise in financial services, retail, professional services, insurance, manufacturing, clubs and charities.
3. I received a Bachelor of Commerce majoring in Accounting from Macquarie University and I am also a current member of:
  - a) Chartered Accountants Australia and New Zealand; and



- b) the Australian Restructuring Insolvency and Turnaround Association.
4. Each of the matters to which I depose in this affidavit is true to the best of my knowledge, information and belief. Where statements are not made from my own knowledge, they are made to the best of my information and belief after due inquiry.
  5. Together with Mr Peter Paul Krejci (each a **Deed Administrator** and together the **Deed Administrators**), we are (jointly and severally) Deed Administrators of the Second Plaintiff, Bizpay Group Limited ACN 633 797 627 (Receivers And Managers Appointed) (Subject To Deed Of Company Arrangement) (**Bizpay** or the **Company**).
  6. Exhibit to me at the time of swearing this affidavit and marked "JK-1" (**Exhibit JK-1**) is a bundle of documents to which I refer in this affidavit by page number.
  7. Exhibited at **pages 1 and 2 of JK-1** is a copy of my and Mr Krejci's curriculum vitae.
  8. The Deed Administrators are the First Plaintiffs in these proceedings. I am authorised by Mr Krejci to make this affidavit on behalf of the Deed Administrators. Where I depose below the view or views of the Deed Administrators, they are the view(s) which each of Mr Krejci and I hold at the date of swearing this affidavit. References in this affidavit to "our", "we" and the "Deed Administrators" are references to Mr Krejci and to me.
  9. I make this affidavit in support of the relief sought by the First Plaintiffs and the Second Plaintiff, namely, an order pursuant to section 444GA(1)(b) of the *Corporations Act 2001* (Cth) (**Corporations Act**) that leave be granted for the Deed Administrators to transfer all of the existing shares in the capital of the Second Plaintiff to BP New Start Holding Pty Ltd ACN 675 974 348 (**the Deed Proponent**) (**Section 444GA Application**).
  10. This application is made having regard to terms of the Deed of Company Arrangement dated 21 March 2024 entered into by the Deed Administrators, Bizpay and the Deed Proponent (**Bizpay DOCA**), in particular the requirements under clauses 4.1(a) and 5.1(f) that all shares in Bizpay be transferred to the Deed Proponent.
  11. Obtaining orders from the Court under section 444GA(1)(b) of the Corporations Act for leave to transfer the shares in Bizpay to the Deed Proponent is therefore a condition precedent to the effectuation of the Bizpay DOCA.

**Background to DOCA – Administration of Company**

12. On 23 November 2023, Mr Krejci and I were appointed joint and voluntary administrators of Bizpay pursuant to section 436A of the Corporations Act by a written resolution of Directors of Bizpay, being Mr Robert Westgarth, Mr Abe Tomas, and Mr Steve Bannigan. A copy of that board resolution is exhibited at **pages 3 to 5 of Exhibit JK-1**.
13. Shortly after our appointment as Administrators, we commenced a campaign to seek to sell the business and assets of Bizpay. Our actions taken to do so included, without limitation:
  - a) arranging for sale of business advertisements being published in the *Australian Financial Review* and LinkedIn on 27 November 2023, which invited interested parties to register their interest by 4 December 2023 and to submit binding offers by 11 December 2023. Copies of those advertisements are exhibited at **pages 6 to 8 of Exhibit JK-1**;
  - b) preparing confidentiality agreements for interested parties to participate in a due diligence process, and executing those agreements on behalf of the Company in relation to 5 interested parties. Those agreements are not exhibited due to their terms being confidential between the parties to them;



- c) arranging a data room and assembling documentation relevant to the Bizpay business and assets; and
  - d) assessing expressions of interest received in response to the advertisements. Around twenty (20) interested parties expressed potential interests in the Company. Five (5) of those parties paid a refundable deposit and executed confidentiality agreements.
14. On 30 November 2023, the Administrators were advised that BP Fiduciary Pty Ltd ACN 649 000 591 (**BP**), the principal secured creditor of the Company, had appointed Mr Simon Cathro and Mr David Mutton as receivers and managers (**Receivers and Managers**) over all of Bizpay's assets and business on 29 November 2023. I had not received prior notice of that appointment. The Receivers and Managers assumed control of the assets of Bizpay from that time.
15. On:
- a) 30 November 2023, the Administrators were advised by the Receivers and Managers to immediately cease any further work on the sale of business process (a copy of that communication is at **pages 9 to 23 of Exhibit JK-1**);
  - b) 30 November 2023, the Administrators were advised by a letter sent from Mr Cathro that BP would not contribute any further funds towards the Administration process (a copy of which is at **pages 24 and 25 of Exhibit JK-1**);
  - c) following the appointment of the Receivers and Managers, their taking control of the Company's business and its assets and immediately following the Administrators' receipt of the notices referred to in paragraphs 15(a) and (b) above, the Administrators' sale process ceased; and
  - d) 1 December 2023, a copy of the register of interested parties was passed to the Receivers and Managers per their request (a copy of that correspondence is at **pages 26 to 29 of Exhibit JK-1**. In the exhibit bundle, the interested parties' register has been partially redacted in large part to preserve confidentiality of the identity and contact details of such interested parties).
16. At around that time, the Administrators were advised by the Receivers and Managers would pursue their own sale of business process. So far as the Administrators are aware, that sale process did not result in any sale of assets of the Company by the Receivers and Managers, save as noted in paragraphs 36, 38 and 39 below.
17. On 5 December 2023, I conducted a first meeting of creditors of Bizpay (**First Creditors' Meeting**). The meeting was convened electronically through the use of virtual meeting technology. A copy of the Minutes of the First Creditors' Meeting is at **pages 30 to 43 of Exhibit JK-1**. I tabled the Administrators' report to creditors dated 27 November 2023, a copy of that report is at **pages 44 to 86 of Exhibit JK-1**.
18. On 14 December 2023, the Administrators issued the second report to creditors titled "Second report to creditors" (**Second Report to Creditors**), a copy of which is at **pages 87 to 188 of Exhibit JK-1**.
19. In the Second Report to Creditors, the Administrators expressed the following recommendations:
- a) since there was no DOCA proposal for creditors to consider at the time of the report, creditors should not resolve in favour of a DOCA;
  - b) creditors should not resolve in favour of the Administration ending as Bizpay was insolvent; and
  - c) because of the above reasons, creditors should resolve in favour of Bizpay being wound up.
20. On 21 December 2023, I had a phone call discussion with Mr Anthony Murphy, a person associated with the Deed Proponent, regarding a potential DOCA proposal.

<sup>3</sup>

21. On 22 December 2023 at 8:40 AM, prior to the second creditors' meeting, I received an email from Mr Murphy requesting that the second creditors' meeting of the Company be adjourned by 45 days to enable time for a DOCA proposal to be formulated. A copy of that email correspondence is at **pages 189 and 190 of Exhibit JK-1**.
22. On 22 December 2023 at 11 AM, the second creditors' meeting of the Company was commenced to be held but was adjourned to allow time for a DOCA to be explored (**Adjourned Second Creditors' Meeting**). A copy of the Minutes of the Adjourned Second Creditors' Meeting is at **pages 191 to 203 of Exhibit JK-1**.
23. On 20 February 2024, the Administrators received a written DOCA proposal from Anthony Murphy, Denver Heng Li and Matthew Hill (**DOCA Proposal**).
24. On 21 February 2024, the Administrators issued the Supplementary Second Report to Creditors, which:
- a) summarised (on pages 11 and 12) the key terms of the DOCA proposal as they are understood by the Deed Administrators;
  - b) recorded (on page 12) the Deed Administrators' view that the proposed Bizpay DOCA appeared viable and may provide for an improved return to creditors as compared to the projected outcome in a liquidation scenario; and
  - c) recommended (on page 15) that creditors vote in favour of the proposed Bizpay DOCA.
- A copy of that report, annexing the DOCA Proposal is at **pages 220 to 288 of Exhibit JK-1**.
25. On 29 February 2024, the Adjourned Second Creditors' Meeting resumed. In the meeting, I tabled the Supplementary Second Report and discussed our key observations on the DOCA Proposal, potential returns to creditors in DOCA versus in liquidation. I noted that the DOCA Proposal appears to be a viable arrangement should creditors resolve to support it.
26. The creditors voted in favour of Bizpay executing the Bizpay DOCA. A copy of the Minutes of the Resumed Second Creditors' Meeting is at **pages 204 to 219 of Exhibit JK-1**.
27. The Bizpay DOCA was executed on 21 March 2024. A copy of which is at **pages 289 to 320 of Exhibit JK-1**.

#### Loan facility with BP

28. Based on my review of the books and records of Bizpay and my inquiries with prior Directors of Bizpay, I understand that:
- a) On 21 April 2021, Bizpay and BP entered into a facility agreement (**Facility Agreement 1**). Under Facility Agreement 1, Bizpay had access to a debt facility of \$25,000,000 and a further option of \$15,000,000 at BP's discretion. It was a condition precedent of Facility Agreement 1 that a General Security Deed was executed. Copies of Facility Agreement 1 and the General Security Deed are at **pages 321 to 474 of Exhibit JK-1**.
  - b) On 20 May 2022, more than a year after the Facility Agreement was entered into, the ALL-PAAP security interest was registered on Bizpay in favour of the BP.
  - c) On 7 March 2022, BP and Bizpay entered into a warrant instrument for the warranty of the repayment of the debt facility under the Facility Agreement 1 (**4m warrant**). Under the 4m warrant, the Company granted the Lender 4,000,000 tranche A and tranche B shares as defined in the 4m warrant instrument.



- d) On 8 March 2022, Bizpay entered into a Share Subscription Deed with the Lender, by which the Company agreed to issue 809,838 shares in the capital of the Company to the Lender.
  - e) On 30 May 2022, Bizpay and BP entered into a refinance arrangement (**Facility Agreement 2**) for an aggregate amount of \$5,000,000 to convert the Company's debt to preferred equity. A copy of the Facility Agreement 2 is at **pages 475 to 562 of Exhibit JK-1**.
  - f) Under Facility Agreement 2, Bizpay entered into a Deed of Amendment dated 30 May 2022 of the 4m warrant instrument to effect the subscription of 4,000,000 shares on 7 March 2022. A copy of a Deed of Amendment to the 4m warrant instrument is at **pages 563 to 614 of Exhibit JK-1**.
  - g) Under Facility Agreement 2, on 30 May 2022, Bizpay agreed to issue additional shares to the Lender. A copy of the letter recording this transaction is at **pages 615 to 620 of Exhibit JK-1**.
  - h) Per Facility Agreement 2, on 30 May 2022, the Company and the Lender executed a second General Security Deed (**Second General Security Deed**), a copy of which is at **pages 621 to 652 of Exhibit JK-1**. It appears that security interest was registered on the PPSR of the Company pursuant to the Second General Security Deed.
29. As at 9 November 2023, Bizpay: was subject to the following security interests registered on the Personal Property Securities Register (**PPSR**):
- a) an all present and after-acquire property (**ALL-PAAP**) in favour of BP; and
  - b) an Investment Instrument registration on the PPSR in favour of BP.
- A copy of a search from the PPSR showing the registrations of the security interests obtained on 9 November 2023 is at **pages 653 to 688 of Exhibit JK-1**;
30. As at 23 November 2023, being my appointment as Administrator, my enquiries indicate that Bizpay:
- a) was party to a real property sub-lease in Australia and occupied the office that is the subject of that sub-lease; and
  - b) employed eleven staff members (which included one Director) and engaged 4 Contractors.

#### **Bizpay DOCA**

31. The Bizpay DOCA was executed on 21 March 2024.

32. Conditions precedent to the Bizpay DOCA being effectuated include:

<u>Condition</u>	<u>Details</u>	<u>Clause reference in the Bizpay DOCA</u>
1.	An order is made under s 444GA of the Act for an order from the Court to allow the compulsory transfer of all Shares in the Company not already held by the Deed Proponent to the Deed Proponent or its nominee ( <b>Share Transfers</b> ), on terms satisfactory to the Deed Proponents and Deed Administrators (acting reasonably).	4(a)

<u>Condition</u>	<u>Details</u>	<u>Clause reference in the Bizpay DOCA</u>
2.	ASIC grants such exemptions or declarations pursuant to the Act in order to permit the Transfers to occur without the approval of Shareholders, in a form satisfactory to the Deed Proponent.	4(b)
3.	Regulatory approvals necessary to implement and complete the share transfer been provided on an unconditional basis or with conditions satisfactory to the Deed Proponents acting reasonably, and remain in full force and effect and not have been withdrawn, suspended or revoked.	4(c)
4.	<p>The steps set out below have been agreed to by BP Fiduciary or effected by the Receivers and Managers, whether through the entry into Retirement and Release Agreement or such other means acceptable to the parties acting reasonably – namely that BP Fiduciary agree to procure the Receivers and Managers to:</p> <ul style="list-style-type: none"> <li>a) sell Bizpay's loan book;</li> <li>b) apply sale proceeds from the sale of loan book toward secured debt owed to BP Fiduciary;</li> <li>c) if BP Fiduciary is the successful bidder for the loan book, set-off the sale proceeds against the secured debt,</li> </ul> <p>subject in each case to the Receivers and Managers complying with s 561 of the Corporations Act, and:</p> <ul style="list-style-type: none"> <li>a) the Receivers and Managers apply the sale proceeds in the following priority order: <ul style="list-style-type: none"> <li>i) to discharge and pay out Bizpay's priority creditors;</li> <li>ii) pay out reasonable costs and remuneration of the Receivers and Managers;</li> <li>iii) account for any balance to BP Fiduciary,</li> </ul> </li> <li>b) the Receivers and Managers retire on or before the completion date of the share transfers, and BP provides certain acknowledgments.</li> </ul>	4(d) and Schedule 1




<u>Condition</u>	<u>Details</u>	<u>Clause reference in the Bizpay DOCA</u>
5.	No regulatory intervention occurs that restraints, prohibits, or otherwise materially adversely impedes or impacts upon implementation of the DOCA.	4(e)

33. Since the Bizpay DOCA was entered into, my office and my legal representatives have periodically engaged in correspondence with the Receivers and Managers and their lawyers, respectively, seeking updates on their progress of the sale of assets, payments of priority creditors and their anticipated date of retirement.
34. On 9 May 2024, I sent an email to the Receivers and Managers seeking an update on the recovery and/or sale of Bizpay's Accounts Receivables & Loan Book for market value or a reasonably obtainable price; the progress in adjudicating and paying out the Priority Creditor Claims from the circulating asset realisations; and Receiver & Manager's anticipated retirement. A copy of that email is at **pages 689 to 690 of Exhibit JK-1**.
35. On 17 May 2024, a representative of the Receivers and Managers' firm to confirm that no sale of Bizpay's Accounts Receivables & Loan Book had been achieved. A copy of that response is at **pages 691 to 694 of Exhibit JK-1**.
36. My lawyers subsequently contacted the lawyers acting for the Receivers and Managers on multiple occasions to seek further updates on these conditions, most recently via a phone call on 4 June 2024 and emails on 4 June, 21 June and 26 June 2024.
37. On 28 June 2024, Mr Greg Wrobel - lawyer of the Receivers and Managers responded that the Receivers and Managers had received an offer from BP to purchase Bizpay's Accounts Receivables & Loan Book.
38. On 2 August 2024, my lawyers emailed Mr Wrobel for the Receivers and Managers inquiring whether a sale agreement had been entered into and when completion would occur.
39. On 6 August 2024, Mr Wrobel confirmed no sale agreement had been entered into.
40. On 19 August 2024, Mr Wrobel further indicated that BP was finalising their due diligence on the acquisition.
41. A copy of that email chain of correspondence is at **pages 695 to 702 of Exhibit JK-1**.

#### Expert Report

42. On 13 May 2024, my lawyers instructed Mr Richard Stone, a partner at RSM Australia Partners (**Expert**) to determine the value of Bizpay's shares on issue if Bizpay were wound up and prepare an expert report in accordance with ASIC regulatory guides 6 and 111 (**Expert Report**). A copy of the instructions letter dated 14 May 2024 and the annexures and schedule referred therein are at **pages 703 to 1042 of Exhibit JK-1**.
43. On 15 August 2024, I received a finalised Expert Report. A copy of that report is at **pages 1043 to 1075 of Exhibit JK-1**.
44. I note that the annexures to the instructions letter to Expert and the Expert Report are partially redacted to remove identifying details of Bizpay's shareholders and former employees.

45. I have instructed my lawyer, Mr Mark Wilson, to file an affidavit before the first hearing date to these proceedings, exhibiting the unredacted version of Bizpay's register of members, in respect of which I intend to seek confidentiality orders to preserve the confidentiality of personal information relating to Bizpay's shareholders.

#### **Notification to shareholders**

46. The following notifications regarding the administration and receivership of the Company, and of the Bizpay DOCA were sent to shareholders whose email addresses are recorded in the Company's register of members (which I estimated to be approximately 90% of more than 600 members of the Company):

Date of Circular	Subject
24 November 2023	Notice to shareholders that Jonathon Keenan and Peter Krejci were appointed as joint and several voluntary administrators ( <b>Administrators</b> ) of Bizpay.
28 November 2023	Notice to shareholders that the Administrators had circulated their first report to creditors.
30 November 2023	Notice to shareholders that on 29 November 2023, BP Fiduciary Pty Ltd appointed David Mutton and Simon Cathro as Receivers and Managers over all of the Company's assets/business, and providing notice of the first creditors meeting to occur on 27 November 2023.
22 February 2024	Update to shareholders that the second meeting of creditors, held on 22 December 2023, was adjourned to allow the Company time to explore an option to restructure via a Deed of Company Arrangement; that a DOCA proposal had been received proposing the transfer of all shares for nil consideration on the basis that the Company had negative equity value, and was recommended to creditors, and that a second report and second supplementary report to creditors had been circulated recommending the DOCA proposal.
2 April 2024	Update on DOCA and proposed share transfer.

Copies of those notices are produced at **pages 1076 to 1083 of Exhibit JK-1 (Notification of Bizpay)**.

#### **Share Structure**

47. As at 22 March 2024, Bizpay has 1,110,589,282 ordinary shares and 400,000,000 preference shares on issue pursuant to the records maintained by the Australian Securities and Investment Commission (**ASIC**). A copy of a search of current extract of the records maintained by ASIC in respect of Bizpay, obtained on 22 March 2024 is at **pages 1084 to 1097 of Exhibit JK-1**.
48. On 16 May 2024, I was alerted by my solicitors to a discrepancy in the number of ordinary shares on issue for Bizpay, where:
- Bizpay's ASIC public documentation recorded at that time 1,110,859,282 ordinary shares on issue; and
  - whereas its register of members records 948,859,282 ordinary shares on issue,
- (the **Share Discrepancy**).



49. On 27 May 2024, my office made enquiries to Mr Abraham Tomas and Mr Robert Westgarth, Bizpay's former directors, regarding the Share Discrepancy. On the same day, Mr Tomas confirmed that the Share Discrepancy was due to a recording error with ASIC. Mr Tomas advised that in January 2023, he had written to ASIC to request that they correct the error in the number of shares, however ASIC had not responded.
50. On 5 August 2024, my office submitted a request to ASIC to correct the error and resolve the Share Discrepancy on ASIC public documentation, and on 14 August 2024, following ASIC's instructions, my office lodged five correction requests to ASIC to rectify the Share Discrepancy. A copy of those forms is at **pages 1098 to 1107 of Exhibit JK-1**.
51. Unfortunately, ASIC processed the correction forms incorrectly and so on 15 August 2024, I arranged for my office to lodge a further online request to ASIC to rectify the error with the forms. A copy of that request is reproduced at **pages 1108 to 1110 of Exhibit JK-1**. This has not been actioned by ASIC as yet. As of 20 August 2024, Bizpay's ASIC public documentation recorded 863,566,437 on issue. A copy of a current and historical extract of the ASIC records obtained on 20 August 2024 is at **pages 1111 to 1125 of Exhibit JK-1**.

**ASIC relief application**

52. I have instructed my lawyers and staff to lodge an application to ASIC for relief from the prohibition of acquisitions of relevant interests in voting shares under s 606 of the Corporations Act, and to file an affidavit prior to the first hearing date to these proceedings exhibiting that ASIC relief application.

Sworn at: Sydney on 21 August 2024.

  
Signature of deponent

Before me:

  
Signature and designation of person before whom deponent swears affidavit

Name: Mark Wilson  
Capacity: Solicitor admitted in New South Wales (Practising Number 25502)  
Address: W Advisers, Level 5, 151 Macquarie Street  
Sydney NSW 2000