



BBY Nominees Pty Ltd

(In Liquidation) ACN 007 001 443

Liquidators' annual report

25 November 2016

Stephen Vaughan
and Ian Hall

Joint and Several
Liquidators

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Executive summary

BBY Nominees acted as a bare trustee and nominated custodian for clients of the BBY business providing nominee services in respect of securities and other financial products, both domestic and international. BBY Nominees was part of the wider BBY Group and failed as a consequence of the collapse and insolvency of BBY Limited and the other BBY Companies.

Purpose of this report

Each year during the winding up of a company liquidators are required to convene an annual meeting of creditors (or lodge an annual report with ASIC), providing an account of the conduct of the winding up. This is the first annual report by the Liquidators to the former clients and creditors of BBY Nominees and accompanies notice of a meeting of creditors to be held on 15 December 2016.

Appointment details

Stephen Vaughan and Ian Hall of KPMG were appointed as Administrators of ten BBY group companies on 17 May 2015 including BBY Nominees. At a meeting of creditors held on 8 October 2015 BBY Nominees was placed into liquidation and we became the Liquidators.

Clients

At the time of or appointment, the accounts of BBY Nominees were inadequate to determine the identity of all clients, the extent of assets held and whether assets were owned or held on trust for others. We had to obtain information from a variety of sources, including forensic searches of computer records and counterparties that dealt with the Company. We identified approximately \$25 million of listed and unlisted domestic and international shares and options held by BBY Nominees in a nominee capacity on behalf of approximately 600 clients. In many cases the available documentation was incomplete and a large amount of effort has been required to collate details in an orderly manner for processing. We have, where possible, contacted former clients seeking further documentation to support possible entitlements, in order to terminate nominee arrangements and deal with assets identified to be held on their behalf. This process is largely complete. We are finalising a number of remaining claims and plan to realise any unclaimed securities and cash to meet costs of the winding up.

Creditors

Based on review of books and records and our investigations there were no trade or other external creditors besides possible intercompany debts or possible claims that former clients may have. In any case, there will likely be insufficient realisations to meet winding up costs and no surplus funds available for creditors after completion of the process of returning assets held on behalf of clients.

Annual Meeting

An annual meeting of creditors will be held at 10am AEDT on 15 December 2016 at the offices of KPMG to receive a report from the Liquidators, discuss the status of the liquidation and approve outstanding remuneration of the Liquidators. Attached is a notice of the meeting, a proxy form and informal proof of debt form.

More information

A copy of this report, other BBY Nominees documents and further details of the wider BBY external administrations can be found on the creditor information website at www.kpmg.com/AU/bby. The website is updated on a periodic basis for material developments of interest to clients and creditors. Clients and creditors can also email inquiries to AU-FMBBY@kpmg.com.au.

Glossary

ABN AMRO	ABN AMRO Clearing Bank N.V.
ACN	Australian Company Number
Act	Corporations Act 2001 (Commonwealth)
Ashurst	Ashurst Australia, lawyers assisting the Liquidators
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange
ATO	Australian Taxation Office
BBY	The business operated by BBYL and the wider BBY Group
BBYAS	BBY Advisory Services Pty Ltd (Receivers and Managers Appointed) (In Liquidation)
BBYL	BBY Limited (Receivers and Managers Appointed) (In Liquidation)
BBYH	BBY Holdings Pty Ltd (Receivers and Managers Appointed) (In Liquidation)
BBY Nominees	BBY Nominees Pty Ltd (In Liquidation)
BSA	Broker Services Australia Pty Ltd (In Liquidation) (the employment company)
Commsec	Commsec Securities Limited
Court	Supreme Court of New South Wales
GST	Goods and services tax
GBST	GBST Holdings Ltd
Interactive Brokers	Interactive Brokers LLC
HIN	Holder Identification Number
Jefferies	Jefferies International Limited
Linc Energy	Linc Energy Limited (In Liquidation)
Liquidators	Stephen Vaughan and Ian Hall of KPMG
Ord Minnett	Ord Minnett Pty Ltd
Pershing	Pershing LLC
Receivers	Receivers & Managers of BBYH, BBYL, BBYAS, S Parbery and B Lord of PPB Advisory

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Introduction

This annual report

Stephen Vaughan and Ian Hall of KPMG were appointed as joint and several Administrators of ten BBY group companies on 17 May 2015 including BBY Nominees. At a meeting of creditors held on 8 October 2015 BBY Nominees was placed into liquidation and we became the Liquidators.

This is the first annual report to creditors, including former clients, in the liquidation of BBY Nominees.

When the winding up of an insolvent company in liquidation continues for more than 1 year, the Corporations Act (section 508) stipulates that a liquidator must convene a meeting of creditors (or prepare a report that is lodged with ASIC) setting out the conduct of the winding up during that first year and providing an estimate of when the winding up is likely to be completed.

This report should be read in conjunction with the Administrators' 'Section 439A' report to creditors, dated 29 September 2015. This report covers the first 12 months of the winding up of the Company from 8 October 2015 to 7 October 2016, as well as more recent developments.

Further background details and related information can be found in previously published material on our website at www.kpmg.com/AU/bby including:

- BBY Nominees Section 439A Report to Creditors, 29 September 2015
- BBY Nominees circular to clients, 2 October 2015
- BBY Nominees second meeting of creditors presentation, 8 October 2015
- BBY Nominees circular to clients, 17 October 2016
- Other notices and material on the BBY creditor information website.

Meeting of creditors (including clients)

A meeting of creditors will be held on 15 December 2016 to receive a report from the Liquidators, discuss the status of the liquidation and approve outstanding remuneration of the Liquidators.

Time: 10.00am AEDT on Thursday, 15 December 2016

Venue: Level 38 Tower Three, International Towers Sydney
300 Barangaroo Avenue, Sydney

Attached is a notice of the meeting, a proxy form and informal proof of debt form.

Teleconference facilities are available for clients and creditors unable to attend in person. Should you wish to attend by telephone, please contact Matteo Valentini of KPMG at mvalentini1@kpmg.com.au or telephone +61 2 9455 9087 no later than 12.00pm AEDT on 14 December 2016.

Role of the Liquidators

The purpose of liquidation of an insolvent company is to have an independent and qualified person (the liquidator) take control of the company so that its affairs can be wound up in an orderly and fair way for the benefit of all creditors. The liquidator's role is to:

- Collect, protect and realise the company's assets
- Investigate and report to creditors about the company's affairs, including any unfair preferences which may be recoverable, any uncommercial transactions which may be set aside, and any possible claims against the company's officers
- Enquire into the failure of the company and possible offences by people involved with the company and report to ASIC
- After payment of the costs of the liquidation, and subject to the rights of any secured creditor, distribute the proceeds of realisation—first to priority creditors, including employees, and then to unsecured creditors, and
- Apply for deregistration of the company on completion of the liquidation.¹

BBY Nominees did not actively trade, earn revenue or incur liabilities, which were accounted for in other group companies. As such, the majority or all of creditor claims will likely relate to any losses incurred by former BBY clients in relation to dealings with BBY Nominees after recovery of any assets held on trust, as well as in respect of possible unreconciled inter-company debts relating to goods and services made available to BBY Nominees by BBYL and BSA.

The main focus of the Liquidators has therefore been to deal with claims to assets held in a custodial capacity by BBY Nominees and, where possible, return these to former clients of the BBY group.

Declaration of independence

Enclosed with our report to creditors, dated 29 September 2015, was the Administrators' Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) pursuant to section 436DA of the Act and the ARITA Code of Professional Practice.

We updated our DIRRI on 14 December 2015 reflecting changed circumstances that arose during the external administration of BBY Nominees in respect to Linc Energy Ltd. KPMG was the auditor of Linc Energy Ltd, a listed oil and gas company.

Linc Energy Ltd was a former client of BBY Nominees, which held shares in a nominee capacity on Linc Energy Ltd's behalf through a London based counterparty, Jeffries International (Nominees) Limited. BBY Nominees also acted in a nominee capacity for approximately 380 clients holding shares in Linc Energy Ltd, including its employees. These shares are held in a sub-custodian arrangement through ABN AMRO in Singapore. Linc Energy Ltd was not a party to those arrangements. Linc Energy Ltd was placed into administration on 16 April 2016 and into liquidation on 23 May 2016.

No further information has come to our attention that should be included in our DIRRI. A copy of the DIRRI is included with this report at Appendix A.

¹ Australian Securities & Investments Commission, Liquidation: a guide for creditors information sheet 45

Background

BBY was an independent Australian and New Zealand based financial services group and stockbroking firm that was established in 1987. The BBY Companies operated from 6 offices in Australia which were located in Sydney (head office), Melbourne, Brisbane, Gold Coast, Adelaide and Perth and four offices overseas in Auckland, Wellington, New York and London.

BBY Nominees acted as a trustee/nominee company for BBY Ltd and on request for clients of BBY Ltd. It did not have employees or service providers and no balance sheets or profit or loss statements were ever prepared.

Officers

Mr Glenn Rosewall was the sole director for BBY Nominees, appointed in 2004. The Company secretary was Mr David Perkins.

Shareholders

The sole shareholder of BBY Nominees was BBY Limited, the main trading entity. These shares were sold as part of a wider business asset sale during the administration of BBYL.

Reasons for failure

BBY Nominees was part of the wider BBY Group and failed as a consequence of the collapse and insolvency of BBY Limited and other BBY Companies.

Assets and client positions

BBY Nominees acted as a bare trustee and nominated custodian for clients of the wider BBY business, providing nominee services in respect of securities and other financial products, both domestic and international. On occasion, it was also used to hold securities on behalf of related parties including other members of the BBY Group.

At the time of the BBY Nominee Companies' administrations, the records available to the Administrators were inadequate to determine the identity of clients and creditors, the extent of assets held and whether assets were owned or held on trust for others. We had to obtain information from a variety of sources, including from counterparties and through searches of computer records. The information obtained is still insufficient to fully document and reconcile assets, client entitlements and any creditor claims.

We took the view that all custodian arrangements should be terminated and unwound as quickly as possible and that all trust assets should be transferred or otherwise dealt with in accordance with any instructions received from those beneficially entitled to them as quickly as the circumstances allow.

The table below summarises the various asset held by BBY Nominees and the status of client claims:

BBY Nominees Claim progress as at 18 November 2016											
Asset Category	At appointment			Claims completed				Claims in review			
	Holdings	Total clients	Value (\$AUD)	Holdings	Total clients	Value (\$AUD)	% of claim value returned	Holdings	Total clients	Value (\$AUD)	% of claims value in review
Equity positions											
Domestic - Listed shares	33	34	20,977,305	25	17	15,887,501	76%	4	10	4,578,629	22%
Domestic - OTC Options	5	1	135,000	5	1	135,000	100%	-	-	-	-
International - Listed shares	172	565	3,380,720	1	1	20,000	1%	47	31	3,010,174	89%
International - Unlisted shares	1	5	NQ	1	5	NQ	-	-	-	-	-
Listed private placements	2	7	368,000	2	7	368,000	100%	-	-	-	-
Unlisted private placements	3	15	NQ	3	15	NQ	-	-	-	-	-
Cash positions											
International Custodian	NQ	NQ	394,724	NQ	-	-	-	NQ	21	291,850	74%
Total	216	627	25,255,749	37	46	16,410,501	65%	51	62	7,880,653	31%

NQ: Not quantified

NA: Not applicable

This table differs to the information presented in our report of 29 September 2015 where subsequent inquiries have confirmed Company records were incorrect.

Values noted in the table are estimated market values. Certain values could not be estimated as the security is unlisted and or illiquid.

The number of claims processed and under review does not include 350 clients with shares in Linc Energy Ltd, which went into liquidation in May 2016. Those shares are now effectively worthless.

Cash positions held by international custodians were not detailed in our report dated 29 September 2015 as this information had not been confirmed by counterparties at that time. We have since identified approximately \$395,000 in cash positions held with Jefferies and Ord Minnett. We understand this includes proceeds of share sales and dividends and we have received 21 claims in respect to cash, as outlined in the table.

Client positions were held pursuant to the terms of a formal nominee agreement or similar document. Whilst the nature of each trust relationship varied depending upon the legal documentation used, generally financial products were held on the following basis:

- The client would be a client of both BBYL as well as BBY Nominees with relevant brokers operating under the letterhead of BBYL in arranging for BBY Nominees to hold the financial product on behalf of each client;
- BBY Nominees would be registered as the holder of the financial product, often without any notification that BBY Nominees held those financial products beneficially for a third party;
- Certificates and other documentation or evidence of title would be retained by BBY Nominees;
- In the case of ASX listed shares, multiple client shares may be held in a single CHESS holding;
- BBY Nominees would collect all principal, dividends, interest and other related amounts, deposit these to a trust account and account to the client. It appears that all transactions were channelled through an equities trust account in the name of BBYL and, at the time of our appointment, there were associated dividends that had not been reconciled to nominee client accounts. Treatment of some of those monies are currently subject to directions being sought by the liquidators of BBYL in the Supreme Court of New South Wales.

Domestic shareholdings

Listed domestic shares

At appointment, BBY Nominees held shares in 33 ASX listed companies on behalf of 34 clients, valued at approximately \$21 million. This includes, for example, shares in larger listed companies, smaller listed mining companies and other more 'speculative' stock.

The ASX provided information to assist us to reconcile ASX listed shares held by BBY Nominees and we have contacted and have dealt with all those we believe to be relevant clients.

We wrote to BBY Nominees clients and creditors in October 2015 to explain the transfer process and seek substantiating documentation in respect of their claim. We offered clients the choice of the following options:

- Working through a resolution process with the liquidators and paying a facilitation fee to cover our associated costs. The applicable fees would vary according to the size and complexity of the holdings in question. Clients who nominated to have their holdings sold would have the fee, as well as third party brokerage, deducted from the sale proceeds. The fee charged would cover costs in reviewing company records and supporting documentation, taking legal advice where necessary, confirming entitlements and facilitating transfers or sales as required.
- Participating in a court directions process to resolve and deal with claims. Where client holdings could not be sufficiently substantiated or where clients chose not to pay a facilitation fee, we anticipated that we may ultimately need to make an application to court under the Trustee Act 1925 (NSW) or the Corporations Act to deal with client holdings. We expected that, in any case, there will be a portion of holdings where court directions may be necessary due to an inability to identify and contact the client, substantiate an entitlement or resolve any disputes.

Shortly after our circular to clients was issued in October 2015, the ASX notified the liquidators that all domestic CHES holdings held under the control of BBY, including those relating to BBY Nominees, were to be removed from the CHES sub-register. After exploring a number of options, we transferred all domestic holdings to Commsec as a temporary measure whilst we processed client claims.

A large number of legal and logistical issues had to be addressed and delayed processing however the majority of domestic positions have been resolved at the date of this report.

We returned approximately \$15 million in listed domestic shareholdings to 17 clients. Another 10 claims to shares valued at approximately \$4.5 million are under review and we expect to complete these shortly.

Over the counter (OTC) options

Records of OTC were maintained in Sydney utilising spreadsheets maintained by officers and brokers of BBYL and much of the supporting documentation had to be retrieved from forensics searches of company records or from third parties.

At the date of our appointment the Company indicated it held put and call options, at a cost price of \$3.6 million in relation to 25 unlisted securities on behalf of a number of clients however further inquiries indicated that these either were no longer held or that the value was nominal given expiries.

With assistance from the ASX, we identified options holdings in 5 ASX listed companies. A former BBY employee in the corporate finance team, claimed ownership to 80% of these options under an

agreement in respect to remuneration for work performed in raising capital for these companies. The remaining 20% of the option positions were owned by BBY Limited and subject to the control of the Receivers.

In order to facilitate transfers and sales of the options we assisted by reviewing the terms of the options, conducted an indicative valuation, reviewing substantiation of claims, corresponding with the relevant companies, preparing and sending Notices of Assignment under section 12 of the Conveyancing Act 1919 (NSW), obtaining clearance from the ASX in the respect to the escrow restrictions imposed in relation to one option position, holding meetings and corresponding with the claimant and the Receivers to discuss the claims and reviewing and executing a deed of settlement. We charged facilitation fees in respect of this work.

Private placements

BBY Nominees held shares relating to private placements in 5 domestic listed and unlisted companies on behalf of 18 clients (excluding related party positions).

We have dealt with the majority of private placement entitlements, including; attending to reconciling and authenticating documentation provided by clients against the books and records of BBY and BBY Nominees and the GBST system; obtaining legal advice, preparing and completing settlement and transfer documentation and corresponding with clients and their brokers and lawyers.

We also facilitated a commercial settlement between 4 clients and an ASX listed company, in relation to a dispute over the exercise of options in the company. This involved reviewing and considering all relevant option and security documentation and background correspondence, meetings and correspondence with the parties, negotiation and preparation of settlement and transfer documentation.

International positions

BBYL and BBY Nominees uses the services of an international custodian to hold listed and unlisted shares on behalf of BBYL's clients in jurisdictions outside of Australia.

BBY Nominees held via international custodians, shares in 172 listed companies, valued at approximately \$3.4 million, on behalf of 565 clients. The holdings were in listed companies such as Google Inc, Apple Inc, AFC Energy PLC and Linc Energy Ltd and a large number of less well known listed companies on exchanges in the USA, Canada, UK and Singapore.

Where clients required BBY Nominees to hold foreign listed securities, there were additional terms and conditions and BBY Nominees was authorised to appoint another nominee, an overseas counterparty, such as Ord Minnett, Pershing or Jefferies, to hold non Australian market quoted products. The custodians hold both equities and some associated cash dividends. This relationship typically arose in circumstances in which:

- BBYL or BBY Nominees were instructed to purchase or deal in financial products in jurisdiction where BBYL and BBY Nominees were not licensed (e.g. the United Kingdom, the United States, Singapore or Canada);
- BBY Nominees had a referral relationship and custodial agreements in place with stock brokers and other financial services counterparties who were licensed to place trades and deal in the jurisdictions in which BBYL was not licensed to trade; and

- Each client had (usually at the initiative of a relevant officer/broker of BBYL) entered into a nominee agreement or similar document with BBY Nominees.

In this context, the financial products were dealt with on a "back to back" basis in which a client gave instructions to BBY Nominees, and then BBY Nominees gave instructions to the relevant international custodian.

Records of international custodian holdings were not well maintained or reconciled and there appeared to be missing data, including client contact details, requiring us to attempt to reconstruct ledger records for international clients.

Approximately \$3 million or 90% of these positions by value have been returned to clients. We expect shortly to complete processing of claims in respect to the majority of holdings, as discussed further below.

Ord Minnett

Approximately 70% in value of international equities were held via Ord Minnett, including 138 shareholdings traded on various overseas exchanges, such as the London and New York stock exchange. Ord Minnett used Pershing, based in the US, as clearing agent and custodian for international shares.

Once a claim has been verified and approved by the liquidators, a letter of authority with relevant transfer details would be lodged with the clearing agent to effectuate the transfer to the clients' nominated account.

There were significant legal, commercial and logistical issues that had to be addressed in order to deal through Ord Minnett which caused significant delays and added to processing costs. This culminated in Ord Minnett giving notice, in July 2016, of termination of its relationship with BBY Nominees.

We contacted a number of brokers and explored options to transfer the international holdings from Ord Minnett so they could be dealt with however there was no interest given the complexity of issues associated with the liquidation.

Ord Minnett required that remaining stock be either dealt with or liquidated but agreed to a limited process to provide clients with a final opportunity to provide information required to process claims and complete transfers. We negotiated the terms of this process and we wrote to clients with possible international holdings on 17 October 2016 providing a final opportunity to make claims by a deadline of 4 November 2016.

This process is almost complete with a number of further claims being processed before remaining holdings are liquidated.

Jefferies

A number of international shareholdings, with a value of approximately \$1 million, were held with Jefferies, based in London, UK. Jefferies used Citi, based in the US, as clearing agent and custodian for international shares.

Jefferies provided records of 29 holdings however there were no records of ownership. Six clients have made claims to 10 of the holdings representing the majority of this portfolio. We could not identify any further clients.

We are processing number of further claims before remaining holdings are liquidated.

Unlisted foreign shares

BBY Nominees held shares in one unlisted foreign company on behalf of five clients. We have completed the transfer of these shares to their beneficial owners.

Linc Energy Ltd

BBY Nominees acted in a nominee capacity for 350 clients holding shares in Linc Energy Ltd, including Linc Energy Ltd employees. These shares were held in a sub-custodian arrangement through ABN AMRO and Interactive Brokers in Singapore.

We explored with Linc Energy Ltd options to deal with employee holdings in a bulk manner and spent considerable time working through alternatives, with assistance of our lawyers, that could avoid the need to deal with their employees on an individual basis, which would have been more costly and time consuming. This was complicated as there were unreconciled records of holdings with large unexplained discrepancies

We proposed a bulk transfer to a broker nominated by Linc Energy Ltd as an most efficient way of dealing the positions. We were negotiating an arrangement with Link Energy Ltd when it entered voluntary administration in April 2016. It was subsequently placed into liquidation, extinguishing any value in shareholdings, and therefore we were unable to recover costs associated with the work we had undertaken.

Related party positions

The Company records indicated that there were a large number of holdings on behalf of related entities and group companies. It appears from our investigations these were inaccurate and out of date. There are a small number of holdings that are mostly of nominal or no value, some being illiquid and unsaleable shares.

There are two material holdings apparently on behalf of a superannuation fund for Glenn Rosewall and for BBY Limited, which have an estimated combined market value of approximately \$60,000. There are no records to hand to substantiate the circumstances of either holding and we are investigating this further.

Unclaimed or residual assets

We have contacted former clients, where possible, in order to terminate nominee arrangements and deal with assets identified to be held on their behalf. In cases where we cannot achieve an orderly resolution directly with a client (for instance due to a lack of documentation) it may also be necessary to seek court directions on remaining holdings.

Any unclaimed or residual assets will be liquidated where possible and the proceeds applied to winding up costs. We expect that this process will take another 6 months.

Creditors

Based on review of books and records and our investigations there were no trade or other external creditors besides possible intercompany debts or possible claims that former clients may have. In any case, there will likely be insufficient realisations to meet winding up costs and no surplus funds available for creditors after completion of the process of returning assets held on behalf of clients.

Liquidation expenses

A liquidator is entitled to reasonable fees, or remuneration, for the work they perform, once these fees have been approved by a creditors' committee, creditors or a court, and reimbursed for out-of-pocket costs incurred in performing their role (these costs do not need creditors' committee, creditor or court approval).

The Liquidators must undertake some tasks that may not directly benefit creditors. These include reporting potential breaches of the law and meeting statutory obligations such as lodging various returns such as a detailed listing of receipts and payments with ASIC every six months. The Liquidators are entitled to be paid for completing these statutory tasks. As a trustee of client assets, a liquidator may also be entitled to be indemnified from trust assets.

Liquidator's remuneration may be calculated using one of a number of different methods. Charging on a time basis is the most common method using a scale of hourly rates, with different rates for each category and level of staff. The hourly rates incorporate costs such as business 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 who are 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.

At the meeting of creditors held on 8 October 2015, creditors approved our remuneration in relation to the voluntary administration from 17 May to 8 October 2015 in the amount of \$209,265 and future remuneration up to \$297,300.

Included with this report is a Liquidators' remuneration report setting out details of our costs in the liquidation from 8 October 2015 to 18 November 2016 in the amount of \$615,952 (of which \$297,300 has already been approved).

We seek approval of the balance of \$318,652 as well as estimated future time costs of \$214,400, as set out in the table below.

Remuneration Voluntary administration and liquidation				
	VA	Liquidation		Total
\$	17 May to 8 Oct 2015	8 Oct 2015 to 18 Nov 2016	Estimated future	
Actual	209,265	615,952	-	825,217
Estimated	-	-	214,400	214,400
Total				1,039,617
Approved on 8 Oct 2015	209,265	297,300	-	506,565
Approval sought	-	(318,652)	(214,400)	(533,052)

We expect there may not be insufficient residual assets to meet these costs in full.

Further analysis of the Liquidators' time costs is set out below and in our remuneration report.

Set out in this table is a summary of fees by phase of work completing during the liquidation to 18 November 2016.

Liquidators' fees by phase from 8 October 2015 to 18 November 2016		
Phase	Hours	\$
Assets	1,249.6	486,737
Administration	302.5	117,645
Creditors	34.6	11,570
Total	1,586.7	615,952

The majority of time was incurred in relation to dealing with assets and client claims including:

- Corresponding with domestic and overseas clients;
- Reviewing documentation and substantiation of entitlements;
- Obtaining legal advice in relation to claims;
- Completing transfers of domestic and international securities;
- Liaising with legal advisors in relation to issues relating to dealings with counterparties and various disputes; and
- Issuing and advertising a final notice seeking submission of claims in relation to international securities.

Administrative time incurred was in relation to the following high level tasks:

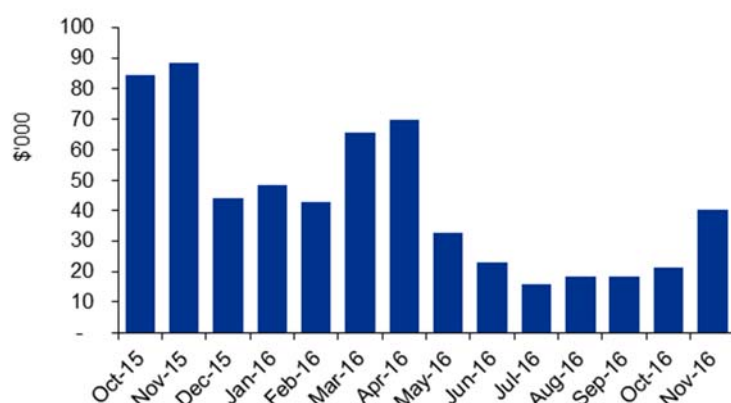
- Maintaining bank accounts, accounting records;
- Lodging business activity statements with the Australian Taxation Office;
- Various other statutory lodgement requirements including notices, advertisements, minutes of meetings, biannual accounts of receipts and payments; and
- Managing the winding up process and maintaining internal files.

An analysis of our time and costs by grade of staff member is set out below.

BBYN Liquidators fees by position to 18 November 2016		
Position	Hours	\$
Partner or Appointee	70.0	45,500
Associate Director	60.5	33,275
Manager	277.6	138,800
Executive	1,095.7	383,495
Analyst	54.6	10,920
Administration	28.3	3,962
Total	1,586.7	615,952

Set out below is a further break down of fees in the liquidation by month.

BBYN Liquidators' monthly fees from 8 October 2015 to 18 November 2016



Fees charged from October 2015 to April 2016 related mostly to the adjudication and review of claims for domestic and international assets. We wrote to clients in October 2015 to explain the claims adjudication and transfer process, providing clients with a short questionnaire template and requesting substantiating documentation. As client claims were received, we reviewed these against Company and other records, took legal advice where necessary to confirm entitlements and facilitated transfers or sales in respect to agreed claims.

As noted earlier, significant time costs up to April 2016 were also incurred in relation to the employee holdings in Linc Energy Ltd, which could not be recovered after it was placed into liquidation. Time incurred in October and November 2016 has related to international claims and dealings with Ord Minnett and Jefferies.

Resolutions to approve liquidators' remuneration

Creditors will be asked to consider two resolutions regarding liquidators' actual and prospective remuneration at the meeting of creditors on 15 December 2016.

We propose that the Liquidators' actual fees be approved to an amount of \$318,652 plus GST.

We also seek approval of estimated future costs to complete the liquidation over the next six months or so, in the amount of \$214,400 plus GST.

Liquidators' remuneration	
Remuneration approval sought	Amount (\$ ex GST)
Resolution 1:	
Remuneration from 8 October 2015 to 18 November 2016	615,952
Less: Approved by creditors	(297,300)
Liquidators' remuneration approval sought	318,652
Resolution 2:	
Prospective remuneration to finalise the liquidation	214,400
Total approval sought	533,052

Further particulars are set out in the Liquidators' remuneration Report attached at Appendix B.

Legal expenses

Ashurst have provided a variety of legal services in relation to the adjudication of client claims, dealing with a number of disputes and dealing with counterparties and their lawyers. Legal costs to 18 November 2016 are \$181,976, of which \$124,149 has already been paid. Expected legal costs to conclude the liquidation are estimated at \$90,000, as summarised in the table below:

BBYN legal fees			
\$ excl. GST	At 18 Nov 2016	Future	Total
Paid to date	124,149.1	-	124,149.1
Unpaid	57,827.0	90,000.0	147,827.0
Total fees	181,976.1	90,000.0	271,976.1

Unpaid legal costs will be paid subject to sufficient asset realisations being available.

Receipts and Payments

Set out below is a summary of receipts and payments in the liquidation.

Receipts and Payments from 8 Oct 2015 to 18 Nov 2016	
\$	Total
Receipts	
Facilitation fees - Domestic	180,916
Facilitation fees - International	55,148
Facilitation fees - Linc Energy	45,883
Total Receipts	281,946
Payments	
Administrators' remuneration	90,000
Liquidators' remuneration	-
Legal fees - Ashurst	124,149
GST	2,370
Disbursements	1,544
Total payments	218,063
Funds on hand	63,883

There are insufficient funds available to meet liquidation expenses. Further funds may become available depending on the level and value of residual assets not claimed by clients.

Estimated outcome

As noted on our report of 29 September 2015, BBY Nominees only acted as a bare trustee and nominated custodian for clients of the BBY business and did not trade in its own right, and the key focus of the liquidation has been to deal with claims to assets held in a custodial capacity by BBY Nominees and, where possible, return these to former clients.

Over the past year, we have undertaken a process to contact former clients to complete investigations, confirm entitlements, terminate nominee arrangements and return assets identified to be held on their behalf. While a significant number of assets have already been returned to clients, we expect this process will take some months to complete. We expect the winding up to take at least a further six months to complete.

Communications

Information on website

Upon our appointment we established an information website www.kpmg.com/AU/bby to facilitate communications with former clients and creditors of the BBY companies subject to external administration. The website contains copies of notices and reports to creditors, our initial and supplementary client monies investigation reports, key court documents, answers to frequently asked questions and other material. The website is updated on a periodic basis for material developments of interest to clients and creditors.

Email

We established a dedicated email hotline AU-FMBBY@kpmg.com.au to assist in responding to inquiries.

Statutory matters

Lodgements

As part of our statutory obligations we are required to attend to various tasks during the period of appointment. In the 12 month reporting period from 8 October 2015 to 7 October 2016 we have completed the following:

- Lodged minutes of concurrent second creditors meetings
- Lodged notice of appointment as Liquidators with ASIC and advertised the appointment
- Lodged Form 524, accounts of receipts and payments with ASIC for the period of the administration and for the liquidation to 7 April 2016 and 7 October 2016
- Submitted BAS lodgements to the ATO

How to keep up to date

The most convenient way to keep up to date with developments in the wider BBY group liquidations is to periodically check the BBY creditor information website where we publish significant news. This information can be obtained at www.kpmg.com/AU/bby.

END OF REPORT

Appendices

Appendix A - Declaration of Independence

Appendix B – Liquidators' Remuneration Request

Appendix C - Approving fees: a guide for creditors



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**Declaration of Independence, Relevant Relationships and Indemnities (“DIRRI”)
Replacement DIRRI
Pursuant to Section 436DA(5) of the Corporations Act 2001 (the “Act”)**

14 December 2015

**BBY Holdings Pty Limited (Receivers and Managers Appointed) ACN 075 187 432 (“BBYH”)
BBY Limited (Receivers and Managers Appointed) ACN 006 707 777 (“BBYL”)
BBY Advisory Services Pty Ltd (Receivers and Managers Appointed) ACN 102 761 008 (“AS”)
Broker Services Australia Pty Ltd ACN 074 976 364 (“BSA”)
BBY Nominees Pty Ltd ACN 007 001 443 (“BBYN”)
(All in Liquidation)**

**SmarTrader Limited ACN 115 752 102
BBY HomeTrader Pty Ltd ACN 134 838 207
(Both subject to a pooled Deed of Company Arrangement)**

(the “Companies”)

We previously provided creditors with a DIRRI dated 20 May 2015 and a replacement DIRRI on 27 May 2015. This was updated when we issued our section 439A report to the creditors of BBY Nominees Pty Ltd (and three other nominee companies) on 29 September 2015. This DIRRI has been updated again in conjunction with issuing our report to the BBYL Committee of Inspection.

This Declaration, or any subsequently updated DIRRI, will be included in future reporting to former clients and creditors of the Companies and will be posted on KPMG’s dedicated BBY web page relating to the Companies at <http://www.kpmg.com/AU/bby>.

This document requires the Practitioners appointed to an insolvent entity to make declarations as to:

- A. their independence generally;
- B. relationships, including
 - i the circumstances of the appointment;
 - ii any relationships with the Insolvent and others within the previous 24 months;
 - iii any prior professional services for the Insolvent within the previous 24 months;
 - iv. that there are no other relationships to declare; and
- C. any indemnities given, or up-front payments made, to the Practitioner.

This declaration is made in respect of ourselves, our partners, KPMG Australia partnership and related parties covered by the extended definition of firm.

A. Independence

We, Stephen Vaughan and Ian Hall, of the KPMG Australia partnership (“KPMG Australia”), care of KPMG, 10 Shelley Street, Sydney, NSW 2000, have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Joint and Several Administrators of the Companies in accordance with the law and applicable professional standards, in particular the Code of Professional Practice for Insolvency Practitioners published by the Australian Restructuring Insolvency and Turnaround Association, 3rd edition, effective 1 January 2014 (“the Code”).



This assessment identified no real or potential risks to our independence or any matter which results in our having a conflict of interest of duty. We are not aware of any reasons that would prevent us from accepting the appointments.

B. Declaration of Relationships

i) Circumstances of the Appointment

The above Companies are part of a wider corporate group (the “BBY Group”) including other entities that are not subject to external administration.

We and KPMG Australia had not had any prior involvement in this matter other than the following:

- In the week of 27 April 2015 members of KPMG’s audit practice met with BBYH Director, David Perkins and Managing Director, David Smith to discuss a forthcoming tender for the statutory audit of the BBY Group for the financial year of 2015.
- BBYH and BBYL issued a request, dated 4 May 2015, to a number of accounting firms for a proposal for provision of various audit and compliance services. On Thursday 7 May 2015 members of KPMG’s audit division met with Mr Perkins and discussed a possible secondment of an accounting resource to provide assistance in relation to certain internal accounting functions of the BBY Group for a period of one month. On Friday 8 May 2015, Mr Perkins emailed KPMG to confirm the secondment and it was agreed this should commence on 11 May 2015. As discussed further below, this secondment did not proceed and KPMG were not engaged as auditors.
- On Sunday 10 May 2015, a partner in KPMG’s audit division was contacted by Mr Smith advising that the business was in financial distress as a consequence of certain events in the preceding days, including a requirement to exit its Options clearing business, and that it may be placed into voluntary administration. The KPMG audit partner referred the matter to Carl Gunther a partner in KPMG’s Restructuring Services team.
- On Monday 11 May Carl Gunther and Stephen Vaughan of KPMG attended the BBY Group offices to ascertain further details and discussed the proposed scope of a solvency review. KPMG was engaged by BBYL, pursuant to an engagement letter dated 11 May 2015, to carry out the following scope of work:
 - A rapid high level assessment of the current and forecast financial position based on the records of the Companies and management’s short term cash flow forecast and assumptions;
 - An assessment of solvency of the Companies;
 - Providing commentary on the consequences of any possible insolvency and courses of action that may be available to the Companies in that event; and
 - Liaising with key stakeholders as necessary to gather information or confirm our role, including, among others, the Australian Stock Exchange, ASIC, the secured creditor, St. George Bank and its advisors, PPB Advisory.
- Our fee for this work was \$40,000 (plus GST), with funds paid into trust with Ashurst, on account of our future costs and expenses under our engagement with BBYL during the period to Friday 15 May 2015. Those funds have since been drawn in satisfaction of our fees and expenses. No issue arises under section 448C(1)(a) of the Act given that we are not and never have been a creditor of any of the Companies.

- During 5 days from Tuesday 12 May to Friday 15 May 2015 we worked to understand the nature and extent of issues facing the business and the financial implications. During our work we attended various meetings each day with staff, management and the external stakeholders mentioned above. We were also introduced to representatives of two parties who were understood to be interested in investing in the business, AIMS Financial Group (“AIMS”) and Bridge Global Capital Management Limited (HK) (“Bridge”) although we were not involved in negotiations.
- On the evening of Friday 15 May 2015, we understand that a memorandum of understanding was executed between BBYH and the two parties, AIMS and Bridge to take a controlling shareholding in BBYH and recapitalise the business with a planned initial contribution of \$3 million. This effectively brought our engagement to a conclusion.
- On the afternoon of Sunday, 17 May 2015 Stephen Vaughan received a call from Mr Smith advising that, following completion of some further due diligence during the weekend, AIMS and Bridge had requested amendments to the terms of the proposed investment and that negotiations were continuing. Mr Smith called Stephen Vaughan again on Sunday evening and advised that AIMS and Bridge had withdrawn from the proposed recapitalisation. Mr Smith advised that the Directors of the Companies planned to meet that evening to review solvency and consider the future of the Companies. He requested that Mr Vaughan attend the meeting.
- Concurrent meetings of the Companies were held at 11pm on 17 May 2015 at which time resolutions were passed appointing Stephen Vaughan and Ian Hall of KPMG as voluntary administrators of the Companies (**Administrators**).

These meetings and correspondence do not affect our independence for the following reasons:

- The need for potentially insolvent companies to seek prompt and appropriate advice about their financial position is emphasised by the law and by the Regulators. It is common for Practitioners to provide such advice or other information about the insolvency process and options available to a company prior to taking an Appointment. The work we carried out was over a relatively short period of 5 days and was confined to a specific scope of work which remained consistent with the preservation of our independence as prospective Administrators.
- The discussions were at all times factual in nature, focused on the historical and forecast financial position and performance of the Companies, the consequences of any possible insolvency and courses of action that may be available to the Companies in that event.
- The work undertaken during the solvency review engagement assisted us in developing an understanding of the business and its activities. Much of the investigatory work undertaken was work that we would have needed to undertake in order to be able to report to creditors under s439A of the Act. As such, this information will be made available to creditors when we report to them in due course.
- We did not provide any report to the Companies. We do not consider the nature of the work performed is such that it would be subject to review and challenge during the course of the Administrations. The engagement will not influence our ability to be able to fully comply with the statutory and fiduciary obligations associated with the Administrations of the Companies in an objective and impartial manner.
- Neither KPMG nor the Administrators provided advice to directors of the Companies in their personal capacity. We understand the directors have sought their own legal advice.

ii) Relevant Relationships (excluding Professional Services to the Insolvent)

We, or a member of our Firm, have, or have had within the preceding 24 months, a relationship with:

Name	Nature of relationship	Reasons why no conflict of interest or duty
<p>Westpac Banking Corporation and St George Bank Australia (“Westpac”)</p>	<p>Westpac has a registered security interest over the whole, or substantially whole, of the property of the following four entities in the group of Companies.</p> <ol style="list-style-type: none"> 1. BBY Holdings Pty Limited 2. Broker Services Australia Pty Ltd 3. BBY Limited 4. BBY Advisory Pty Limited <p>KPMG Australia has an ongoing business relationship with Westpac. KPMG has provided Tax, Advisory and other non-audit services to Westpac and/or their international affiliates.</p>	<p>There are no matters of which we are aware which give rise to a conflict in this appointment.</p> <p>Each professional engagement undertaken for Westpac is conducted on an entirely separate basis and has no bearing on this appointment.</p> <p>Neither KPMG nor the administrators have been, or will be, engaged by Westpac in relation to the affairs of the Companies. Westpac has appointed receivers and managers to three of the Companies, who represent Westpac’s interests.¹ Westpac will be treated as a secured creditor during the Administrations and we will continue to liaise with them during the Administrations.</p> <p>This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the Administrations in an objective and impartial manner.</p>
<p>ABN Amro Clearing Sydney Pty Limited (“ABN”)</p>	<p>ABN has a registered security interest over the assets in the following two entities in the group of Companies:</p> <ol style="list-style-type: none"> 1. BBY Limited 2. Jaguar Funds Management PL <p>KPMG Australia has an ongoing business relationship with ABN. KPMG has provided external financial audit services to ABN and/or their international affiliates.</p>	<p>There are no matters of which we are aware which give rise to a conflict in this appointment.</p> <p>Each professional engagement undertaken for ABN is conducted on an entirely separate basis and has no bearing on this appointment.</p> <p>Neither KPMG nor the Administrators have been, or will be, engaged by ABN in relation to the affairs of the Companies. ABN will be treated as a secured creditor during the Administrations.</p> <p>This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the Administrations in an objective and impartial manner.</p>

¹ Mr Stephen Parbery and Mr Brett Lord of PPB Advisory were appointed as receivers and managers to BBYH, BBYL, AS and BSA on 18 May 2015. They retired from BSA on 20 May 2015 and remain appointed to the other three Companies as receivers and managers.

Name	Nature of relationship	Reasons why no conflict of interest or duty
<p>Konica Minolta Business Solutions Australia Pty Ltd (“Konica”)</p>	<p>Konica has a registered security interest over the assets of BBY Limited.</p> <p>KPMG Australia has an ongoing business relationship with Konica. KPMG has provided external financial audit services to Konica and/or their international affiliates.</p>	<p>There are no matters of which we are aware which give rise to a conflict in this appointment.</p> <p>Each professional engagement undertaken for Konica is conducted on an entirely separate basis and has no bearing on this appointment.</p> <p>Neither KPMG nor the Administrators have been, or will be, engaged by Konica in relation to the affairs of the Companies. Konica will be treated as a secured creditor during the Administrations.</p> <p>This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the Administrations in an objective and impartial manner.</p>
<p>Credit Suisse Holdings (Australia) Limited (“Credit Suisse”)</p>	<p>Credit Suisse has a registered security interest over the assets of BBY Limited.</p> <p>KPMG Australia has an ongoing business relationship with Credit Suisse. KPMG has provided external financial audit services to Credit Suisse and/or their international affiliates.</p>	<p>There are no matters of which we are aware which give rise to a conflict in this appointment.</p> <p>Each professional engagement undertaken for Credit Suisse is conducted on an entirely separate basis and has no bearing on this appointment.</p> <p>Neither KPMG nor the Administrators have been, or will be, engaged by Credit Suisse in relation to the affairs of the Companies. Credit Suisse will be treated as a secured creditor during the Administrations.</p> <p>This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the Administrations in an objective and impartial manner.</p>
<p>Macquarie Leasing Pty Ltd</p>	<p>Macquarie Leasing Pty Ltd has a registered security interest over the assets of BBY Limited.</p> <p>KPMG Australia has not directly performed services for Macquarie Leasing Pty Ltd. However KPMG has an ongoing business relationship with the wider Macquarie banking group through the provision of Tax, Advisory and other non-audit services.</p>	<p>There are no matters of which we are aware which give rise to a conflict in this appointment.</p> <p>Each professional engagement undertaken for the Macquarie banking group is conducted on an entirely separate basis and has no bearing on this appointment.</p> <p>Neither KPMG nor the Administrators have been, or will be, engaged by Macquarie Leasing Pty Ltd in relation to the affairs of the Companies. Macquarie Leasing Pty Ltd will be treated as a secured creditor during the Administrations.</p> <p>This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the Administrations in an objective and impartial manner.</p>

Name	Nature of relationship	Reasons why no conflict of interest or duty									
<p>AIMS Group Financial Holding Pty Ltd (“AIMS Group”)</p>	<p>KPMG Australia has provided external financial audit services to the following companies in the AIMS Group:</p> <ul style="list-style-type: none"> AIMS Fund Management Limited AIMS Real Estate Funds Limited Asia Pacific Exchange Limited Asia Pacific Exchange Limited Fidelity Fund AIMS Home Loans Pty Limited AIMS Securitisation Pty Limited AIMS Warehouse Trust No.1, AIMS 2004-1 Trust, AIMS 2005-1 Trust, AIMS 2007-1 Trust AIMS Property Securities Fund AIMS Commercial Mortgage Fund MacarthurCook Diversified Property Income Fund MacarthurCook Property Securities Fund MacarthurCook Mortgage Fund MacarthurCook Office Property Trust CWH Australia Trust <p>There are other companies in the AIMS Group which KPMG does not audit. Total fees received in the last 2 years by KPMG from AIMS Group entities has been \$371,000.</p>	<p>Commentary in relation to AIMS has been updated and discussed further below.</p> <p>Each professional engagement undertaken for the AIMS Group is conducted on an entirely separate basis and has no bearing on this appointment.</p> <p>Neither KPMG nor the Administrators have been, or will be, engaged by AIMS Group in relation to the affairs of the Companies.</p> <p>This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the Administrations in an objective and impartial manner.</p>									
<p>Linc Energy Limited</p>	<p>KPMG Australia and overseas KPMG firms have provided external financial audit and other services to Linc Energy Limited in Australia and overseas.</p> <p>Total fees received in the last 2 years by KPMG from Linc Energy Limited entities has been:</p> <table border="1" data-bbox="352 1294 791 1420"> <thead> <tr> <th></th> <th>2014</th> <th>2015</th> </tr> </thead> <tbody> <tr> <td>Australia</td> <td>\$978,911</td> <td>\$520,150</td> </tr> <tr> <td>Overseas</td> <td>\$838,947</td> <td>\$726,776</td> </tr> </tbody> </table>		2014	2015	Australia	\$978,911	\$520,150	Overseas	\$838,947	\$726,776	<p>Linc Energy Limited was a former client of BBYN which held in trust securities on its behalf in a nominee capacity. Commentary in relation to the BBYN Administrators dealings with Linc Energy Limited is set out in more detail below.</p> <p>Each professional engagement undertaken by KPMG for Linc Energy Limited is conducted on an entirely separate basis and has no bearing on this appointment.</p> <p>This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the Administrations in an objective and impartial manner.</p>
	2014	2015									
Australia	\$978,911	\$520,150									
Overseas	\$838,947	\$726,776									

AIMS Group

Since our appointment, we have liaised with representatives of the AIMS Group in respect of a prospective sale and recapitalisation of the Companies via the voluntary administration process. We and the AIMS Group have had independent legal advice throughout those discussions and have dealt at arms' length with each other.

In the course of our discussions with AIMS Group, AIMS Group Financial Service Pty Ltd (AFG) made a limited recourse loan of \$500,000 to Stephen Vaughan in his capacity as Administrator for the specific purpose of funding wages and other costs and expenses that may be incurred during the week following the appointment of the Administrators and to allow time for a possible sale agreement to be agreed. The limited recourse loan also permitted a capped amount of remuneration to be funded up to \$100,000, with remuneration being subject to approval in accordance with the Act.



On 26 May 2015, the Voluntary Administrators entered into a Share and Asset Sale Deed with BBY Asia Pacific Group Holdings Pty Ltd (an AIMS subsidiary), selling specified BBY Group assets, including various shareholdings. The sale terms were agreed and proceeds were shared with the Receivers and Managers under a separate agreement. The sale was an arm's length transaction and both parties had separate legal representation.

Linc Energy Limited (“LE”)

KPMG is the auditor of LE, which is an oil and gas company listed in Singapore and the USA.

In May 2012 LE engaged BBYL as its broker in relation to a parcel of shares owned by LE in AFC Energy PLC (“AFC”), a publicly traded company listed in the UK. LE utilised the nominee services of BBYN to hold the shares through a London based counterparty, Jeffries International (Nominees) Limited (“Jeffries”) to be held as sub-custodian for BBY Nominees on behalf of LE pursuant to a nominee agreement.

At the request of LE, the BBYN Administrators reviewed the AFC asset holding and client records relating to LE and confirmed its entitlements to the shares. We subsequently instructed Jeffries to take direct instruction from LE in relation to the AFC shares as part of a wider process that is being carried out with other former clients, of BBYN to confirm entitlements, terminate nominee arrangements and deal with assets identified to be held clients' behalf.

As part of these arrangements we negotiated a fee of \$30,000 to cover our associated costs including legal fees, which was paid into a trust account with our lawyers, Ashurst, as well as an indemnity from LE against any possible claims made against us in connection with the directions given by LE.

We also instructed Jeffries to pay to the Ashurst trust account \$639,055 in proceeds held by Jeffries from a previous sale of AFC shares to be held against any obligations of LE under the indemnity as well as any other costs. We expect that sum will ultimately be released to LE after deduction of any costs in accordance with the agreement reached with LE.

BBYN also acts in a nominee capacity for approximately 380 clients holding shares in LE, including LE employees. These shares are held in a sub-custodian arrangement through ABN AMRO Clearing Bank N.V. in Singapore. LE is not a party to these arrangements. We are progressively contacting former clients of BBY Nominees, including these LE shareholders in order to confirm entitlements, terminate nominee arrangements and deal with assets identified to be held on their behalf.

We do not believe these relationships give rise to us having a conflict of interest or being unable to act as Administrators of the Companies. If information should come to light at a future point during the course of the Administrations, which has the potential to affect our independence as administrators of the Companies, whether in relation to KPMG's relationship with the AIMS Group or another matter, we would undertake a full analysis of the circumstances to determine whether the relationship or threat is one that could have precluded the acceptance by us of our appointment.

If following that analysis we concluded that the circumstances at issue would not have precluded our acceptance of the appointment, we would continue with the Administrations subject to amending this DIRRI and disclosing the full circumstances to the Companies' creditors.

If we were to conclude that the circumstances could have precluded our acceptance of the appointment, then as soon as practicable after the circumstances or facts were identified we would prepare and deliver a report to creditors (disclosed also to ASIC and ARITA) setting out:

- the nature of the circumstances, including the key facts and origin, the reasons why the issue was not detected prior to acceptance of the Appointment, and the potential impact on our independence or our perceived independence;
- the status of the Administrations – work done, work in progress and work to complete the Administrations;
- our estimated costs of stepping down and transferring the Appointment; and
- remuneration drawn and accrued subject to the approval of creditors.

In such circumstances, and where the Administrations were substantially complete or we consider that our replacement as administrators was not in the interests of the Companies' creditors, we would apply to the Court for leave to continue and complete the Administrations.

If the Administrations were not substantially complete at that time, or our replacement would be in the interests of the Companies' creditors, we would seek a consent from suitable replacement administrators and seek our replacement as administrators by Court order, disclosing the full particulars to creditors by a circular or report.

iii) Prior professional services to the Insolvent

Neither Stephen Vaughan or Ian Hall, or KPMG Australia, or a related party covered by the extended definition of firm, have provided any professional services to the Companies in the previous 24 months or prior period with the exception of the solvency review conducted over 5 days between 11 May and 15 May 2015.

iv) Group Company Appointments

We were originally appointed as Administrators to 10 entities (the Companies) within the BBY Group. BBYH was the holding company and BBYL was the main trading entity. It appears the majority of business activity was conducted through BBYL. The other entities over which we have been appointed are subsidiaries of either BBYH or BBYL.

It is not uncommon for a practitioner to be appointed to a group of related companies and there are sound commercial and practical reasons for an appointment of this nature. However there can be circumstances where possible conflicts could arise as a result of group appointments, such as preference payments between the Companies, other voidable or contestable transactions, insolvent trading liabilities of the parent company and contentious proofs of debt. The financial information available to us at the time of appointment was very limited due to the state of available records. At the time of our appointment, we were not aware of any conflicts of interest between the Companies.

We believe that the multiple appointments do not result in a conflict of interest or duty because we have obtained and reviewed further information since our appointment and have not identified any issues that may present a conflict. We believe that the Administrations should be conducted by one practitioner and that this will lead to efficiencies in the orderly resolution of the Companies' estates and as such is in the interests of creditors. Should such a conflict arise, we will keep creditors informed and take appropriate action to resolve the conflict.

v) No other relevant relationships to disclose

There are no other known relevant relationships of the Administrators, including personal, business and professional relationships, from the previous 24 months with the Companies, an associate of the Companies, a former insolvency practitioner appointed to the Companies or any person or entity that has a charge on the whole or substantially whole of the Companies' property that should be disclosed.

C. Indemnities and up-front payments

We received an indemnity from Linc Energy Limited in relation to the release of AFC shares, as discussed earlier. We consider this was a normal and prudent step for an Administrator to take in these circumstances. We also received limited funding during the Administrations from AIMS as discussed earlier.

We have not otherwise been indemnified in relation to the Administrations, other than any indemnities that we may be entitled to under statute or received any up-front payments in respect of our remuneration or disbursements.

Dated: 14 December 2015



.....
Stephen Vaughan
Joint and Several Administrator



.....
Ian Hall
Joint and Several Administrator

Note:

1. If circumstances change, or new information is identified, I am/we are required under the Corporations Act 2001 and ARITA's Code of Professional Practice to update this Declaration and provide a copy to creditors with my/our next communication as well as table a copy of any replacement declaration at the next meeting of the insolvent's creditors.

2. Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.

**BBY Nominees Pty Ltd
(In Liquidation)**

*Liquidators' remuneration request approval report
From 8 October 2015 to 18 November 2016*

**BBY Nominees Pty Ltd
(In Liquidation)
ACN 007 001 443
("BBY Nominees")**

Liquidators' Remuneration Request

for the period 8 October 2015 to 18 November 2016
Stephen Vaughan & Ian Hall

Joint and Several Liquidators

Part 1: Declaration

We, Stephen Vaughan and Ian Hall, of KPMG have undertaken a proper assessment of this remuneration claim for our appointment as Joint and Several Liquidators of BBY Nominees in accordance with the law and applicable professional standards. We are satisfied that the remuneration claimed is in respect of necessary work, properly performed in the conduct of the Liquidation of BBY Nominees.

Part 2: Executive Summary

Remuneration totalling \$506,565 was approved by creditors at the Second Meeting of Creditors held on 8 October 2015, with additional approval being sought by the Liquidators for \$533,052 for actual costs incurred since 8 October 2015 and future work to complete the Liquidation.

	Amount (ex GST) (\$)
Past remuneration approved:	
<i>Voluntary Administration period</i>	
Remuneration for the period 17 May 2015 to 25 September 2015	121,365
Remuneration for the period 26 September 2015 to 8 October 2015	87,900
<i>Liquidation period</i>	
Prospective remuneration approved at meeting of creditors on 8 October 2015	297,300
Total past remuneration approved	\$ 506,565
Current remuneration approval sought:	
<i>Resolution 1:</i>	
Remuneration for the period 8 October 2015 to 18 November 2016	615,952
Less: Approved liquidators' remuneration	(297,300)
Liquidators' remuneration approval sought	318,652
<i>Resolution 2:</i>	
Prospective remuneration to finalise the liquidation	214,400
Total remuneration approvals	\$ 533,052

Please refer to part 3 of this report for full details of the calculation and composition of the remuneration approval sought.

Part 3: Description of work to be completed

3.1 Resolution 1 from period 8 October 2015 to 18 November 2016 (actual remuneration)

Task Area	General Description	Including, but not limited to:
<p>Assets 1,249.6 hours \$486,737</p>	<p>Trust Assets</p>	<ul style="list-style-type: none"> ● Reconciling and authenticate materials provided by clients against the books and records of BBY and BBY Nominees and the GBST system; ● In regular correspondence with Commsec, the ASX, APP Securities, Linc Energy, Ord Minnett, Interactive Brokers, ABN Amro Singapore, Pershing and Jefferies to verify holdings held by BBY Nominees by each of the counterparties, assisting with transfer of holdings, completion of transfers; ● Preparation of model to capture all holdings by BBY Nominees and to assist with reporting; ● Reviewed in detail documents provided by clients for domestic and international holdings, including regular correspondence in relation to client holdings; ● Reviewed and considered all relevant option and security documentation and background, where applicable; ● Liaised with legal advisors to confirm clients' assertions as to ownership; ● Preparation and finalisation of checklists to ensure all documentation and risk covered off for all client holdings reviewed; ● Liaising with clients and/or their advisors on facilitation fees required to verify and transfer claims to beneficial holders; ● Negotiation and preparation of Deed of Settlements; ● Execution of settlement, discharge and transfer documents on behalf of BBY Nominees; ● Liaised with legal advisors to prepare appropriate instruction and indemnity documents; ● Reviewed and signed transfer documents to complete transfers; ● Met with parties on commercial disputes, including preparing and responding to correspondence, ● Corresponding with relevant ASX listed and unlisted domestic companies to confirm options and ordinary share holdings by clients; ● Liaising with legal advisors on preparation of Notices of Assignment under section 12 of the Conveyancing Act 1919 (NSW); ● Obtaining clearance from the ASX in the respect to the escrow restrictions imposed in relation to certain options holdings; ● Performed technical valuations on options held; ● Meetings and correspondence with PPB Advisory to discuss options and asset realisation strategies; ● Liaised with additional brokers to discuss transferring bulk holdings of international shares into a new account to facilitate the final transfer of holdings to clients; ● Finalisation and sign off various legal documentation.

**BBY Nominees Pty Ltd
(In Liquidation)**

*Liquidators' remuneration request approval report
From 8 October 2015 to 18 November 2016*

Task Area	General Description	Including, but not limited to:
Creditors 34.6 hours \$11,570	Creditors report	<ul style="list-style-type: none"> • Preparation of Annual report to creditors • Preparation of Remuneration report to creditors • Preparation of circular to creditors to be issued prior to annual meeting
Administration 302.5 hours \$117,645	Document maintenance/file review/checklist	<ul style="list-style-type: none"> • Maintained engagement checklist to ensure statutory compliance • Maintained an updated a team work plan to align team activities
	Bank account administration	<ul style="list-style-type: none"> • Maintain receipts and payments bookkeeping in MYOB Insolvency • Received, convert and filed bank statements
	ASIC Lodgements / other forms	<ul style="list-style-type: none"> • Preparation and lodgement of all statutory requirements with ASIC including Form 524, Form 505 and Form 5011 • Correspondence with ASIC regarding statutory forms
	ATO and other statutory reporting	<ul style="list-style-type: none"> • Prepare quarterly BAS lodgements for BBY Nominees

3.2 Resolution 2 from 19 November 2016 to completion of liquidation (estimated future remuneration)

Task Area	General Description	Including, but not limited to:
Assets 322.0 hours \$145,800	Trust Assets	<ul style="list-style-type: none"> Dealing with domestic and overseas clients and their legal advisors on the treatment of shareholdings Reviewing additional documentation received by clients for domestic and international custodians, unlisted options and private placements Assisting clients with the transfer of shares where formal instructions had been received and appropriate documentation provided Discussions with our legal advisors on asset resolution status and progress Dealing with agent to execute the transfer of shares for domestic and overseas publicly listed shareholdings Realising unclaimed domestic and international equity positions
Creditors 85.0 hours \$37,750	Annual meeting of creditors	<ul style="list-style-type: none"> Prepare meeting notices, proxies and advertisements Forward notice of meeting to all known creditors and clients Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisements of meeting and draft minutes of meeting Liaise and instruct webcast traffic and questions Prepare meeting presentation Planning meeting for annual meeting of creditors Hold annual meeting of creditors at KPMG Sydney offices
	Creditors report/circulars	<ul style="list-style-type: none"> Issued a creditors annual report and remuneration report via the KPMG website and via post and email Updates on the progress of the Liquidation via post and email, including finalisation
Administration 73.0 hours \$30,850	Document maintenance/file review/checklist	<ul style="list-style-type: none"> Maintained engagement checklist to ensure statutory compliance Maintained an updated a team work plan to align team activities
	Bank account administration	<ul style="list-style-type: none"> Maintain receipts and payments bookkeeping in MYOB Insolvency Received, convert and filed bank statements
	ASIC Lodgements / other forms	<ul style="list-style-type: none"> Preparation and lodgement of all statutory requirements with ASIC including Form 523, Form 524, Form 505 and Form 5011 Correspondence with ASIC regarding statutory forms
	ATO and other statutory reporting	<ul style="list-style-type: none"> Prepare and lodge quarterly BAS lodgements for BBY Nominees
	Finalisation	<ul style="list-style-type: none"> Notifying ATO of finalisation Cancelling ABN/ GST/ PAYG Completing checklists Finalising WIP Convene final meeting of creditors (if applicable)

Part 4: Calculation of remuneration

4.1 Calculation of actual remuneration for period 8 October 2015 to 18 November 2016

Set out below are further details of the calculation of actual remuneration, including grade and hours of staff.

BBYN Liquidators fees by position to 18 November 2016		
Position	Hours	\$
Partner or Appointee	70.0	45,500
Associate Director	60.5	33,275
Manager	277.6	138,800
Executive	1,095.7	383,495
Analyst	54.6	10,920
Administration	28.3	3,962
Total	1,586.7	615,952

A detailed breakdown of staff members by activity is set out below.

BBY Nominees Calculation of remuneration for the period 8 October 2015 to 18 November 2016										
Employee	Position	\$ Hour (ex GST)	Total		Administration		Assets		Creditors	
			Actual Hours	Total \$ (ex GST)	Actual Hours	Total \$ (ex GST)	Actual Hours	Total \$ (ex GST)	Actual Hours	Total \$ (ex GST)
Vaughan Stephen	Partner or Appointee	650.0	70.0	45,500.0	16.0	10,400.0	47.3	30,745.0	6.7	4,355.0
Lynch Patrick	Associate Director	550.0	59.5	32,725.0	8.0	4,400.0	51.5	28,325.0	-	-
Gower Luke	Associate Director	550.0	1.0	550.0	-	-	1.0	550.0	-	-
Chung Joe	Manager	500.0	7.5	1,500.0	-	-	7.5	1,500.0	-	-
Naran Darsun	Manager	500.0	5.3	2,650.0	1.0	500.0	4.3	2,150.0	-	-
Hatsatouris Micha	Manager	500.0	272.3	136,150.0	38.7	19,350.0	229.8	114,900.0	3.8	1,900.0
Valentini Matteo	Executive	350.0	747.1	261,485.0	196.3	68,705.0	550.8	192,780.0	-	-
Somerville John	Executive	350.0	4.5	1,575.0	1.2	420.0	-	-	3.3	1,155.0
Diprose Leah	Executive	350.0	344.1	120,435.0	37.4	13,090.0	306.7	107,345.0	-	-
Warden Andrew	Analyst	200.0	15.3	3,060.0	2.6	520.0	-	-	12.7	2,540.0
Cahill Michael	Analyst	200.0	22.0	4,400.0	-	-	22.0	4,400.0	-	-
Parker Luke	Analyst	200.0	1.3	260.0	1.3	260.0	-	-	-	-
Rackemann Jack	Analyst	200.0	8.5	1,700.0	-	-	0.4	80.0	8.1	1,620.0
Spence Morgan	Administration	140.0	28.3	3,962.0	-	-	28.3	3,962.0	-	-
Total excluding GST			1,586.7	615,952.0	302.5	117,645.0	1,249.6	486,737.0	34.6	11,570.0
GST				61,595.2		11,764.5		48,673.7		1,157.0
Total including GST				677,547.2		129,409.5		535,410.7		12,727.0
Average Hourly Rate				427.0		427.8		428.5		367.8

4.2 Calculation of prospective remuneration from 19 November 2016 to completion of the liquidation

A detailed breakdown of staff members by activity is set out below.

BBY Nominees - Calculation of prospective remuneration to completion of the liquidation										
Employee	Position	\$/hour (ex GST)	Total		Assets		Creditors		Administration	
			Actual	Total \$ (ex GST)	Hrs	\$	Hrs	\$	Hrs	\$
Hall Ian	Appointee	650	6.0	3,900	2.0	1,300	2.0	1,300	2.0	1,300
Vaughan Stephen	Appointee	650	43.0	27,950	30.0	19,500	8.0	5,200	5.0	3,250
Hatsatouris Michael	Associate Director	550	141.0	77,550	100.0	55,000	25.0	13,750	16.0	8,800
Matteo Valentini	Executive	350	300.0	105,000	200.0	70,000	50.0	17,500	50.0	17,500
Total excluding GST			490.0	214,400	332.0	145,800	85.0	37,750	73.0	30,850
GST				21,440		14,580		3,775		3,085
Total including GST				235,840		160,380		41,525		33,935
Average Hourly Rate				438		439		444		423

Part 5: Statement of remuneration claim

This section details the resolutions that creditors will be asked to consider at the forthcoming meeting of creditors.

Resolution 1 from period 8 October 2015 to 18 November 2016 (actual remuneration)

Resolution 1			
Company:	<i>BBY Nominees Pty Ltd (In Liquidation)</i>	Period:	8 October 2015 to 18 November 2016
Practitioner:	Stephen Vaughan and Ian Hall	Firm:	KPMG
Administration type:	Creditors' Voluntary Liquidation		
Proposed resolution:	<i>"That the Liquidators' remuneration for the period 8 October 2015 to 18 November 2016 in respect of the liquidation of BBY Nominees Pty Ltd (In Liquidation) be approved in a sum equal to the cost of time spent by the Liquidators and their partners and staff, calculated at rates set under the KPMG Restructuring Services guide to hourly rates, of an amount up to \$318,652 plus GST and disbursements, and that such fees are authorised for payment from the assets of the Company, or otherwise."</i>		

Resolution 2 from 19 November 2016 to completion of liquidation (estimated future remuneration)

Resolution 2			
Company:	<i>BBY Nominees Pty Ltd (In Liquidation)</i>	Period:	From 19 November 2016 to completion of the liquidation
Practitioner:	Stephen Vaughan and Ian Hall	Firm:	KPMG
Administration type:	Creditors' Voluntary Liquidation		
Proposed resolution:	<i>"That the Liquidators' remuneration in respect of BBY Nominees Pty Ltd (in Liquidation) be approved in a sum equal to the cost of time spent by the Liquidators and their partners and staff, calculated at rates set under the KPMG Restructuring Services guide to hourly rates, of an amount up to \$214,400 plus GST and disbursements, and that such fees are authorised for payment from the assets of the Company, or otherwise."</i>		

*Should the Liquidators' actual remuneration exceed the amount approved by creditors, then a further claim for remuneration may be proposed to creditors at a later date.

Part 6: Disbursements

Disbursements are divided into three types:

- Externally provided professional services - these are recovered at cost. An example of an externally provided professional 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 be charged 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.

Generally disbursements do not require creditor approval prior to payment, but must be accounted for to creditors once paid. At the date of this report the Liquidators have paid \$124,419.10 excluding GST in legal costs to Ashurst Australia.

Prior to paying any disbursements, the Liquidators' will undertake a proper assessment of disbursements claimed, in accordance with the law and applicable professional standards, and satisfy themselves that the disbursements claimed are necessary and proper.

Disbursements incurred by the Liquidators' for the period 8 October 2015 to 18 November 2016 in the amount of \$125,527.12 (exclusive of GST) are detailed below.

Disbursements for the period 8 October 2015 to 18 November 2016	
Disbursement (excl. GST)	\$
Externally provided professional services	
Legal costs (Ashurst Australia)	124,149.10
Externally provided non-professional services	
Advertising	1,216.00
Couriers	14.55
Travel	147.47
Total	125,527.12

Part 7: Report on progress of the Liquidation

Please refer to our Report to Creditors dated 25 November 2016 for an update on the progress of the Liquidation.

Part 8: Summary of Receipts and Payments

Please refer to the table below for a summary of receipts of payments for the period from 8 October 2015 to 18 November 2016.

Receipts and Payments (excl. GST)		\$
Description	At 18 Nov 2016	
Receipts		
Facilitation fees		
Domestic	180,916	
International	55,148	
Linc Energy	45,883	
Total	281,946	
Payments		
Less: Liquidation costs		
Administrators' remuneration	(90,000)	
Liquidators' remuneration	-	
Legal fees - Ashurst	(124,149)	
GST	(2,370)	
Disbursements	(1,544)	
Total liquidation costs	(218,063)	
Net position	63,883	

Part 9: Queries

Should creditors have any queries in respect to the matters discussed in this report, please contact Matteo Valentini on (02) 9455 9087 or mvalentini1@kpmg.com.au.

Part 10: Information sheet

Creditor information sheet: 'Approving remuneration in an external administration' is attached. This information sheet provides further general information in respect to assessing and approving remuneration in external administrations.



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 85

Approving fees: a guide for creditors

If a company is in financial difficulty, it can be put under the control of an independent external administrator.

This information sheet gives general information for creditors on the approval of an external administrator's fees in a liquidation of an insolvent company, voluntary administration or deed of company arrangement (other forms of external administration are not discussed in this information sheet). It outlines the rights that creditors have in the approval process.

Entitlement to fees and costs

A liquidator, voluntary administrator or deed administrator (i.e. an 'external administrator') is entitled to be:

- paid reasonable *fees*, or remuneration, for the work they perform, once these fees have been approved by a creditors' committee, creditors or a court, and
- reimbursed for out-of-pocket *costs* incurred in performing their role (these costs do not need creditors' committee, creditor or court approval).

External administrators are only entitled to an amount of fees that is reasonable for the 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 reporting potential breaches of the law and lodging a detailed listing of receipts and payments with ASIC every six months. The external administrator is entitled to be paid for completing these statutory tasks.

For more on the tasks involved, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors* and INFO 74 *Voluntary administration: a guide for creditors*.

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

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. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

- legal fees
- valuer's, real estate agent's and auctioneer's fees
- stationery, photocopying, telephone and postage costs
- retrieval costs for recovering the company's computer records, and
- storage costs for the company's books and records.

Creditors have a direct interest in the level of fees and costs, as the external administrator will, generally, be paid from the company's available assets before any payments 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, any shortfall is not paid.

Who may approve fees

Who may approve fees depends on the type of external administration: see Table 1. The external administrator must provide sufficient information to enable the relevant decision-making body to assess whether the fees are reasonable.

Table 1: Who may approve fees

			Court
Administrator in a voluntary administration	✓ ¹	✓	✓
Administrator of a deed of company arrangement	✓ ¹	✓	✓
Creditors' voluntary liquidator	✓ ¹	✓ ⁵	✗ ³
Court-appointed liquidator	✓ ¹	✓ ^{4, 5}	✓ ²

¹ If there is one.

² If there is no approval by the committee or the creditors.

³ Unless an application is made for a fee review.

⁴ If there is no creditors' committee or the committee fails to approve the fees.

⁵ If insufficient creditors turn up to the meeting called by the liquidator to approve fees, the liquidator is entitled to be paid up to a maximum of \$5000, or more if specified in the Corporations Regulations 2001.

Creditors' committee approval

If there is a creditors' committee, members are chosen by a vote of creditors as a whole. In approving the fees, the members represent the interests of all the creditors, not just their own individual interests.

There is not a creditors' committee in every external administration. A creditors' committee 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 creditors' committees and how they are formed, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors*, INFO 74 *Voluntary administration: a guide for creditors* and INFO 41 *Insolvency: a glossary of terms*.

Creditors' approval

Creditors approve fees by passing a resolution at a creditors' meeting. Unless creditors call for a poll, the resolution is passed if a simple majority of creditors present and voting, in person or by proxy,

indicate that they agree to the resolution. Unlike where acting as committee members, creditors may vote according to their individual interests.

If a poll is taken, rather than a vote being decided on the voices or by a show of hands, a majority in *number* and *value* of creditors present and voting must agree. A poll requires the votes of each creditor to be recorded.

A separate resolution of creditors 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 to vote on their behalf. A proxy can be either a *general proxy* or a *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 particular 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 approval of their fees; they must hold a special proxy in order to do this. They must vote all special proxies as directed, even those against approval of their fees.

Calculation of fees

Fees may be calculated using one of a number of different methods, such as:

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

Charging on a time basis is the most common method. 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 the fees.

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 important to note that 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 who are 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.

These are all matters that committee members or creditors should be aware of when considering the fees presented. However, regardless of these matters, creditors have a right to question the external administrator about the fees and whether the rates are negotiable.

It is up to the external administrator to justify why the method chosen for calculating fees is an appropriate method for the particular external administration. As a creditor, you also have a right to question the external administrator about the calculation method used and how the calculation was made.

Report on proposed fees

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

- information that will enable the committee members/creditors to make an informed assessment of whether the proposed fees are reasonable
- a summary description of the major tasks performed, or to be performed, and
- the costs associated with each of these tasks.

Committee members/creditors may be asked to approve fees for work already performed or based on an estimate of work yet to be carried out.

If the work is yet to be carried out, it is advisable to set a maximum limit ('cap') on the amount that the external administrator may receive. For example, future fees calculated according to time spent may be approved on the basis of the 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 then exceeds this figure, the external administrator will have to ask the creditors' committee/creditors to approve a further amount of fees, after accounting for the fees already incurred.

Deciding if fees are reasonable

If asked to approve an amount of fees either as a committee member or by resolution at a creditors' meeting, your task is to decide if that amount of fees is reasonable, given the work carried out in the external administration and the results of that work.

You may find the following information from the external administrator useful in deciding if the fees claimed are reasonable:

- the method used to calculate fees
- the major tasks that have been performed, or are likely to be performed, for the fees
- the fees/estimated fees (as applicable) for each of the major tasks
- the size and complexity (or otherwise) of the external administration
- 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
 - if the fees are for work that has already been carried out, the time spent by each level of staff on each of the major tasks
 - 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, you should let them 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 do not think the fees being claimed are reasonable, you should raise your concerns with the external administrator. It is your decision whether to vote in favour of, or against, a resolution to approve fees.

Generally, if fees are approved by a creditors' committee/creditors and you wish to challenge this decision, you may apply to the court and ask the court to review the fees. Special rules apply to court liquidations.

You may wish to seek your own legal advice if you are considering applying for a court review of the fees.

Reimbursement of out-of-pocket costs

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 should also include information on the out-of-pocket costs of the external administration.

If you have questions about any of these costs, you should ask the external administrator and, if necessary, bring it up at a creditors' committee/creditors' meeting. If you are still concerned, you have the right to ask the court to review the costs.

Queries and complaints

You should first raise any queries or complaints with the external administrator. If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ASIC at www.asic.gov.au/complain, or write to:

ASIC Complaints
PO Box 9149
TRARALGON VIC 3844

ASIC will usually not become involved in matters of commercial judgement by an external administrator. Complaints against companies and their officers can also be made to ASIC. For other enquiries, email ASIC through infoline@asic.gov.au, or call ASIC's Infoline on 1300 300 630 for the cost of a local call.

To find out more

For an explanation of terms used in this information sheet, see ASIC's information sheet INFO 41 *Insolvency: a glossary of terms*. For more on external administration, see ASIC's related information sheets at www.asic.gov.au/insolvencyinfosheets:

- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 75 *Voluntary administration: a guide for employees*
- 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 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*

These are also available from the Insolvency Practitioners Association (IPA) website at www.ipaa.com.au. The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.