



STATUTORY REPORT TO CREDITORS

ZHKY CONSTRUCTION PTY LTD (IN LIQUIDATION)

T/AS TOP PLUS CIVIL AND TOP PLUS DEMOLITION & EXCAVATION

ACN 641 419 641

ABN 69 641 419 641

3 March 2025

PETER KREJCI
LIQUIDATOR

Phone: 02 8263 2333

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Website: www.briferrier.com.au

Address: Level 26, 25 Bligh Street
Sydney NSW 2000

INTRODUCTION

I refer to my initial report to creditors dated 20 December 2024 in which my appointment as Liquidator of the Company was advised along with your rights as a creditor in the liquidation.

The purpose of this report is to provide creditors with information regarding the following:

- ▲ The estimated amount of asset and liabilities of the Company;
- ▲ An update on the progress of the Liquidation and further actions that may need to be undertaken;
- ▲ What happened to the business;
- ▲ The likelihood of creditors receiving a dividend before the affairs of the Company are fully wound up; and
- ▲ Possible recovery actions.

This report should be read in conjunction with the initial report. If you have any questions relating to the liquidation in general, or specific questions relating to your position, please do not hesitate to contact this office.

Creditors can find copies of all previous reports on this matter on our website.

- ▲ BRI Ferrier <https://briferrier.com.au/>

COMPANY DETAILS

Name	ZHKY Construction Pty Ltd (In Liquidation)
Incorporated	3 June 2020
ACN	641 419 641
Registered Office	6 Raimonde Road Eastwood NSW 2122
Trading Address	6 Raimonde Road Eastwood NSW 2122

LIQUIDATOR

Name	Peter Krejci
Date Appointed	3 December 2024

ADMINISTRATION CONTACT

Name	Sushma Mandira
Email	smandira@brifnsw.com.au
Phone	02 8263 2322

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GLOSSARY OF COMMON ACRONYMS & ABBREVIATIONS

ABN	Australian Business Number
ACN	Australian Company Number
Act	Corporations Act 2001 (Cth)
ARITA	Australian Restructuring Insolvency and Turnaround Association
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CBA	Commonwealth Bank of Australia
CL	Court Liquidation
Company	ZHKY Construction Pty Ltd (In Liquidation)
Company Accountant	Cathy Shi of HSC Australia Pty Ltd
Company Solicitor	Origo Lawyers
DEWR	Department of Employment and Workplace Relations
DCoT	Deputy Commission of Taxation
Director	Haixin Zhang
DIRRI	Declaration of Independence, Relevant Relationships & Indemnities
Department	Department of Employment and Workplace Relations
FEG	Fair Entitlements Guarantee
Firm	Novabrif Pty Ltd trading as BRI Ferrier New South Wales
iCare	Workers Compensation Nominal Insurer
Initial Report	Initial Report to Creditors dated 20 December 2024
IPR	Insolvency Practice Rules (Corporations) 2016
IPS	Insolvency Practice Schedule (Corporations) 2016
NSW	New South Wales
Petitioning Creditor	iCare
POD	Proof of Debt
PPSR	Personal Properties Securities Register
RBA	Running Balance Account
RBP	Relation Back Period
ROCAP	Report on Company Activities and Property
Shareholder	Haixin Zhang
SGC	Superannuation Guarantee Charge

EXECUTIVE SUMMARY

As you are aware, I was appointed Liquidator of the Company pursuant to an Order of the Supreme Court of NSW. The Petitioning Creditor in this matter is iCare who in their proof of debt advised of a debt of \$21,282.63 relating to unpaid workers compensation premiums and litigation costs associated with the collection of same.

This report has been prepared in accordance with Rule 70-40 of the Insolvency Practice Rules to provide creditors with an update on developments in this Liquidation. I provide hereunder a summary of my preliminary investigations into the affairs of the Company to date, the potential return for creditors and the conduct of the Liquidation over the past three (3) months.

As advised in my Initial Report to Creditors, the Company was incorporated on 3 June 2020 and operated as a subcontractor to residential builders primarily providing basement excavations using plant & equipment owned by another entity that the Director controlled. Mr. Haixin Zhang is the sole Director, Secretary, and Shareholder of the Company.

I confirm have not traded on the business of the Company. However, I suspect that the Director may still be trading the Company's business under the name "Top Civil" with a different bank account. Should that be the case, any debts incurred post my appointment may form an insolvent trading claim to be pursued against the Director personally. Any debts incurred post my appointment will not be accepted by me as a claim against the Company.

As at the date of this report, I have recovered pre-appointment cash at bank funds in the amount of \$1K and am awaiting further cash at bank recoveries of approx. \$24K to be remitted from the pre-Company's pre-appointment bank account that the Company is currently a joint holder of alongside the Director. The Director has advised that the Company has \$100K in outstanding debtors. Given that debtors have not replied to my requests for payment, I have sought the assistance of the Director and the Company's lawyers (Origo Lawyers) to commence recovery actions. Furthermore, I note there is a professional indemnity claim in the amount of \$84K which had been commenced prior to my appointment. I am considering continuing this claim via the engagement on a speculative basis of Origo Lawyers. In terms of liabilities, my investigations have identified two (2) unsecured creditors of the Company being iCare owed an amount of \$30K and the ATO for a figure of \$262K. I note that the ATO debt however is estimated to increase pending lodgement of outstanding GST returns.

My investigations to date lead me to conclude that the director may have breached his duties owed to the Company under s180-s183 of the Act. Additionally, I have determined that the Company may have been insolvent since incorporation and accordingly there may be a potential insolvent trading claim valued at c. \$292K to be pursued against the Director. My findings however are preliminary and these claims will require further investigation and funding to pursue. The same applies to the uncommercial transactions and unreasonable director-related transactions I have identified that could be pursued for the benefit of creditors. Please refer to Section 13 of this Report where I have detailed my findings in this regard. The recovery prospects are unknown at this stage however a NSW Land Title Search indicates that the Director is the joint proprietor of a property located at 3 Sunbeam Street Campsie NSW 2194 and may be the purchaser/lessee of three (3) other properties located in NSW.

I have prepared and lodged with ASIC a report pursuant to Section 533(1) of the Act. This report to ASIC is a legislative requirement in liquidations where potential offences and breaches of the Act by Directors and Officers of the Company have been identified and/or the estimated return to unsecured creditors is less than fifty (50) cents in the dollar. Subject to ASIC's response, I do not intend to prepare any further report to ASIC and Creditors.

At this stage, there have been limited recoveries in the Liquidation to discharge any Liquidator costs. Whilst I have identified potential recoveries, subject to further information being obtained to strengthen these claims I do not anticipate pursuing same. Please see Findings and Recovery Actions for further details on the Directors asset position. Accordingly, I do not anticipate there to be any dividends available for any class of creditors in this Liquidation.

Should a creditor have any relevant information which may assist my investigations or potential asset recoveries or wish to fund my further investigations, they should contact my office by no later than 14 March 2025. Otherwise, absent any substantive new information, the Liquidation may continue for the next two (2) to three (3) months.

1. BASIS OF REPORT

This report has been prepared primarily from information received from the Director both through a verbal meeting and his completed ROCAP and the financial reports produced from the Company Xero file.

In order to complete this report and in conducting my investigations, I have also utilised information from:

- ▲ ASIC;
- ▲ Bank statements provided by CBA;
- ▲ Litigation documents provided by iCare; and
- ▲ Extracts from public information databases.

2. DISCLAIMER

An investigation of the Company's affairs has been conducted and this report and the statements made herein have been prepared based upon available books and records, information provided by the Director 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.

Neither I, 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 estimates and assessments made for the purposes of the report.

This report is not for general circulation, publication, reproduction, or any use other than to assist creditors in evaluating their position as creditors of the Company and must not be disclosed without the prior approval of the Liquidator.

Creditors should consider seeking their own independent legal advice as to their rights and options available to them.

Should any creditor have material information in relation to the Company's affairs which they consider may impact on my investigations or report, please forward details in writing as soon as possible.

3. DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS, AND INDEMNITIES

I confirm that my DIRRI as previously circularised has not been amended.

4. CORPORATE INFORMATION

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

4.1 COMPANY DETAILS

Company Name	ZHKY Construction Pty Ltd (In Liquidation)
Registered Address	6 Raimonde Road Eastwood NSW 2122
Principal Place of Business	6 Raimonde Road Eastwood NSW 2122
Incorporation Date	03 June 2020
ABN	69 641 419 641
ACN	641 419 641

4.2 COMPANY OFFICE HOLDERS

Name	Position	App Date	Cease Date
Haixin Zhang	Director and Secretary	09/02/2022	Current
Huijun Zang	Director and Secretary	03/06/2020	09/02/2022

4.3 SHAREHOLDINGS

Name	Share Class	No. of Shares	Fully Paid Up	Status
Haixin Zhang	ORD	100	Yes	Current
Huijun Zang	ORD	100	Yes	Ceased/ Former

4.4 RELATED PARTIES AND ASSOCIATES

A directorship search was undertaken in respect to the Company's Director and my investigations indicate that the Director and former Director held the following roles.

Current Director

Name	Company Name	Position	App Date	Cease Date
Haixin Zhang	Kylin Construction Development Pty. Ltd.	Director and Secretary	19/08/2016	Current
Haixin Zhang	Dab Investment Development Pty Ltd	Director	02/03/2021	Current
Haixin Zhang	Kylin Investment Development Pty Ltd	Director and Secretary	21/12/2021	Current
Haixin Zhang	ZHKY Construction Pty Ltd (In Liquidation)	Director and Secretary	09/02/2022	Current
Haixin Zhang	Z & Z Fortune Pty Ltd	Director and Secretary	22/02/2022	Current
Haixin Zhang	Zanx Holding Pty Ltd	Director and Secretary	08/11/2022	Current
Haixin Zhang	Topplus Demolition Pty Ltd	Director and Secretary	27/09/2023	Current

Former Director

Name	Company Name	Position	App Date	Cease Date
Huijun Zang	Nunu Investment Pty Ltd	Director and Secretary	02/08/2018	Current
Huijun Zang	ZHKY Construction Pty Ltd (In Liquidation)	Director and Secretary	03/06/2020	09/02/2022
Huijun Zang	Z & Z Fortune Pty Ltd	Director and Secretary	22/02/2022	08/11/2022
Huijun Zang	Zanx Holding Pty Ltd	Director and Secretary	15/03/2022	08/11/2022

5. LEGAL PROCEEDINGS

Pursuant to Section 500(2) of the Act, my appointment as Liquidator automatically stays any current legal proceedings against the Company.

Creditors cannot commence or continue proceedings against the Company without my written consent or without leave of the Court.

As advised in my Initial Report, the Company's lawyers notified me that they were engaged by the Director on a speculative basis to pursue a professional negligence claim against a third party. I have consented to them pursuing the same given the claim has merit and could ensure the Company is paid \$84K less legal costs, if it succeeds.

6. COMPANY BACKGROUND AND EVENTS LEADING TO MY APPOINTMENT

The following information was obtained from enquiries with third parties and information obtained from same by me.

- ▲ The Company was registered on 30 June 2020 and appears to have provided Demolition & Excavation services in NSW.
- ▲ Mr Haixin Zhang is the sole director, secretary and shareholder of the Company having been appointed director since 9 February 2022. Prior to him, Mr Huijun Zang held these positions when the Company's was incorporated.
- ▲ My investigations reveal that the Director's residential address and the Company trading address are both located at 6 Raimonde Road Eastwood NSW 2122. An RP Data Search indicates the property was sold for nil consideration from 'Zhang' to 'Zang' on 6 September 2024. I am unsure if the property was sold to the Former Director Huijun Zang.
- ▲ iCare served the Company with a Statement of Claim on 18 May 2023 for unpaid Workers Compensation Insurance premiums which led to a Creditor's Statutory Demand being served on 24 July 2024 and thereafter an application to wind the Company up in insolvency which was filed on 1 November 2024.
- ▲ Subsequently, I was appointed Liquidator of the Company by Order of the Supreme Court of NSW on 3 December 2024.

7. REASONS FOR FAILURE

In the ROCAP submitted by the Director to my office, I have been advised that the business failed due to the appointment of a Liquidator over the Company.

Based on my investigations to date, I have identified the following reasons for the Company's failure:

- ▶ Poor financial control, including lack of records. I note the Company never paid its workers compensation premiums. Secondly, I note the management accounts for FY23 to FY24 and financial statements for FY24 appear to be materially inaccurate on the basis that the financial accounts do not list the debts owed to iCare and the DCoT at the correct amounts and the superannuation amount outstanding is recorded at the incorrect rate.
- ▶ Insufficient working capital or high cash use. I have identified that the Company historically had insufficient working capital to meet its statutory debts. Records available to me indicate these statutory debts have remained outstanding since incorporation date, whilst the Company continued to trade without addressing same.

8. HISTORICAL FINANCIAL INFORMATION

I have reviewed the Company's management accounts for the period ending 30 June 2023, 30 June 2024 and 3 December 2024. I note the below reports were extracted from the Company Xero file maintained by the Company Accountants HSIC Australia Pty Ltd.

8.1 BALANCE SHEETS

Attached as **Annexure C** is a comparative analysis of the Balance Sheets for the abovementioned periods. I make the following comments on the Company's Financial Position for FY23, FY24 and as at the date of appointment:

- ▶ The balance sheets for the period reveal the sole asset of the Company to be trade debtors of \$114K which appear to increase since 2023 indicating poor strategic business management. During my discussions with the Director, he advised that debtors of the Company made payments only when it suited their cash flows and there were no written contracts exchanged which would have typically outlined the payment terms between the Company and its customer. The unreconciled bank transactions on the Company's Xero file however give me reason to believe that the debtors may have made payments of their accounts in full however the payments appear not to have been posted on the Company's Xero file giving an incorrect financial position for the Company. I have therefore prepared an amended current assets/liabilities position under Section 11.4 below detailing the liquidity position of the Company after amending the current bank balance/outstanding debtor amounts.
- ▶ The Company's current liabilities predominantly comprise of statutory taxation debts of \$262,033 as at the date of my appointment while the DCoT running account balance on the Company portal indicates the Company owes only \$7K as at appointment. I believe the GST liabilities on the Company Xero file are calculated on an accrual basis and therefore seems to with the outstanding trade debtors balance. The Company's Director additionally recalled

there to be a year's worth of taxation lodgements outstanding as at my appointment which when lodged will likely increase statutory debts owing to the ATO currently recorded at \$7K.

- ▶ The balance sheets for FY23, FY24 and as at the date of my appointment reflects a position of high liquidity, with a current asset ratio ranging from 12 to 11. This ratio appears high and may be reflective of incorrect balances with respect to debtors and statutory liabilities. I have included an amended current assets/liabilities position under Section 11.4 below which reveals the liquidity position of the Company when the current bank balance/outstanding debtor figures are amended.

8.2 PROFIT AND LOSS STATEMENTS

Attached as **Annexure D** is a comparative analysis of the Profit and Loss Statements for the abovementioned periods. I make the following comments on the Company's Profit and Loss for FY23, FY24 and as at the date of appointment:

- ▶ From my review of the Company's profit and loss statements, it appears that the Company only posted certain transactions noted in the Company's bank statements and to only three accounts - sales, cost of goods sold and "Freight and Courier", which is insufficient information to capture the true operating costs of the Company.
- ▶ Outside of freight courier, none of the major expenses of the business including but not limited to staff amenities, subcontractor payments, administration expenses or fuel expenses have been reported by the Company against the Cost of goods sold account. The highest expense figure recorded against the account appears to be that of Stripe Fees incurred in the amount of \$115 during financial year 2024.

9. CURRENT FINANCIAL POSITION

Below is my analysis of the current financial position of the Company, with regard to available books and records and my enquiries to date.

ZHKY Construction Pty Ltd (In Liquidation) ACN 641 419 641 Summary of Companies' Financial Position			
	Report Reference	Director's ROCAP as at 24.12.2024 (\$)	Liquidator's ERV (\$)
Assets			
Cash and Cash Equivalents	9.1.1	57,851	25,375
Trade Debtors	9.1.2	104,271	TBC
Motor Vehicles	9.1.3	Nil	Nil
Real Property	9.1.4	Nil	Nil
Total Assets		162,122	25,375
Liabilities			
Petitioning Creditor	9.2.1	Nil	8,885
Secured Creditors	9.2.2	Nil	Nil
Priority Creditors	9.2.3	Nil	Nil
Unsecured Creditors	9.2.4	37,423	292,464
Total Liabilities		37,423	301,349
Estimated Net Asset / (Deficiency)		124,698	(275,974)

9.1 ASSETS

9.1.1 Cash and Cash Equivalents

On appointment, I made enquiries with all major banks in Australia seeking details of any accounts maintained by the Company. These enquiries revealed that the Company maintained three (3) accounts with the CBA which held a credit balance of \$0.46, \$1,024 and \$24,350 respectively as at the date of my appointment.

I requested the CBA to transfer the balances to a bank account of the Company that I control and confirm that I have received \$0.46 and \$1,024.21 to date and am currently awaiting the transfer of \$24,350.59. The reason for the delay is that the Director was listed as the joint holder of the third bank account alongside the Company and the CBA requires the Director to complete a form authorising the transfer, which I have requested the Director to do and have been advised by the Company solicitors that it will be sent to the Bank shortly.

Based on my enquiries to date, I am not aware of any other bank accounts held by the Company.

9.1.2 Debtors

Through my discussions with the Director and the Company solicitors, I was made aware that the Company was owed \$104,271 in outstanding trade debtors as at my appointment. A list of the outstanding debtors is provided below:

Debtor Name	Amount outstanding (\$)
Access Piering Pty Ltd	84,542
Wenjing Dong	2,420
Structural Master Construction Pty Ltd	16,000
Spur Constructions Pty Ltd	1,309
	\$104,271

In the month of December 2024, I issued correspondences to Wenjing Dong, Structural Master Construction Pty Ltd and Spur Construction and note that I have not received any response to date despite following the debtors up on same. Given the non-response, I requested the Director to assist me with the debtor recoveries as he entered into contacts with the customers, and he confirmed via the Company solicitors that he would do so.

I have additionally been advised that one of the outstanding debtors, Access Piering Pty Ltd, is currently in Liquidation. In order to recover the outstanding debt, the Company solicitors were engaged by the Director to pursue a professional negligence claim against an external solicitor who drafted an Equipment Hire Agreement on behalf of the Company to Access Piering Pty Ltd but failed to include a clause for a personal guarantee from the director of the Debtor company if the Company sustained any losses.

I have discussed this debt with the Company's solicitor and have engaged them to continue their work on the matter on a speculative basis on account of the claim having merit and the Company's solicitors having knowledge of the subject matter since before my appointment. As the debt is under the \$100,000 threshold per Section 477(2A) of the Act I will not be required to seek creditor approval should I seek a commercial resolution to this claim.

I will inform creditors of the result of my recovery action in terms of the debtor if there are any further material developments

9.1.3 Motor Vehicles

A search of the Roads and Maritime Services database has not identified any vehicles registered in the Company's name in NSW.

9.1.4 Real Property

A search of the NSW Land Titles Office database reveals that the Company is not the owner of any real property in NSW.

9.2 LIABILITIES

9.2.1 Petitioning Creditor Costs

The Petitioning Creditor's costs in respect to this matter were determined by the Court at a fixed amount of \$8,884.61. Pursuant to Section 556(1)(b) of the Act, these costs are afforded a statutory priority over all other unsecured claims and costs incurred in the Liquidation, once expenses incurred in "preserving, realising or getting in" property of the Company are discharged.

9.2.2 Secured Creditors

A search of the Personal Property Securities Register (“PPSR”) indicates that there is one security interest registered on the PPSR against the Company.

Registration Number	Secured Party	Start Date	Collateral Class
202208050049594	United Rentals Australia Pty Ltd	05/08/2022	Commercial - Other Goods

Upon my appointment, I wrote to the secured party to provide me with information regarding the security interest registered against the Company and am still awaiting a response regarding same.

In any event, if you have leased property to the Company, have a retention of title claim or hold a Personal Property Security in relation to the Company, please contact Mr. Zachary George of this office as soon as possible.

9.2.3 Priority Creditors

My investigations reveal, as at the date of my appointment, the Company was employing one (1) person, being the Director and at this stage, I have not officially recorded any outstanding employee entitlements that the Company owes.

To the extent that there are amounts owed to former employees, they are eligible to apply to the Federal Government, which has established a safety net scheme known as the FEG, for payment of their outstanding entitlements. FEG is administered by the Attorney General’s Department (“the Department”) for eligible employees who have been terminated as a result of their employer’s insolvency and are owed entitlements.

In order for an employee to be eligible to claim outstanding entitlements under FEG:

- The employee must be an Australian citizen or permanent resident (contact FEG for further details); and
- The end of their employment must be due to the insolvency of the employer; or have occurred less than six (6) months before the appointment of an insolvency practitioner; or occurred on or after the appointment of an insolvency practitioner.

Employees may submit claims in respect of the following entitlements, provided they are entitled to claim under their respective industrial instrument, contract of employment or by any other means:

- Up to thirteen (13) weeks unpaid wages for the period ending at the earlier of the date on which employment ended or the appointment of an insolvency practitioner;
- Unpaid annual leave and long service leave;
- Up to a maximum of five (5) weeks unpaid payment in lieu of notice;
- Up to a maximum of four (4) weeks redundancy entitlement for each completed year of service.

In calculating employee entitlements payable under the scheme, the maximum annual wage applies.

FEG will not cover:

- ▶ Outstanding superannuation entitlements;
- ▶ Entitlements such as rostered days off unless the relevant legislation, award, statutory agreement, or written contract of employment provides they are payable upon termination of employment; and
- ▶ Employee entitlements of the Directors and relatives of the Director as defined by the *Corporations Act 2001*.

To obtain further information, the Department may be contacted on 1300 135 040 or alternatively, please visit their website at: <https://www.ag.gov.au/industrial-relations/fair-entitlements-guarantee>.

9.2.4 Unsecured Creditors

As previously noted, my investigations to date have identified two (2) unsecured creditors. I provide details into their claim as follows:

- ▶ iCare have advised of a debt owed to them in the amount of \$30,431.34, relating to unpaid insurance premiums since June 2020.
- ▶ The DCoT have advised of a debt owed to them in the amount of \$7,056.00, relating to running balance account deficits. As there are outstanding lodgements due to the DCoT, the current amount that the DCoT has claimed may increase to at least \$262,033.08 as per the company books and records or an amount higher upon lodgement of these documents.

I encourage any creditors who have not already done so, to lodge their creditor claims with this office. In this regard, please complete the Formal Proof of Debt form, attached as **Annexure A**, and return the same together with documentary evidence to support your claim.

10. INVESTIGATIONS

As Liquidator, I am required to review certain transactions to determine whether or not claims for statutory recoveries may be made for the benefit of creditors. Attached as **Annexure J** is the ARITA creditor information sheet on Offences, Recoverable Transactions, and Insolvent Trading.

Whilst a potential claim may be identified having regard to the Company's records, any net recovery ultimately depends upon:

- ▶ The costs involved in pursuing a claim; and
- ▶ The capacity of the defendant to meet such a claim.

10.1 INVESTIGATIONS UNDERTAKEN

During the course of these investigations, I have:

- ▶ Taken possession of limited books and records of the Company and reviewed same;

- ▲ Written to relevant authorities requesting information required for investigations;
- ▲ Carried out ASIC and other searches available to me in relation to the Company;
- ▲ As no bank accounts have been identified, I have been unable to determine potential preferences, uncommercial transactions, and unfair loans (sections 588FA, 588FB, 588FD and 588FE of the Act).

10.2 BOOKS AND RECORDS

Section 286 of the Act requires a company is to keep written financial records that:

- ▲ correctly record and explain its transactions, financial position, and performance; and
- ▲ 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 and records were not maintained (Section 588E of the Act).

Books and records required to sufficiently prepare financial statements that would correctly record and explain its transactions and financial position and performance and that would enable true and fair financial statements to be prepared and audited, at minimum, include the following:

- ▲ Financial statements including P & L's, balance sheets, depreciation schedule, tax returns;
- ▲ General Ledger;
- ▲ General Journal;
- ▲ Asset register;
- ▲ Computer Back up Discs;
- ▲ Cash records including bank statements cash receipts journal, bank deposit books, cash payments journal, cheque butts and petty cash books.

On my appointment, I requested the Company's Director and Accountant to deliver the books and records of the Company to enable me to investigate the affairs of the Company. To date, the following Company's books and records have been provided:

- ▲ Xero Management Accounts;
- ▲ Financial Statements for FY2024;
- ▲ Tax Return for FY2024; and
- ▲ The Company's bank statements.

I have additionally received a completed ROCAP and Questionnaire stating the affairs of the Company prior to my appointment however note that the Company Xero file was unreconciled since appointment and without sufficient source documents, I have determined the management accounts and reports to be incomplete and unreliable. As a result, I am of the view that the Company has not satisfied the requirements set out in Section 286 of the Act and rely on the presumption of insolvency pursuant to Section 588E of the Act.

10.3 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).

10.4 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 a costly exercise.

11. FINDINGS AND RECOVERY ACTIONS

11.1 INSOLVENT TRADING

Pursuant to Section 588G of the Act, a director may be personally liable for insolvent trading by a company where:

- 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 Act 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.

As at the date of this report I have not been provided with proper reconciled financial information of the Company to accurately determine any potential insolvent trading claim and/or conduct a comprehensive investigation into the insolvency of the Company. However, as per section 588E(4) of the Act, failure to maintain books and records allows for a presumption of insolvency of the Company during the period of failure to maintain books and records. Since I do not hold any source

documentation on file, I have the option to rely on the presumption that the Company was insolvent since the date of commencement of trade however note there to also be other indicators of insolvency that carry more leverage in my determination of the Company's insolvency.

At present, the insolvent trading claim against the Director appears to be at least \$292K representing the outstanding debts owed to creditors as at the date of appointment of the Company. The value of the insolvent trading claim may increase upon lodgement of outstanding tax/BAS returns with the ATO.

Detailed below are further reasons for my assessment.

11.2 INDICATORS OF INSOLVENCY

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

- ▲ The Company bank statements reveal a history of overdrawn funds, as evidenced by the interest charges applied by CBA on the deficit.
- ▲ The Company was subject to creditor demands from both iCare and the DCoT for outstanding debt.
- ▲ The Company's bank statements reveal several rounded payments which are not reconcilable to specific invoices.
- ▲ As previously stated, I believe the Company is in breach of Section 286 of the Act and therefore entitled to rely on the presumption that the Company has been trading whilst insolvent.

11.3 ASSESSMENT OF INSOLVENCY

In light of the above, I am of the view that the Company may have been trading whilst insolvent from 3 June 2020.

11.4 WORKING CAPITAL ANALYSIS

The working capital analysis has been based on a review of the Company's management accounts.

As per the Company Financials, there appears to have been sufficient working capital from the year ending 30 June 2023, 30 June 2024 and 3 December 2024, the date of my appointment. A summary is shown below:

	Year Ended 30-Jun-23	Year Ended 30-Jun-24	Period Ended 03-Dec-24
Working Capital Analysis	(\$)	(\$)	(\$)
Current Assets	346,093.09	1,760,488.49	2,925,383.21
Current Liabilities	<u>28,307.82</u>	<u>153,548.56</u>	<u>259,448.08</u>
Net Working Capital	<u>317,785.27</u>	<u>1,606,939.93</u>	<u>2,665,935.13</u>
Current Asset Ratio	12.23	11.47	11.28

Given the inaccuracies in the management accounts described under Section 8.1 and 8.2, especially the non-reflection of accurate debts since incorporation, I am of the view that the Company traded at a liquidity ratio less than 1.

With the Company records I have in my possession; I have adjusted the management accounts to reflect accurate debts as at the date of my appointment which has significantly affected the working capital. A summary is shown below:

	End of Financial 30 June 2023	End of Financial 30-Jun-24	End of Financial 3-Dec-24
Working Capital Analysis	(\$)	(\$)	(\$)
Current Assets	115,510.29	153,717.29	45,104.00
Current Liabilities	<u>33,614.23</u>	<u>177,416.19</u>	<u>291,811.42</u>
Net Working Capital	<u>81,896.06</u>	<u>(23,698.90)</u>	<u>(246,707.42)</u>
Current Asset Ratio	3.44	0.87	0.15

Items adjusted in the balance sheet:

- iCare debts have been added to reflect the Company's current liabilities position since appointment;
- Business Transaction Account (Cash at Bank) has been amended to reflect the actual cash at bank as at the relevant period;
- Access Piercing Pty Ltd, the current debtor of the Company as at appointment, has been moved from current assets to contingent assets given the current PI claim in pursuit as detailed under Section 9.1.2 above.

11.5 POTENTIAL QUANTUM OF CLAIM

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 and remains outstanding. For the purposes of this Report, I have prepared a preliminary assessment of the claim, assuming the Company was insolvent since incorporation.

My preliminary investigations indicate that an insolvent trading claim may be valued at circa \$292K, based on proofs of debts received to date, as detailed below.

Insolvent Trading Calculation	Total Amount (\$)
DCoT	262,033
iCare	30,431
Total	292,464

11.6 RECOVERY OF CLAIM

When assessing any potential litigation for insolvent trading, a Liquidator must assess the director's financial position and his ability to meet any insolvent trading claim should it be successfully proven. I am not empowered at law to demand from the director a statement as to his personal financial position. A NSW Land Title Search on the Director's name indicates that a 'Haixin Zhang; is the joint proprietor of a property located at 3 Sunbeam Street Campsie NSW 2194 and is the purchaser/lessee of three (3) other properties located in NSW. I am not aware if the property identified under the NSW Title Search belongs to that of the Director of the Company or another person in the name of 'Haixin Zhang'. Should it be the Director, I note the property was purchased 19 February 2013 with a registered mortgage to Westpac which indicates there may be some equity present. Should further information be forthcoming that would enable me to strengthen potential claims against the Director, I shall consider pursuit of same.

12. 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 months before the relation-back day, which is the date the winding up application was filed against the Company, i.e., 1 November 2024.

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 and up to ten (10) years if the transactions were entered into with related parties with the intention to defraud.

12.1 UNFAIR PREFERENCES (588FA)

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. I additionally note that pursuant to S588FE(2D) (4) of the Act clawback provisions available to the Liquidator extend to four (4) years from the RBP for transactions to related-party creditors.

I have identified payments totalling \$3,693.23 to Revenue NSW which appear preferential in nature. I note however, this amount would be uncommercial to pursue and thus my investigations into same have ceased. I have further been unable to investigate any potential related-party or preferential transactions.

12.2 UNCOMMERCIAL TRANSACTIONS (588FB)

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 identified personal expense payments (which include international flight payments and round-figure transfers to the Director out of the Company bank account) made in the amount of \$384,418.57, home loan payments of \$13,200.00 and round figure cash withdrawals of \$4,000.00 to have been made in the detriment of the Company and identify these to be potentially uncommercial in nature.

12.3 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.

Based on the limited financial information currently available to me, I have not identified unfair loans.

12.4 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 identified the transactions reported under Section 12.2 to also constitute unreasonable director-related transactions having regard to premiums that were owed to iCare at the time.

12.5 CREDITOR-DEFEATING DISPOSITIONS (S588FDB)

A disposition of company's property is a creditor-defeating disposition if the consideration payable to the company for the disposition was less than the market value of the property and if the disposition has the effect of preventing the property from becoming available for the benefit of the company's creditors in the winding-up of the company.

Based on the limited financial information currently available to me, I have not identified any unfair loans.

13. SUMMARY OF POTENTIAL OFFENCES

In summary, I consider there are various potential contraventions of the Act as follows:

Breach	Commentary
s180—Failure to exercise due care and diligence (civil)	<ul style="list-style-type: none"> ▲ Trading whilst insolvent ▲ Failure to pay iCare premiums since incorporation. ▲ Failure to pay statutory debts. ▲ Failure to make statutory lodgements with the DCoT ▲ Failure to address demands for payments issued by the DCoT and iCare. ▲ Electing to draw funds for personal expenditure whilst outstanding debts were owed to creditors of the Company
s181(1)—Absence of good faith or proper purpose (civil)	Electing to draw funds for personal expenditure whilst outstanding debts were owed to creditors of the Company.
s182 - Use of Position	<ul style="list-style-type: none"> ▲ Failure to address demands for payments issued by the DCoT and iCare. ▲ Electing to draw funds for personal expenditure whilst outstanding debts were owed to creditors of the Company.
s286 (civil)/ —Failure to maintain adequate financial records	As I have not been provided with reconciled and up to date Company's books and records, my preliminary view is that the

Breach	Commentary
	Company has failed to maintain sufficient books and records to meet the requirements of Section 286 of the Act.
S588G(2) - Trading whilst insolvent (civil)	<p>As the Director has failed to maintained reconciled Company books and records, as per section 588E(4) of the Act, failure to maintain sufficient/source books and records allows for a presumption that the Company was insolvent from the date of its incorporation.</p> <p>The insolvency of the Company is further supported by the iCare debt having been outstanding since incorporation and demands issued by external parties, being iCare and the DCoT, for outstanding debts due.</p>

14. RECEIPTS AND PAYMENTS

The receipts and payments up to date of this report are attached as **Annexure B**.

15. ESTIMATED RETURN TO CREDITORS

The likelihood of a dividend being paid to creditors will be affected by a number of factors including:

- ▲ the size and complexity of the administration.
- ▲ the amount of voidable transactions recovered and the costs of these recoveries;
- ▲ the statutory priority of certain claims and costs;
- ▲ the value of various classes of claims including secured, priority and unsecured creditor claims; and
- ▲ the volume of enquiries by creditors and other stakeholders.

At this stage, there have been minimal recoveries in the Liquidation, and I have been unable to discharge my professional costs in full. Any return to creditors is therefore contingent on pursuing and recovering the abovementioned potential claims against the Director, which may require obtaining further evidence and conducting further investigations. Absent any funding, I may consider pursuing a commercial settlement of all potential claims identified against the Director and unless there are significant recoveries from these claims, there will not be any dividends available for any class of creditors in this Liquidation.

16. REMUNERATION OF LIQUIDATOR

On 20 December 2024, I asked creditors to approve my retrospective and prospective remuneration of \$40,000 (excl. GST) which comprised of work completed for the period 3 December 2024 to 19 December 2024 for \$9,494.00 (excl. GST) and future work for the period 20 December 2024 to conclusion of the Liquidation for \$30,506.00 (excl. GST). I advise creditors have not approved my retrospective and prospective remuneration.

I am now asking creditors to approve my remuneration of \$40,000.00 (excl. GST).

Details of work completed for the period 3 December 2024 to 3 March 2025 are summarised as follows:

- ▲ Attendance at physical meeting with the Director;
- ▲ Conversations with the Company Solicitors regarding debtor recoveries and books and records of the Company that need to be provided to the Liquidator's office at a minimum;
- ▲ Conversations with the Company Accountants regarding books and records of the Company that need to be provided to the Liquidator's office at a minimum;
- ▲ Issuance of correspondences with debtors regarding the outstanding debts owed to the Company and following up on same where I have not received a response;
- ▲ Reviewing ROCAP and Questionnaire completed by the Director to better understand the Company affairs;
- ▲ Reviewing Company Xero file in detail and subsequently the Company bank statements in detail due to a lack of reconciled management accounts;
- ▲ Investigations into potentially voidable transactions; and
- ▲ Investigations in relation to the insolvent trading claims and Director's asset position.

Creditors are referred to the following items set out at the Remuneration Approval Report attached as **Annexure E**:

- ▲ The spreadsheet which sets out the calculation of remuneration by appointee, employee and position for the work undertaken by myself and my staff for the period 3 December 2024 to 3 March 2025;
- ▲ A summary sets out a general description of additional necessary work carried out for the period 4 March 2025 to conclusion of the Liquidation.

It is my intention to seek approval from creditors of my remuneration in the sum of \$40,000.00 for the work I have completed/intend to complete from 20 December 2024 to the conclusion of the Liquidation. Attached as **Annexure F** is a copy of the Proposals without Meeting forms. These forms need to be returned to my office by **close of business, 25 March 2025**.

17. MATTERS OUTSTANDING

The outstanding matters in the administration are:

- ▲ Finalising debtor recoveries;
- ▲ Correspondence with creditors;
- ▲ Confirming the total amounts owed to the Creditors;

- ▲ Liaising with lawyers regarding recovery action, pending the total amounts owed to the Creditor;
- ▲ Statutory lodgements and general administrative matter; and
- ▲ Finalise.

Subject to the timing of the finalisation of the above matters and any unforeseen circumstances, I currently estimate that the administration will be finalised within 4-6 months.

18. CONCLUSION

It would be appreciated if you would consider the matters detailed in this report and please write to this office setting out full particulars if you are:

- ▲ Aware of any errors in the information contained within this report including the non-disclosure of any divisible assets; and
- ▲ Have any information that you consider is relevant for creditors' decision making or relevant information that may help assist the liquidator's investigations into the affairs of the Company.

Creditors should however, maintain their records in relation to the affairs of the Company and advise this office of any change of address.

Additional general information regarding liquidations which may be of assistance, is available from the following websites:

- ▲ ARITA at www.arita.com.au/creditors ; and
- ▲ ASIC at www.asic.gov.au (search for "insolvency information sheets"), also attached as **Annexure I** to this report.

Should you require assistance in completing the relevant forms or have any queries, please contact the Administration Contact shown at page 1 of this report.

Any further reports will be issued as considered appropriate.

Yours faithfully,

ZHKY CONSTRUCTION PTY LTD (IN LIQUIDATION)



PETER KREJCI
LIQUIDATOR

The logo for BRI Ferrier, featuring the text "BRI Ferrier" in white on a dark grey rectangular background. A green triangle is positioned at the bottom right corner of the grey rectangle.

ZHKY Construction Pty Ltd
(In Liquidation)
ACN 641 419 641
ABN 69 641 419 641

Annexure "A"
Form 535 Formal Proof of Debt or
Claim (General Form)

FORM 535
CORPORATIONS ACT 2001

Subregulation 5.6.49(2)

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Liquidator of ZHKY Construction Pty Ltd (In Liquidation) (In Liquidation) ACN 641 419 641/ ABN 69 641 419 641

1. This is to state that the company was, on 3 December 2024, ⁽¹⁾ and still is, justly and truly indebted to ⁽²⁾ (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 ⁽³⁾ state how the debt arose	Amount \$ (Incl. GST)	Remarks ⁽⁴⁾ 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 ⁽⁵⁾☐ I am a related creditor of the Company ⁽⁵⁾
relationship:3A. ^{(6)*} 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. ^{(6)*} 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.

The External Administrators' (whether as Voluntary Administrators/Deed Administrators/Liquidators) will send and give electronic notification of documents in accordance with Section 105A of Corporations Act 2001. Please provide your email address below:

Contact Name:

Email Address:

DATED this day of 2024

NAME IN BLOCK LETTERS

Occupation

Address

Signature of Signatory

OFFICE USE ONLY

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



ZHKY Construction Pty Ltd
(In Liquidation)
ACN 641 419 641
ABN 69 641 419 641

Annexure "B"
Summary Receipts & Payments

Summarised Receipts & Payments

ZHKY Construction Pty Ltd
(In Liquidation)
Transactions From 03 December 2024 To 03 March 2025

A/C	Account	Net	GST	Gross
74	Cash at Bank	1,024.67	0.00	1,024.67
83	Bank Interest	4.39	0.00	4.39
Total Receipts (inc GST)		\$1,029.06	\$0.00	\$1,029.06
Total Payments (inc GST)		\$0.00	\$0.00	\$0.00
Balance in Hand - By Bank Account				
212	Cheque Account			1,029.06
				\$1,029.06



ZHKY Construction Pty Ltd
(In Liquidation)
ACN 641 419 641
ABN 69 641 419 641

Annexure "C"
Comparative Balance Sheets

ZHKY Construction Pty Ltd (In Liquidation)
T/AS TOP PLUS CIVIL GROUP PTY LTD
ACN 641 419 641
Comparative Balance Sheets
For the Period Ending 30 June 2023 to 3 Dec 2024

	30-Jun-23 (\$)	30-Jun-24 (\$)	3-Dec-24 (\$)
ASSETS			
Current Assets			
Business Trans Acct	236,031.85	1,615,566.05	2,779,609.50
Accounts Receivable	110,061.24	144,922.44	145,773.71
Total Current Assets	346,093.09	1,760,488.49	2,925,383.21
Total Assets	346,093.09	1,760,488.49	2,925,383.21
LIABILITIES			
Current Liabilities			
GST	30,892.82	156,133.56	262,033.08
Owner A drawings	(2,585.00)	(2,585.00)	(2,585.00)
Total Current Liabilities	28,307.82	153,548.56	259,448.08
Total Liabilities	28,307.82	153,548.56	259,448.08
NET ASSETS	317,785.27	1,606,939.93	2,665,935.13
EQUITY			
Current Year Earnings	317,785.27	1,289,154.66	1,058,995.20
Retained Earnings	-	317,785.27	1,606,939.93
TOTAL EQUITY	317,785.27	1,606,939.93	2,665,935.13

The logo for BRI Ferrier, featuring the text "BRI Ferrier" in white on a dark grey rectangular background. A green diagonal line runs from the bottom right corner of the grey rectangle towards the right edge of the image.

BRI Ferrier

**ZHKY Construction Pty Ltd
(In Liquidation)
ACN 641 419 641
ABN 69 641 419 641**

**Annexure "D"
Comparative Profit and Loss
Statements**

ZHKY Construction Pty Ltd (In Liquidation)
T/AS TOP PLUS CIVIL GROUP PTY LTD
ACN 641 419 641
Comparative Profit and Loss Statements
For the End of Financial Ended 1 July 2022 to 3 Dec 2024

	End of Financial 30-Jun-23 (\$)	End of Financial 30-Jun-24 (\$)	End of Financial 03-Dec-24 (\$)
Income			
Sales	317,794.30	1,293,969.80	1,074,915.20
Total Income	317,794.30	1,293,969.80	1,074,915.20
Less: Cost of Sales			
Costs of Goods Sold	9.03	115.14	-
Total Cost of Sales	9.03	115.14	-
Gross Profit	317,785.27	1,293,854.66	1,074,915.20
Total Income	317,785.27	1,293,854.66	1,074,915.20
Expenses			
Freight & Courier	-	4,700.00	-
Total Expenses	-	4,700.00	-
Net Profit	317,785.27	1,289,154.66	1,074,915.20
Profit / (Loss) Before Income Tax	317,785.27	1,289,154.66	1,074,915.20
Income Tax Expense	-	-	-
Profit / (Loss) After Income Tax	317,785.27	1,289,154.66	1,074,915.20
Retained Profits (Accum Losses) - Opening Balance	-	317,785.27	1,606,939.93
Less: Dividend Paid	-	-	-
Retained Profits (Accum Losses) - Closing Balance	317,785.27	1,606,939.93	2,681,855.13



ZHKY Construction Pty Ltd
(In Liquidation)
ACN 641 419 641
ABN 69 641 419 641

Annexure "E"
Remuneration Approval Report

Remuneration Approval Report

ZHKY Construction Pty Limited (In Liquidation)

**ACN 641 419 641
ABN 69 641 419 641
("The Company")**

3 March 2025

**Peter Krejci
Liquidator**

Novabrif Pty Ltd ABN 61 643 013 610
Level 26, 25 Bligh Street, Sydney NSW 2000
GPO Box 7079, Sydney NSW 2001
Phone (02) 8263 2333
Email: info@brifnsw.com.au
Website: www.briferrier.com.au



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1. EXECUTIVE SUMMARY

I am asking creditors to approve my remuneration of \$40,000.00 (excl. GST) and disbursements of \$1,000.00.

Details of remuneration and disbursements can be found in section 3 and 4 of this report.

I am asking creditors to approve my remuneration via a proposal without a meeting.

I estimate the total cost of this Liquidation will be approximately \$40,000.00 (excl. GST) for the following reasons:

More work than anticipated in conducting investigations relating to the Company's affairs;

- ▲ Attendance at physical meeting with the Director;
- ▲ Conversations with the Company Solicitors regarding debtor recoveries and books and records of the Company that need to be provided to the Liquidator's office at a minimum;
- ▲ Conversations with the Company Accountants regarding books and records of the Company that need to be provided to the Liquidator's office at a minimum;
- ▲ Issuance of correspondences with debtors regarding the outstanding debts owed to the Company and following up on same where I have not received a response;
- ▲ Reviewing ROCAP and Questionnaire completed by the Director to better understand the Company affairs;
- ▲ Reviewing Company Xero file in detail and subsequently the Company bank statements in detail due to a lack of reconciled management accounts;
- ▲ Investigations into potentially voidable transactions; and
- ▲ Investigations in relation to the insolvent trading claims and Director's asset position.

If further significant work is required in relation to the recovery of claims, a dividend to creditors and/or adjudication of proofs of debt over and above what has been outlined in this report (additional work), then I will report to creditors and seek additional remuneration approval.

2. DECLARATION

I have undertaken an assessment of this remuneration and disbursement claim in accordance with the law and applicable professional standards. I am satisfied that the remuneration and disbursements claimed are necessary and proper.

I have reviewed the work in progress report for the Liquidation to ensure that remuneration is only being claimed for necessary and proper work performed and no adjustment was necessary.

3. REMUNERATION SOUGHT

The remuneration I am asking creditors to approve is as follows:

For	Period	Amount \$ (excl. GST)	Rates	When it will be drawn
Completed Work	3 December 2024 to 2 March 2025	\$20,772.00	Provided in my Remuneration Notice dated 3 March 2025	It will be drawn when funds are available.
Future Work	3 March 2025 to Conclusion	\$19,228.00	Provided in my Remuneration Notice dated 3 March 2025	It will be drawn when funds are available and it is incurred.
TOTAL		\$40,000.00 (excl. GST)		

Details of the work already completed for the period 3 December 2024 to 2 March 2025 and future work that I intend to complete are included at Schedule A.

Schedule B includes a breakdown of time spent by staff members on each major task for completed work.

Actual resolutions to be put to creditors by way of a proposal are included at Schedule C and D for your information. These resolutions also appear in the proposal without a meeting form provided to you.

4. LIKELY IMPACT ON DIVIDENDS

The Corporations Act sets the order of payment of claims against the Company, and it provides for remuneration of the Liquidator to be paid in priority to other claims. This ensures that when there are sufficient funds, the Liquidator receives payment for the work done to recover assets, investigate the Company's affairs, report to creditors and ASIC and distribute any available funds. Even if creditors approve my remuneration, this does not guarantee that I will be paid, as I am only paid if sufficient assets are recovered.

Any dividend to creditors will also be impacted by the amount of assets that I am able to recover, and the amount of creditor claims that are admitted to participate in any dividend, including any claims by priority creditors such as employees.

I am unable to provide a dividend estimate of any certainty at this stage of the Liquidation. If I do declare a dividend, any creditor whose claim has not yet been admitted will be contacted and asked to submit a proof of debt.

5. QUERIES & INFORMATION SHEET

If you have any queries in relation to the information in this report, please contact my office.

You can also access information which may assist you on the following websites:

- ▲ ARITA at www.arita.com.au/creditors
- ▲ ASIC at <http://www.asic.gov.au> (search for INFO 85).

Further supporting documentation for my remuneration claim can be provided to creditors on request.

6. ATTACHMENTS

Schedule A – Details of work

Schedule B – Time spent by staff on each major task

Schedule C – Resolutions

Schedule D – Disbursements

Schedule E – Schedule of Hourly Rates

SCHEDULE A – DETAILS OF WORK

Company	ZHKY Construction Pty Limited (In Liquidation)	Period From	3 December 2024	To	Conclusion
Practitioner	Peter Krejci	Firm	BRI Ferrier		
Administration Type	Court Liquidation				

	Tasks	
	Work already completed (excl. GST)	Future work (excl. GST)
Period	3 December 2024 to 2 March 2025	4 March 2025 to Conclusion
Amount (excl. GST)	\$17,260.00	\$22,740.00

Task Area	General Description		
Creditors		7.2 hours \$2,680.00	\$5,768.40
	Creditor Enquiries	Receive and respond to creditor enquiries Review and prepare correspondence to creditors and their representatives by email Maintaining creditor request log	Receive and respond to creditor enquiries Review and prepare correspondence to creditors and their representatives by email and post Compiling information requested by creditors Maintaining creditor request log
	Creditor Reports	Preparing Initial Report to Creditors Preparing annexures to Initial Report to Creditors Finalising Initial Report to Creditors Preparing Statutory Report by Liquidator Preparing annexures to Statutory Report	Complete and Issue Statutory Report to Creditors Prepare further reports to creditors, if necessary
	Dealing with proofs of debt	Review and file PODs when not related to a dividend Corresponding with OSR and ATO regarding POD	Receipting and filing POD when not related to a dividend Corresponding with OSR and ATO regarding POD when not related to a dividend

Task Area	General Description		
		when not related to a dividend	
	Proposal to Creditors	Reviewing votes and determining outcome of proposal Preparation and lodgement of proposal outcome with ASIC	Reviewing votes and determining outcome of proposal Preparation and lodgement of proposal outcome with ASIC
Investigation		15.1 hours \$6,755.00	\$5,768.40
	Conducting Investigation	Preparing and issuing day one correspondence Preparing and issuing letters to Directors regarding their obligations, ROCAP and requesting delivery of the Company's books and records Liaising with Director regarding background of the Company's financial position Conducting and summarising statutory searches Conduct relevant search to identify intellectual property held by the Company Conduct directorship search and NSW land title search on the Company and the Director Liaising with Director regarding Company records and specific queries	Collection of Company books and records Correspondence with ASIC to receive assistance in obtaining reconstruction of financial statements, Company's books and records and Report on Company Affairs and Property Further investigations to identify potential voidable transactions and consider potential recovery actions to be taken Conducting further investigations with respect to solvency position of the Company and considering whether any potential insolvent trading claim exists Liaising with Director regarding certain transactions Preparation of investigation file Lodgement of investigation with the ASIC Preparation and lodgement of supplementary report if required
	Litigation/Recoveries	Correspondence with solicitors regarding potential claims	Correspondence with solicitors regarding potential claims

Task Area	General Description		
			Attending to negotiations
	ASIC reporting		Preparing statutory investigation reports Liaising with ASIC
Administration		25.30 hours \$10,157.00	\$3,845.60
	ASIC Forms and lodgements	Preparing and lodging ASIC forms including 505 Preparing and lodging ASIC advert regarding notice of appointment	Preparing and lodging ASIC forms including 507, 5601, 5602, 5022 and 5603 Correspondence with ASIC regarding statutory forms
	Correspondence	Correspondence with petitioning creditor's solicitor re appointment	General correspondence with stakeholders
	Document maintenance/file review/checklist	Filing of documents File review Updating checklists	Filing of documents File review Updating checklists
	Bank account administration	Preparing correspondence opening accounts Preparing receipts and payment vouchers	Preparing correspondence closing accounts Bank account reconciliations Prepare receipts and payment vouchers
	Insurance	Prepare initial correspondence with insurer regarding insurance requirements	Correspondence with Insurance broker regarding ongoing insurance requirements
	ATO and other statutory reporting	Prepare ATO incap form and notification of appointment	Liaising with ATO regarding request for documents Preparing BAS
	Planning / Review	Discussions regarding status of administration	Discussions regarding status of administration
	Finalisation		Notifying ATO of finalisation Cancelling ABN / GST / PAYG registration Completing checklists Finalising WIP
Assets		1.9 hours \$1,180.00	\$3,845.60
	Bank Accounts	Correspondence with banks requesting information regarding the bank statements and account details and transferring funds	Correspondence with banks
	Other Assets		Conducting unclaimed money search

Task Area	General Description		
			Tasks associated with realising other assets
	Debtors	Correspondence with debtors Reviewing and assessing debtors' ledgers Liaising with solicitors	Correspondence with debtors Reviewing and assessing debtors' ledgers Liaising with solicitors

SCHEDULE B – TIME SPENT BY STAFF ON MAJOR TASKS (COMPLETED WORK)

ZHKY Construction Pty Ltd (In Liquidation)
ACN: 641 419 641
For the period 3 December 2024 to 2 March 2025

Staff Classification	Name	Hourly Rate (\$, ex GST)	Administration		Assets		Creditors		Investigation		Total	
			Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Appointee	Peter Krejci	750.00	2.2	1,650.00	0.6	450.00	-	-	2.4	1,800.00	5.2	3,900.00
Principal	David Cocker	750.00	1.4	1,050.00	0.6	450.00	0.8	600.00	1.9	1,425.00	4.7	3,525.00
Senior Manager	Katherine La	620.00	0.2	124.00		-		-		-	0.2	124.00
Supervisor	Ashleigh Roche	510.00	3.3	1,683.00		-		-		-	3.3	1,683.00
Senior 2	Sushma Mandira	400.00	1.9	760.00	0.7	280.00	1.6	640.00	2.9	1,160.00	7.1	2,840.00
Intermediate 2	Mikaeel English	300.00	1.8	540.00		-	2.0	600.00		-	3.8	1,140.00
Intermediate 2	Mustafa Kashif	300.00		-		-	0.4	120.00	6.0	1,800.00	6.4	1,920.00
Intermediate 2	Zachary George	300.00	3.5	1,050.00		-	2.4	720.00	1.4	420.00	7.3	2,190.00
Intermediate 2	Hugh Matthews	300.00	0.2	60.00		-		-		-	0.2	60.00
Senior Administrator	Andrea Moulikova	300.00	7.7	2,310.00		-		-	0.5	150.00	8.2	2,460.00
Senior Administrator	Sarita Gurung	300.00	2.6	780.00		-		-		-	2.6	780.00
Senior Administrator	Sonia Stelmach	300.00	0.5	150.00		-		-		-	0.5	150.00
Total			25.3	10,157.00	1.9	1,180.00	7.2	2,680.00	15.1	6,755.00	49.5	20,772.00
											GST	2,077.20
											Total (incl GST)	22,849.20
Average rate per hour				401.46		621.05		372.22		447.35		419.64

SCHEDULE C – RESOLUTIONS

I will be seeking approval of the following resolutions to approve my remuneration and disbursements. Details to support these resolutions are included in section 3 and 4 and in the attached Schedules.

Resolution 1: Liquidator's Remuneration for the period 3 December 2024 to 2 March 2025

"That the remuneration of the Liquidator, his partners and staff for the period 3 December 2024 to 2 March 2025, be calculated on a time basis in accordance with the rates of charge annexed to the Liquidator's Report to Creditors dated 3 March 2025, be fixed and approved at \$20,772.00 (excl. GST), and that the Liquidator be authorised to draw that amount as required."

Resolution 2: Liquidator's Remuneration for the period 3 March 2025 to Conclusion

"That the remuneration of the Liquidator, his partners and staff for the period 3 March 2025 to the conclusion of the Liquidation, be calculated on a time basis in accordance with the rates of charge annexed to the Liquidator's Report to Creditors dated 3 March 2025 and approved to an interim cap of \$19,228.00 (excl. GST) and that the Liquidator be authorised to draw that amount as and when incurred."

Resolution 3: Liquidator's Internal Disbursements for the period 3 December 2024 to Conclusion

"That the Liquidator be allowed internal disbursements for the period 3 December 2024 to the conclusion of the Liquidation not previously approved at the rates of charge annexed to the Liquidator's Report to Creditors dated 3 March 2025, up to an amount of \$1,000.00 (excl. GST) and that the Liquidator be authorised to draw that amount as accrued."

Resolution 4: Early Destruction of Books and Records

"That subject to the consent of the Australian Securities & Investment Commission, the Liquidator be approved to destroy the books and records of the Company at any time after the dissolution of the Company."

SCHEDULE D – DISBURSEMENTS

Disbursements are divided into three types:

- Externally provided professional services - these are recovered at cost. An example of an externally provided service disbursement is legal fees.
- Externally provided non-professional costs such as travel, accommodation, and search fees. These are recovered at cost.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally charge at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

I advise that to date, I have not paid any disbursements incurred during this Liquidation by my Firm.

I am not obliged to seek creditor approval for disbursements paid to third parties, but must account to creditors, this includes providing details of the basis of charging for these types of disbursements to creditors as part of the Remuneration Approval Report.

I am required to seek creditor approval for internal disbursements where there could be a profit or advantage. Accordingly, I will be seeking approval from creditors for **Resolution 3**, of which details are provided in **Schedule C** of this Remuneration Approval Report.

Future disbursements provided by my Firm will be charged to the administration on the following basis:

Disbursement Type	Rate (excl GST)
Externally provided professional services	At cost
Externally provided non-professional costs	At cost
Internal disbursements	
ASIC Charges for Appointments and Notifiable Events	At cost
Faxes and Photocopying	\$0.25 per page
Postage	At cost
Staff vehicle use	In accordance with ATO mileage allowances

SCHEDULE E – SCHEDULE OF HOURLY RATES

There are four methods for calculation of remuneration that can be used to calculate the remuneration of an Insolvency Practitioner. BRI Ferrier normally charges to use a Time Cost basis.

The rates applicable are set out in the table below together with a general guide to the qualifications and experience of staff engaged in the administration and the role they undertake in the administration. The hourly rates charged encompass the total cost of providing professional services and are not comparable to an hourly wage rate.

Title	Description	Hourly Rate (ex GST) 1 July 24
Appointee / Principal	Senior member of the firm. May be a Registered Liquidator and/or Registered Trustee. A senior accountant with over 10 years' experience who brings specialist skills and experience to the appointment. Leads staff carrying out appointments.	\$750
Director	An accountant with more than 10 years' experience. May be a Liquidator. Fully qualified and able to control all aspects of an appointment. May have specialist industry knowledge or skills. Assists with all facets of appointment.	\$670
Senior Manager	An accountant with more than 7 years' experience. Qualified and answerable to the Team Leader. Self-sufficient in completing and planning all aspects of large appointments.	\$620
Manager	An accountant with at least 6 years' experience. Typically qualified with well-developed technical and commercial skills. Controls and plans all aspects of medium to larger appointments, reporting to the Team Leader.	\$580
Supervisor	An accountant with more than 4 years' experience. Typically qualified with sound knowledge of insolvency principles and developing commercial skill. Assists to plan and control specific tasks on medium to larger appointments. Often undertaking post qualification study specialising in Insolvency and Reconstruction.	\$510
Senior 1	An accountant with more than 2 years' experience. Typically a graduate undertaking study leading to professional qualification as a Chartered Accountant or CPA. Able to complete work on appointments with limited supervision.	\$450
Senior 2	An accountant with less than 2 years' experience. Typically a graduate who has commenced study leading to professional qualifications. Able to complete many tasks on medium to large appointments under supervision.	\$400
Intermediate 1	An accountant with less than 2 years' experience. Typically a graduate and commencing study for qualifications. Able to complete multiple tasks on smaller to medium appointments under supervision.	\$350
Intermediate 2	An accountant with less than 1 year's experience. A trainee undertaking degree with an accountancy major. Assists in the appointment under supervision.	\$300
Senior Administration	Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.	\$300
Junior Administration	Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.	\$200



**ZHKY Construction Pty Ltd
(In Liquidation)
ACN 641 419 641
ABN 69 641 419 641**

**Annexure "F"
Proposal Without a Meeting Form**

NOTICE OF PROPOSAL TO CREDITORS

Dated: 3 March 2025

Voting Poll Closes: 25 March 2025

ZHKY CONSTRUCTION PTY LTD (IN LIQUIDATION)

ACN 641 419 641

ABN 69 641 419 641

("the Company")

Proposal No. 1 for creditor approval

"That the remuneration of the Liquidator, his partners and staff for the period 3 December 2024 to 2 March 2025, be calculated on a time basis in accordance with the rates of charge annexed to the Liquidator's Report to Creditors dated 3 March 2025, be fixed and approved at \$20,772.00 (excl. GST), and that the Liquidator be authorised to draw that amount as required."

Reasons for the proposal and the likely impact it will have on creditors if it is passed

- A Liquidator is entitled to be fairly remunerated for undertaking statutory and other duties, including reporting obligations in acting as liquidator.
- I am unable to pay my remuneration without the approval of the Committee of Inspection (if one has been appointed), Creditors, or the Court.
- Approval by Creditors is efficient and timely and is less costly than an application to the Court.
- Approval of my remuneration will allow me to progress further investigations in a timely manner to ensure the prospect of any dividends can be maximised.

Vote on the Proposal No. 1

Please select the appropriate Yes, No or Object box referred to below with a ☒ to indicate your preferred position.

Yes ☐ I approve the proposal

No ☐ I do not approve the proposal

Object ☐ I object to the proposal being resolved without a meeting of creditors

For your vote to count, your claim against the Company must have been admitted for the purposes of voting by the Liquidator. Please select the option that applies:

☐ I have previously submitted a proof of debt form and supporting documents

☐ I have **enclosed** a proof of debt form and supporting documents with this proposal form

Creditor details

Name of creditor

Address

ABN (if applicable)

Contact number

Email address

☐

I am **not** a related creditor of the Company

☐

I am a related creditor of the Company*

relationship: _____

*eg Director, relative of Director, related company, beneficiary of a related trust.

**Name of creditor
/authorised person:**

Signature:

Date:

For your vote to count, you **must complete** this document and return it together with any **supporting documents** by no later than close of business on **25 March 2025**, by email to Zachary George at zgeorge@brifnsw.com.au. Should you have any queries in relation to this matter, please contact Zachary George on (02) 8263 2362.

BRI FERRIER
Level 26
25 Bligh Street
Sydney NSW 2000

NOTICE OF PROPOSAL TO CREDITORS

Dated: 3 March 2025

Voting Poll Closes: 25 March 2025

ZHKY CONSTRUCTION PTY LTD (IN LIQUIDATION)
ACN 641 419 641
ABN 69 641 419 641
("the Company")

Proposal No. 2 for creditor approval

"That the remuneration of the Liquidator, his partners and staff for the period 3 March 2025 to the conclusion of the Liquidation, be calculated on a time basis in accordance with the rates of charge annexed to the Liquidator's Report to Creditors dated 3 March 2025 and approved to an interim cap of \$19,228.00 (excl. GST) and that the Liquidator be authorised to draw that amount as and when incurred."

Reasons for the proposal and the likely impact it will have on creditors if it is passed

- A Liquidator is entitled to be fairly remunerated for undertaking statutory and other duties, including reporting obligations in acting as liquidator.
- I am unable to pay my remuneration without the approval of the Committee of Inspection (if one has been appointed), Creditors, or the Court.
- Approval by Creditors is efficient and timely and is less costly than an application to the Court.
- Approval of my remuneration will allow me to progress further investigations in a timely manner to ensure the prospect of any dividends can be maximised.

Vote on the Proposal No. 2

Please select the appropriate Yes, No or Object box referred to below with a ☒ to indicate your preferred position.

- Yes ☐ I approve the proposal
- No ☐ I do not approve the proposal
- Object ☐ I object to the proposal being resolved without a meeting of creditors

For your vote to count, your claim against the Company must have been admitted for the purposes of voting by the Liquidator. Please select the option that applies:

- ☐ I have previously submitted a proof of debt form and supporting documents
- ☐ I have **enclosed** a proof of debt form and supporting documents with this proposal form

Creditor details

Name of creditor

Address

ABN (if applicable)

Contact number

Email address

☐

I am **not** a related creditor of the Company

☐

I am a related creditor of the Company*

relationship: _____

*eg Director, relative of Director, related company, beneficiary of a related trust.

**Name of creditor
/authorised person:**

Signature:

Date:

For your vote to count, you **must complete** this document and return it together with any **supporting documents** by no later than close of business on **25 March 2025**, by email to Zachary George at zgeorge@brifnsw.com.au. Should you have any queries in relation to this matter, please contact Zachary George on (02) 8263 2362.

BRI FERRIER
Level 26
25 Bligh Street
Sydney NSW 2000

NOTICE OF PROPOSAL TO CREDITORS

Dated: 3 March 2025

Voting Poll Closes: 25 March 2025

ZHKY CONSTRUCTION PTY LTD (IN LIQUIDATION)

ACN 641 419 641

ABN 69 641 419 641

("the Company")

Proposal No. 3 for creditor approval

"That the Liquidator be allowed internal disbursements for the period 3 December 2024 to the conclusion of the Liquidation not previously approved at the rates of charge annexed to the Liquidator's Report to Creditors dated 3 March 2025, up to an amount of \$1,000.00 (excl. GST) and that the Liquidator be authorised to draw that amount as accrued."

Reasons for the proposal and the likely impact it will have on creditors if it is passed

- A Liquidator is entitled to be fairly remunerated for undertaking statutory and other duties, including reporting obligations in acting as liquidator.
- I am unable to pay my internal disbursements without the approval of the Committee of Inspection (if one has been appointed), Creditors, or the Court.
- Approval by Creditors is efficient and timely and is less costly than an application to the Court.
- Approval of my internal disbursements will allow me to progress further investigations in a timely manner to ensure the prospect of any dividends can be maximised.

Vote on the Proposal No. 3

Please select the appropriate Yes, No or Object box referred to below with a ☒ to indicate your preferred position.

- Yes ☐ I approve the proposal
- No ☐ I do not approve the proposal
- Object ☐ I object to the proposal being resolved without a meeting of creditors

For your vote to count, your claim against the Company must have been admitted for the purposes of voting by the Liquidator. Please select the option that applies:

- ☐ I have previously submitted a proof of debt form and supporting documents
- ☐ I have **enclosed** a proof of debt form and supporting documents with this proposal form

Creditor details

Name of creditor

Address

ABN (if applicable)

Contact number

Email address

☐

I am **not** a related creditor of the Company

☐

I am a related creditor of the Company*

relationship: _____

*eg Director, relative of Director, related company, beneficiary of a related trust.

**Name of creditor
/authorised person:**

Signature:

Date:

For your vote to count, you **must complete** this document and return it together with any **supporting documents** by no later than close of business on **25 March 2025**, by email to Zachary George at zgeorge@brifnsw.com.au. Should you have any queries in relation to this matter, please contact Zachary George on (02) 8263 2362.

BRI FERRIER
Level 26
25 Bligh Street
Sydney NSW 2000

NOTICE OF PROPOSAL TO CREDITORS

Dated: 3 March 2025

Voting Poll Closes: 25 March 2025

ZHKY CONSTRUCTION PTY LTD (IN LIQUIDATION)

ACN 641 419 641

ABN 69 641 419 641

("the Company")

Proposal No. 4 for creditor approval

"That subject to the consent of the Australian Securities & Investments Commission, the Liquidator be approved to destroy the books and records of the Company at any time after the dissolution of the Company."

Reasons for the proposal and the likely impact it will have on creditors if it is passed

- A Liquidator must retain the books and records of the Company for a period of five (5) years from the end of the Liquidation.
- To minimise the costs of storage, I am able to destroy the books and records at any time after the end of the Liquidation, with the consent of Creditors and the Australian Securities and Investments Commission.

Vote on the Proposal No. 4

Please select the appropriate Yes, No or Object box referred to below with a ☒ to indicate your preferred position.

- Yes ☐ I approve the proposal
- No ☐ I do not approve the proposal
- Object ☐ I object to the proposal being resolved without a meeting of creditors

For your vote to count, your claim against the Company must have been admitted for the purposes of voting by the Liquidator. Please select the option that applies:

- ☐ I have previously submitted a proof of debt form and supporting documents
- ☐ I have **enclosed** a proof of debt form and supporting documents with this proposal form

Creditor details

Name of creditor

Address

ABN (if applicable)

Contact number

Email address

☐

I am **not** a related creditor of the Company

☐

I am a related creditor of the Company*

relationship: _____

*eg Director, relative of Director, related company, beneficiary of a related trust.

**Name of creditor
/authorised person:**

Signature:

Date:

For your vote to count, you **must complete** this document and return it together with any **supporting documents** by no later than close of business on **25 March 2025**, by email to Zachary George at zgeorge@brifnsw.com.au. Should you have any queries in relation to this matter, please contact Zachary George on (02) 8263 2362.

BRI FERRIER
Level 26
25 Bligh Street
Sydney NSW 2000

The logo for BRI Ferrier, featuring the text "BRI Ferrier" in white on a dark grey rectangular background. A green triangle is positioned at the bottom right corner of the grey rectangle.

**ZHKY Construction Pty Ltd
(In Liquidation)
ACN 641 419 641
ABN 69 641 419 641**

**Annexure "G"
ARITA Information Sheet – Proposal
Without Meeting Forms**

Information sheet: Proposals without meetings

You may be a creditor in a liquidation, voluntary administration or deed of company arrangement (collectively referred to as an external administration).

You have been asked by the liquidator, voluntary administrator or deed administrator (collectively referred to as an external administrator) to consider passing a proposal without a meeting.

This information sheet is to assist you with understanding what a proposal without a meeting is and what your rights as a creditor are.

What is a proposal without a meeting?

Meetings of creditors were previously the only way that external administrators could obtain the views of the body of creditors. However, meetings can be very expensive to hold.

A proposal without a meeting is a cost effective way for the external administrator to obtain the consent of creditors to a particular course of action.

What types of proposals can be put to creditors?

The external administrator is able to put a range of proposals to creditors by giving notice in writing to the creditors. There is a restriction under the law that each notice can only contain a single proposal. However, the external administrator can send more than one notice at any single time.

What information must the notice contain?

The notice must:

- include a statement of the reasons for the proposal and the likely impact it will have on creditors if it is passed
- invite the creditor to either:
 - vote yes or no to the proposal, or
 - object to the proposal being resolved without a meeting, and
- specify a period of at least 15 business days for replies to be received by the external administrator.

If you wish to vote or object, you will also need to lodge a Proof of Debt (POD) to substantiate your claim in the external administration. The external administrator will provide you with a POD to complete. You should ensure that you also provide documentation to support your claim.

If you have already lodged a POD in this external administration, you do not need to lodge another one.

The external administrator must also provide you with enough information for you to be able to make an informed decision on how to cast your vote on the proposal. With some types of proposals, the law or ARITA's Code of Professional Practice sets requirements for the information that you must be provided.

For example, if the external administrator is asking you to approve remuneration, you will be provided with a Remuneration Approval Report, which will provide you with detailed information about how the external administrator's remuneration for undertaking the external administration has been calculated.

What are your options if you are asked to vote on a proposal without a meeting?

You can choose to vote yes, no or object to the proposal being resolved without a meeting. If the administration is a simplified creditors' voluntary liquidation (SCVL), you cannot object to the proposal being resolved without a meeting as meetings cannot be held in a SCVL.

How is a resolution passed?

A resolution will be passed if more than 50% in number and 50% in value (of those creditors who did vote) voted in favour of the proposal, but only so long as not more than 25% in value objected to the proposal being resolved without a meeting.

What happens if the proposal doesn't pass?

If the proposal doesn't pass and an objection is not received, the external administrator can choose to amend the proposal and ask creditors to consider it again or the external administrator can choose to hold a meeting of creditors to consider the proposal.

The external administrator may also be able to go to Court to seek approval.

What happens if I object to the proposal being resolved without a meeting?

If more than 25% in value of creditors responding to the proposal object to the proposal being resolved without a meeting, the proposal will not pass even if the required majority vote yes. The external administrator will also be unable to put the proposal to creditors again without a meeting.

You should be aware that if you choose to object, there will be additional costs associated with convening a meeting of creditors or the external administrator seeking the approval of the Court. This cost will normally be paid from the available assets in the external administration.

This is an important power and you should ensure that it is used appropriately.

Where can I get more information?

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

This information is available from ARITA's website at arita.com.au/creditors.

ASIC also provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at asic.gov.au (search for "insolvency information sheets").

**For more information, go to www.arita.com.au/creditors.
Specific queries should be directed to the external administrator's office.**

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ZHKY Construction Pty Ltd
(In Liquidation)
ACN 641 419 641
ABN 69 641 419 641

Annexure "H"
ASIC Information Sheet – Approving
Fees: A Guide for Creditors

Approving fees: A guide for creditors

This is **Information Sheet 85 (INFO 85)**. It provides creditors with information about the external administrator's fees in a liquidation of a company, voluntary administration or deed of company arrangement. This information sheet outlines the rights that creditors have in approving the external administrator's fees.

The fees of a receiver are fixed by the secured creditor that appoints the receiver and is not discussed in this information sheet.

An external administrator is entitled to receive:

- reasonable fees, or remuneration, for the necessary work they properly perform, after these fees have been approved by creditors, a committee of inspection or a court
- reimbursement for out-of-pocket costs incurred in performing their role.

External administrators are only entitled to fees that are reasonable for the necessary work that they and their staff properly perform in the external administration. What is reasonable will depend on the type of external administration and the issues that need to be resolved. Some are straightforward, while others are more complex.

External administrators must undertake some tasks that may not directly benefit creditors. These include 'statutory' tasks such as reporting to ASIC about potential breaches of the law and lodging forms and notices with ASIC. The external administrator is entitled to be paid for undertaking statutory tasks.

Out-of-pocket costs that are commonly reimbursed include:

- legal fees
- valuers', real estate agents' and auctioneers' fees
- stationery, photocopying, telephone and postage costs
- retrieval costs for recovering company computer records
- storage costs for company books and records.

Creditors have a direct interest in the level of fees and costs because the external administrator will generally be paid from the company's available assets before any payments are made to creditors. If there are not enough assets, the external administrator may have arranged for a third party to pay any shortfall. As a creditor, you should receive details of such an arrangement. If there are not enough assets to pay the fees and costs, and there is no third-party payment arrangement, an external administrator is sometimes not paid (or only partially paid) for the work they do.

An external administrator's fees must be approved by:

- resolution of creditors
- a committee of inspection (if there is a committee of inspection and if no resolution has been passed by creditors), or
- the court if neither the creditors or a committee of inspection have passed a resolution.

An external administrator in a member's voluntary winding up must have fees approved by a resolution of the company, or the court.

The external administrator must provide enough information to allow creditors to help you assess whether the fees are reasonable.

If fees are not approved by creditors in one of the above ways, the liquidator is entitled to receive reasonable fees up to a maximum default amount (indexed annually).

Creditors' approval of fees at a creditors' meeting

Creditors can approve fees by passing a resolution at a creditors' meeting. To vote on any resolution at a creditors' meeting, creditors state aloud their agreement or disagreement (called a 'vote on the voices') or a 'poll' is taken.

Unless creditors call for a poll, the resolution passes if a simple majority of creditors present and voting, in person or by proxy, indicates they agree to the resolution.

If a poll is taken, a majority in number and value of creditors present and voting must agree. A poll requires the votes of each creditor to be counted and recorded.

A separate creditors' resolution is required for approving fees for an administrator in a voluntary administration and an administrator of a deed of company arrangement, even if the administrator is the same person in both administrations.

A proxy is where a creditor appoints someone else to represent them at a creditors' meeting and vote on their behalf. A proxy can be a general or special proxy. A general proxy allows the person holding the proxy to vote as they wish on a resolution, while a special proxy directs the proxy holder to vote in a certain way.

A creditor will sometimes appoint the external administrator as a proxy to vote on the creditor's behalf. An external administrator, their partners or staff must not use a general proxy to vote on approving their fees – they must hold a special proxy to do this. All special proxies must vote as directed, even those against approval of fees.

Creditors' approval without a creditors' meeting

Instead of convening a creditors' meeting, the external administrator can put proposals to creditors by giving notice in writing.

This notice must be given to each creditor entitled to receive notice of a meeting, and:

- include a statement of reasons for the proposal and the likely impact the proposal will have on creditors
- invite the creditor to either:
 - vote 'yes' or 'no' for the proposal
 - object to the proposal without a meeting
- specify a reasonable time for the external administrator to receive creditors' replies.

To vote on the proposal, you must lodge details of your debt or claim with the external administrator and complete the provided voting documents.

Creditors can vote 'yes' or 'no' on the proposal and/or object to the proposal without a creditors' meeting. You should return your response to the external administrator within the time specified in the notice which must be at least 15 business days after the notice is given to creditors.

A resolution is passed if the majority of creditors in number and value who responded to the notice voted 'yes' and if 25% or less in value of the creditors who responded objected to the proposal without a creditors' meeting.

The external administrator should provide you with enough information to make an informed decision. Contact the external administrator if you require further information to help you decide.

The external administrator must lodge with ASIC the outcome of the proposal. You can get a copy of the outcome of the proposal by searching [ASIC Connect](#) for a fee.

Committee of inspection approval

Where creditors have not passed a resolution approving fees, a [committee of inspection](#) can approve an external administrator's fees. In doing so, the members of the committee represent the interests of all creditors or employees, not just their own individual interests.

A committee of inspection makes its decision by a majority in number of its members present at a meeting, but it can only act if a majority of its members attend.

To find out more about committees of inspection and how they are formed, see [Information Sheet 45 Liquidation: A guide for creditors](#) (INFO 45) and [Information Sheet 74 Voluntary administration: A guide for creditors](#) (INFO 74).

Fees may be calculated on a:

- time basis, based on time spent by the external administrator and their staff
- quoted fixed fee, based on an upfront estimate
- percentage of asset realisations.

Charging on a time basis is the most common method. If an external administrator seeks approval for charging wholly or partly on a time basis, and the work is yet to be carried out, the approval sought must include a maximum limit ('cap') on the amount of remuneration the external administrator is entitled to receive. For example, future fees calculated according to time spent may be approved based on the expected number of hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X.

If the work involved exceeds this figure, the external administrator will have to ask creditors/committee to approve further fees, after accounting for the fees already incurred.

An external administrator is also entitled to ask for approval to pay their estimated future fees (for work yet to be done). Usually this is requested to allow the external administrator to continue doing work up to a certain point in time (e.g. to achieve a particular outcome) or to the completion of the external administration.

The external administrator and their staff will record the time taken for the various tasks involved, and a record will be kept of the nature of the work performed.

It is up to the external administrator to justify why the method chosen for calculating fees is appropriate. As a creditor or committee member you have a right to question the external

administrator about the calculation method used and how the calculation was made. You can also ask whether the hourly rates are negotiable.

Hourly rates

External administrators have a scale of hourly rates, with different rates for each category of staff working on the external administration, including the external administrator.

If the external administrator intends to charge on a time basis, you should receive a copy of these hourly rates soon after their appointment and before you are asked to approve fees. It is important to note the hourly rates do not represent an hourly wage for the external administrator and their staff.

The external administrator is running a business – an insolvency practice – and the hourly rates will be based on the cost of running the business, including overheads such as rent for business premises, utilities, wages and superannuation for staff who are not charged out at an hourly rate (such as personal assistants), information technology support, office equipment and supplies, insurances, taxes, and a profit.

External administrators are professionals required to have qualifications and experience, be independent and maintain up-to-date skills. Many of the costs of running an insolvency practice are fixed costs that must be paid, even if there are insufficient assets available to pay the external administrator for their services. External administrators compete for work and their rates should reflect this.

If the external administrator proposes to seek fee approval, the external administrator must send creditors a notice setting out the following information:

- the method by which they seek to be paid (e.g. time basis, quoted fixed price)
- the rate of fees
- an estimate of the expected total fees
- how out-of-pocket costs will be calculated
- a brief explanation of the different methods to calculate fees
- an explanation why they chose a particular fee method
- if a time-cost basis was chosen, the hourly rates of the external administrator and other staff who will work on the external administration.

This initial remuneration notice must be sent to creditors:

- in a voluntary administration, at the same time as the notice of the first meeting of creditors is sent
- in a court liquidation, within 20 business days after the liquidator's appointment
- in a creditors' voluntary liquidation, within 10 business days after the day of the meeting at which the resolution to wind up the company is passed.

When seeking approval of fees, the external administrator must send creditors/committee members a report setting out:

- a summary description of the major tasks performed, or likely to be performed
- the costs associated with each of these tasks and how the costs were calculated
- when the funds will be drawn to pay the fees
- an estimated total amount, or a range of total fees
- an explanation of the likely impact the fees will have on any payment to creditors

- other information that will assist creditors to assess the reasonableness of the fees claimed.

Creditors/committee members may be asked to approve fees for work already performed or an estimate of work yet to be carried out. For more information about the tasks involved, see [INFO 45](#) and [INFO 74](#).

If you are asked to approve an amount of fees, you must decide if the amount is reasonable given the work carried out in the external administration and the results of that work.

The external administrator must provide you with certain information to help you decide if you should approve their fees. To decide if the fees claimed are reasonable and for necessary work properly performed, you might find the following additional information the external administrator provides useful:

- an explanation of why the work performed was necessary
- the size and complexity (or otherwise) of the external administration
- the value and nature of the assets or property dealt with
- the level of risk or responsibility involved with the external administration
- whether there are any extraordinary issues that the external administrator had to deal with
- the amount of fees (if any) that have previously been approved
- if the fees are calculated, in whole or in part, on a time basis:
 - the period over which the work was or is likely to be performed
 - the time spent by each level of staff on each of the major tasks performed or likely to be performed
 - if the fees are for work that is yet to be carried out, whether the fees are capped.

If you need more information about fees than is provided in the external administrator's report, let the external administrator know before the meeting at which fees will be voted on.

What can you do if you think the fees are not reasonable?

If you think the fees claimed are not reasonable, you should raise your concerns with the external administrator. You decide whether to vote in favour of, or against, a resolution to approve fees.

Generally, if creditors or a [committee of inspection](#) approve fees and you wish to challenge this decision, you may apply to the court for review of the fees. You may wish to seek your own legal advice if you are considering applying for a court review of the fees.

As well as a court review of the external administrator's fees, creditors (by resolution of creditors) or one or more creditors (with the external administrator's consent) can appoint a [registered liquidator](#) to carry out a review of fees and/or costs incurred by the external administrator of the company.

A creditor can also apply for ASIC to appoint a reviewing liquidator: see [Form 5605 Application for ASIC to appoint a reviewing liquidator](#).

Where creditors resolve to appoint a reviewing liquidator, the review is limited to:

- remuneration approved within the six months before the reviewing liquidator is appointed
- costs or expenses incurred during the 12 months before the reviewing liquidator is appointed (unless the external administrator agrees to a longer period).

The reviewing liquidator must be a registered liquidator. A creditor who wishes to appoint a reviewing liquidator must approach a registered liquidator to get written consent that they would be prepared to

act as reviewing liquidator. The person must also make a written declaration about any relationships they or their firm may have that might affect their independence to act as reviewing liquidator.

The external administrator and their staff must cooperate with the reviewing liquidator.

If creditors pass a resolution to appoint the reviewing liquidator, the reviewing liquidator's costs form part of the expenses of the external administration of the company. If one or more of the creditors appoint the reviewing liquidator with the consent of the external administrator, the reviewing liquidator's costs are borne by the creditor(s) appointing the reviewing liquidator.

An external administrator should be very careful incurring costs that must be paid from the external administration – as careful as if they were dealing with their own money. Their report on fees must also include information on the out-of-pocket costs of the external administration.

Out of pocket expenses (or disbursements) can be categorised into:

- external services or costs such as legal fees, valuation fees, travel, accommodation and search fees
- internal services or costs such as photocopying, printing and postage.

External costs are usually charged at cost and do not require prior approval of creditors.

Internal costs may be charged at a rate higher than actual cost in order to recover overheads and similar costs. In instances where costs are charged at a rate higher than cost, the external administrator will need to obtain creditor approval before being reimbursed.

When seeking approval of out-of-pocket expenses, the external administrator must send creditors/committee members a report setting out:

- a summary of the out-of-pocket expenses
- how they were calculated
- the total amount the external administrator is seeking reimbursement for
- why the expenses were necessary.

You may be asked to approve reimbursement of out-of-pocket expenses for expenses already incurred or an estimate of expenses to be incurred.

If the expenses are yet to be incurred, a maximum limit (cap) should be placed on the amount the external administrator may incur and get reimbursed for.

Contact the external administrator to raise questions or complaints. If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a report of misconduct with ASIC. ASIC does not usually become involved in matters of an external administrator's commercial judgement.

More information

- › Information Sheet 39 *Insolvency information for directors, employees, creditors and shareholders* (INFO 39)
- › Australian Restructuring Insolvency & Turnaround Association (ARITA) website
- › ARITA Code of Professional Practice for Insolvency Practitioners

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. We encourage you to seek your own professional advice to find out how the applicable laws apply to you, as it is your responsibility to determine your obligations.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases, your particular circumstances must be taken into account when determining how the law applies to you.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

This information sheet was reissued in June 2023.

Last updated: 17/12/2024 02:41



ZHKY Construction Pty Ltd
(In Liquidation)
ACN 641 419 641
ABN 69 641 419 641

Annexure "I"
ASIC Information Sheet – Insolvency
Information for Directors, Employees,
Creditors and Shareholders

Insolvency information for directors, employees, creditors and shareholders

This is **Information Sheet 39 (INFO 39)**. It 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](#).

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. We encourage you to seek your own professional advice to find out how the applicable laws apply to you, as it is your responsibility to determine your obligations.

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Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

This information sheet was updated on 1 September 2017.

Last updated: 06/03/2024 10:14

The logo for BRI Ferrier, featuring the text "BRI Ferrier" in white on a dark grey rectangular background. A green triangle is positioned at the bottom right corner of the grey rectangle.

**ZHKY Construction Pty Ltd
(In Liquidation)
ACN 641 419 641
ABN 69 641 419 641**

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

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) / 453F 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, or three months if a simplified liquidation process is adopted. 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.

**Must be greater than \$30,000 for unrelated creditors in a simplified liquidation*

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 director may also be able to avail themselves of safe harbour, if they meet certain conditions.

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.

Queries about the external administration should be directed to the insolvency practitioner's office.