

STATUTORY REPORT TO CREDITORS

Incospec Pty Ltd (In Liquidation) **ACN 606 617 994 ("the Company")**

I refer to my initial information for creditors sent in a report dated 8 September 2017 in which I advised you of my appointment as liquidator and your rights as a creditor in the liquidation.

The purpose of this report is to:

- provide you with an update on the progress of the liquidation; and
- advise you of the likelihood of a dividend being paid in the liquidation.

1.0 UPDATE ON THE PROGRESS OF THE LIQUIDATION

To date in this liquidation the following key tasks have been achieved:

- All assets subject to the pre-appointment sales agreements have been realised and the proceeds remain in my liquidation bank account.
- I convened and held a meeting of creditors on 19 September 2017.
- Payments to employees through the Government's Fair Entitlements Guarantee Scheme have been made resulting in \$97,257.33 of employee entitlements being paid.
- I have secured the key books and records of the Company and have commenced investigations into the past trading of the Company.
- My investigations have led me to conclude that it is possible that further assets may be realised in this liquidation for the benefit of creditors. Those assets include:
 - plant and equipment; and
 - loans and other receivables.
- Further inquiries in relation to these recoveries have commenced, and a decision will be made based upon those inquiries as to the extent of further recoveries that could be made.
- I have reported the results of my preliminary investigations to ASIC pursuant to Section 533(1) of the Corporations Act 2001.
- I expect there will be a further meeting of creditors once the outcome of the inquiries and any resultant recoveries are known.

The current financial position of the Company is estimated to be as follows:

Fig 1.1 – Estimated Financial Position

	Notes	Report as to Affairs	ERV (high)	ERV (Low)
Assets				
Cash at Bank		88	0	0
Debtors	A	127,435	122,265	122,265
Plant and Equipment		2,500	0	0
Total assets		130,023	122,265	122,265
Liabilities				
Priority Creditors	B	158,078	247,730	260,000
Secured Creditor's Loan				
Unsecured Creditors	C	1,021,958	1,152,721	1,200,000
Total Liabilities		1,180,036	1,400,451	1,460,000
Contingent Asset				
Potential Legal Claim	D	112,560	<i>Uncertain</i>	<i>Uncertain</i>
Net surplus/(deficiency) #		(937,454)	(1,278,186)	(1,337,735)

Source: RATA supplied by the Director and Liquidator's estimates of ERV

subject to costs of external administration

I comment further with respect to some of the figures shown above.

Note	Comment
A	Adjustments relating to all of the assets sold that were subject to the pre-appointment sale agreement have been considered and the receipt of funds reconciled.
B	Employee entitlements and Superannuation Guarantee Charge claims received are for amounts significantly greater than the Director advised. In the low ERV scenario, we have included a provision for additional claims that may become known.
C	ATO claims, in particular, are for amounts significantly greater than the Director advised. In the low ERV scenario, we have included a provision for additional claims that may become known.
D	Further information is being sought from the Director to enable advice regarding the claim to be provided.

2.0 RECEIPTS AND PAYMENT TO DATE

Attached in **Annexure A** are details of all receipts and payments in the liquidation to date.

3.0 LIKELIHOOD OF A DIVIDEND

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

- the quantum of assets realised in the liquidation;
- the costs of realising those assets and the external administration;
- the statutory priority of certain claims and costs; and
- the value of various classes of claims including secured, priority and unsecured creditor claims.

With respect to the quantum of assets realised, the following matters are still unresolved:

- Realisations from the contingent assets disclosed on the Director's Report as to Affairs; and
- Realisations from matters noted above as subject to further investigation.

Once all assets are realised, issues concerning the statutory priority of certain classes of creditors remains an issue to resolve.

As creditors may be aware, the Company acted as Trustee of the Incospec Trust. The implication for this is that the assets controlled by the Company are assets of a Trust.

The long-established practice of distributing the proceeds of the realisation of assets of an insolvent Trust following the same priorities as set out in the Corporations Act 2001 has been disturbed by a number of recent legal decisions. The effect of these decisions has been to order that surpluses available for unsecured creditors are distributed equally amongst all unsecured creditors i.e. the notion of priority creditors (*principally employee entitlements and superannuation*) is ignored.

The impact of the judgments has significant public policy implications and goes against previously well-established insolvency practices.

As a result, there are two cases on this point (*Killarnee Civil & Concrete Contractors WAD181/2016* and *Re Amerind Pty Ltd (Receivers and Managers Appointed) (In Liquidation) [2017] VSC 127*) that are currently the subject of an appeal to Federal and State Courts in an effort to provide greater clarity to insolvency practitioners.

As such I will not be paying any dividend until this issue is resolved, or I get directions from a Court authorising the priority in which the dividend is to be paid.

If a dividend is going to be paid, you will be contacted before that happens and, if you have not already done so, you will be asked to lodge a proof of debt. This formalises your claim in the liquidation and is used to determine all claims against the Company.

4.0 COST OF THE LIQUIDATION

At the meeting of creditors on 19 September 2017, creditors resolved to approve my remuneration in the sum of \$30,000 (GST exclusive). The remuneration claim was based on an estimate of work necessary to

get to the point where asset realisations have concluded and investigations conducted in order to determine the extent, if any, of legal actions that may be available. The fee claim noted that should legal recoveries be identified, further work may be required resulting in further fee approvals that may be sought from creditors. This is the point that the liquidation is at now.

Our costs to date reflect the remuneration that was approved and in the future, a further request for remuneration approval will be sought from creditors.

5.0 WHAT HAPPENS NEXT?

I will proceed with the liquidation, including:

- finalising investigations into other assets that may be recoverable for the Company;
- initiating whatever legal action may be necessary to recover amounts owing to the Company; and
- subject to the extent of net asset realisations, distributing the surpluses to creditors pursuant to the priorities either established by the appeals described in **Section 3** above, or pursuant to directions of the Court that I may seek.

If I receive a request for a meeting that complies with the guidelines set out in the initial information provided to you, I will hold a meeting of creditors.

I may write to you again with further information on the progress of the liquidation.

I am not yet able to advise with certainty when this liquidation may end.

6.0 WHERE CAN YOU GET MORE INFORMATION?

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

- ARITA at www.arita.com.au/creditors; and
- ASIC at www.asic.gov.au (search for "insolvency information sheets").

Please feel free to contact my office should you have any queries in this regard. There is also information about this liquidation on my firm's website www.heardphillips.com.au (Password ISPE01).

Dated this 17th day of November 2017


Anthony Phillips
Liquidator

Contact: Chris Moody
Email: cmoody@heardphillips.com.au

Encl.

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ANNEXURE A

SUMMARY OF RECEIPTS AND PAYMENTS

Summary of Receipts and Payments from appointment to 16 November 2017

Account	GST	Total
Receipts		
Sale of business assets		122,264.83
	0.00	122,264.83
Payments		
Bank Charges		(1.55)
Legal Fees	(344.40)	(3,788.40)
	(344.40)	(3,789.95)
Net Receipts (Payments)	(344.40)	118,474.88