

21 October 2020



# Brosna Construction Pty Ltd ACN 165 991 588 (In Liquidation) (“the Company”)

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FINAL REPORT TO CREDITORS

I refer to the appointment of Daniel Woodhouse and I, Ian Francis, as Joint and Several Liquidators of the Company on 16 January 2019 and to my Statutory Report to Creditors dated 16 April 2019.

I provide an update in relation to the Liquidation as follows:

## 1. Asset Realisation

As previously reported, I have written to all clients of the Company which according to its records showed monies as being owed in respect of contract works including any outstanding progress claims and or retention sums. To date, I have collected the sum of \$63,383 from Ertech Pty Ltd and the remaining claims are considered non-recoverable including details of same as set out in the following table. As you would be aware the company ceased to trade prior to being placed into liquidation and as a consequence a number of contracts were not completed.

**Table 1: Debtor Recovery**

Debtor	Nature	Outstanding (\$)	Collected (\$)	Notes
Adco Construction - Swancare Aged Care	Progress Claim	216,898	-	<ul style="list-style-type: none"> <li>Additional costs to complete and liquidated damages exceeded the contract sum due to the delay caused by the demobilisation from site on liquidation date.</li> <li>They have a lodged a claim as a creditor in the sum of \$521,771.</li> </ul>
Ertech Pty Ltd - Spearwood Ave Bridge	Progress Claim	68,235	63,383	<ul style="list-style-type: none"> <li>The remaining balance was not recoverable due to scope reduction and overclaimed work.</li> </ul>
Cockram Construction - Onslow Health Services	Retention	22,560	-	<ul style="list-style-type: none"> <li>50% of contract completed and the remaining work was awarded to alternative subcontractor at a higher cost.</li> <li>Costs incurred for reinforcement supply and defects work are higher than the retention held.</li> <li>They have lodged a claim as a creditor in the sum of \$129,602.</li> </ul>
Pindan Construction - Myvista Mirrabooka	Progress Claim	419,736	-	<ul style="list-style-type: none"> <li>Notice of termination of subcontract was issued by Pindan on liquidation of the Company.</li> <li>Alternative contractors were engaged for incomplete scope, defects and remedial works.</li> <li>They have lodged a claim as a creditor in the sum of \$92,507.</li> </ul>
	Retention	55,403		
	Retention	38,311		
	Retention	21,654		
Pindan Construction - Ibis Hotel	Progress Claim	55,000	-	<ul style="list-style-type: none"> <li>Notice of termination of subcontract was issued by Pindan on liquidation of the Company.</li> <li>Alternative contractors were engaged for incomplete scope, defects and remedial works.</li> <li>They have lodged a claim as a creditor in the sum of \$49,420.</li> </ul>
	Retention	36,458		

**Table 1: Debtor Recovery**

Debtor	Nature	Outstanding (\$)	Collected (\$)	Notes
Pindan Construction - Mends Street Ramp	Retention	1,952	-	<ul style="list-style-type: none"> <li>Retention held of \$1,952 payable to the Company but was deducted from the amount due for the Myvista Mirrabooka and Ibis Hotel projects.</li> </ul>
Pindan Construction - Quest Apartments	Retention	109,691	-	<ul style="list-style-type: none"> <li>Retention held of \$46,822 payable to the Company, but was deducted from the amount due for the Myvista Mirrabooka and Ibis Hotel projects.</li> </ul>
Pindan Pty Ltd - Wanneroo Civic Centre	Retention	31,722	-	<ul style="list-style-type: none"> <li>Company in liquidation and no dividend distribution will occur at this time.</li> </ul>
Pindan Contracting - Mercury Treatment Facility	Retention	14,546	-	<ul style="list-style-type: none"> <li>Balance of retention held \$1,561 to be set off against the Northam Health Service project.</li> </ul>
Pindan Contracting - Northam Health Service	Retention	45,260	-	<ul style="list-style-type: none"> <li>Costs of remedying defects exceeded retention held.</li> <li>They have lodged a claim as a creditor in the sum of \$11,631.</li> </ul>

I have since reviewed the relevant contracts and supporting documentation provided and I am satisfied that:

- the book value of trade debtors was inaccurate as the majority of the progress claims were not recoverable due to incomplete / overclaimed work as at the date of liquidation; and
- retention monies held were not recoverable as significantly higher costs were incurred to engage alternative contractors for certification, compliance and defects / remedial works.

Prior to issuing this report, I provided a substantive update regarding the status of debtor recoveries to Finance Resources Pty Ltd ("FIFO Capital") which held specific security interests over certain amounts due by debtors. Based on the information available and correspondence exchanged with respective debtors, FIFO Capital was of the view that it would not be viable to continue to pursue these claims.

Given the lack of funding, no further action will be undertaken by the Liquidators and no further recoveries are expected in this regard.

There have been no other asset realisations since the date of my last report, and I have not identified any further assets to be realised for the benefit of creditors.

## 2. INVESTIGATIONS AND RECOVERY ACTIONS

My investigations into the affairs of the Company are now complete and I set out below the details of my findings:

### 2.1 Unfair Preference Claim

As previously reported, I identified a potential unfair preference claim against the Australian Taxation Office ("ATO") and have pursued recovery of same. The initial offer made by the ATO to settle the claim at \$30,000 was

rejected. Based on further evidence received from the ATO and the strength of the information on hand, I am satisfied that sufficient evidence was provided, and the claim was reduced to \$72,632. The ATO subsequently offered \$60,000 in full and final settlement of claim of which I have accepted and received the payment in full.

Further, I have identified payments made (in excess of wages drawn) to the Director and the Director's brother, Jason Clancy, which may potentially constitute unfair preference claims and recoverable by the Liquidators. However, enquiries made indicate that these payments were in respect to reimbursements for materials purchased for business use.

## 2.2 Insolvent Trading – Director

Section 588G of the Corporations Act 2001 ("the Act") provides that a director has duty to prevent insolvent trading by the Company. The Section applies if:

- a person is a director of the Company at the time when the Company incurs a debt; and
- the Company is insolvent at that time or becomes insolvent by incurring that debt; and
- at that time, there are reasonable grounds for suspecting that the Company is insolvent or would so become insolvent, as the case may be.

Based on information available and enquiries made to date, in my view the Company may have been insolvent from at least 1 November 2018 (and possibly earlier) through to the date of liquidation on the basis of the following:

Table 2: Indicators of Insolvency	
Trading losses	<ul style="list-style-type: none"> <li>▪ The management accounts disclosed an accumulated loss of \$353,024 from July 2018 through to the date of liquidation, with a significant loss of \$233,158 incurred in October 2018.</li> </ul>
Revenue / Sales	<ul style="list-style-type: none"> <li>▪ There has been a significant deterioration in sales from November 2018 through to the date of liquidation.</li> </ul>
Current ratio / Working capital	<ul style="list-style-type: none"> <li>▪ Negative working capital / current ratio from October 2018 through to the date of liquidation.</li> </ul>
Overdraft facility / Borrowings	<ul style="list-style-type: none"> <li>▪ Overdraft facility's limit exceeded as at the date of liquidation.</li> <li>▪ Excessive interest / fees due to high borrowings and short term Prospa loan.</li> </ul>
Creditor ageing	<ul style="list-style-type: none"> <li>▪ Significant increase of unpaid trade creditors from July 2018 onwards.</li> </ul>
Superannuation	<ul style="list-style-type: none"> <li>▪ Unpaid superannuation obligations totaled \$59,639 accrued from period prior to July 2018.</li> </ul>
Overdue taxation obligations	<ul style="list-style-type: none"> <li>▪ The ATO payment plan was defaulted since October 2018 and the interim payment arrangement negotiated has not been adhered to.</li> </ul>

Since the alleged date of insolvency being 1 November 2018, the Company incurred debts of \$741,898 that remained unpaid as at the date of liquidation, comprised of:

**Table 3: Insolvent Trading Claim**

Description	Amount (\$)
Trade creditors incurred and unpaid in:	
- November 2018	135,859
- December 2018	356,954
- January 2019	249,085
<b>Total</b>	<b>741,898</b>

Correspondence with the Director indicates that it was expected that the majority of the trade creditors would be paid in full on collection of outstanding trade debtors, particularly from Pindan Construction and Pindan Contracting. The decision to put the Company into liquidation was a proactive step to cease trading the business and stop incurring further debt while the debt collection process was ongoing.

It is noted that the Director does not have any financial capacity to meet any alleged claim and the legal costs to undertake an insolvent trading claim can be substantial, particularly if the claim is defended.

In consideration as to the strength of the information available, in my view the Director may be able to rely upon the statutory defences available pursuant to Section 588H of the Act as there may be sufficient evidence to prove that the Director did have reasonable grounds to expect and did expect that the Company was solvent. Accordingly, I do not intend to pursue recovery further.

Notwithstanding my comments made above, creditors are invited to contact my office **by no later than Friday, 13 November 2020** if you have any interest in further investigating an insolvent trading claim including funding same.

Additionally, pursuant to Section 588R of the Act, creditors are entitled to commence proceedings for an insolvent trading claim in their own right, subject to the consent of the Liquidator.

## 2.3 Breach of duties

In my opinion, the Director has breached the following sections of the Act:

**Table 4: Contravention of Sections of the Corporations Act 2001**

Section	Reasons
180 – Care and Diligence	<ul style="list-style-type: none"> <li>▪ failure to meet statutory obligations and employee entitlements; and</li> <li>▪ failure to prevent the Company from incurring further debt whilst insolvent; and</li> <li>▪ failure to act in the best interests of the Company by advancing funds to the Director and a related party (in addition to wages drawn) for which the Company did not derive any benefits from the funds advanced.</li> </ul>
181 – Good Faith	
588G – Insolvent Trading	

I have submitted my report to the Australian Securities and Investments Commission ("ASIC") pursuant to Section 533 of the Act. ASIC has since advised its decision not to commence an investigation into the matters raised and provided the necessary clearance to finalise the liquidation.

If creditors are aware of any undisclosed assets or matters which require further investigation or require any further information in respect to my findings, please contact this office **by no later than Friday, 13 November 2020**.

### 3. RETURN TO CREDITORS

As previously reported, FIFO Capital was owed \$293,780 pursuant to an Invoice Finance Facility Deed and has a valid security interest over specific debtors of the Company. An amount of \$47,883 has been paid to FIFO Capital from debtor recoveries in partial satisfaction of amounts owed to FIFO Capital.

Given the extent of the realisable assets of the Company and the costs of the liquidation, no dividend will be available to priority and ordinary unsecured creditors.

### 4. RECEIPTS AND PAYMENTS

During the course of the Liquidation, I have made the following receipts and payments:

**Table 5: Statement of Receipts and Payments for the period 16 January 2019 to 18 October 2020**

	Amount (\$)
<b>Receipts</b>	
Motor vehicle proceeds	1,500.00
Pre-appointment debtor – Ertech Pty Ltd (Note 1)	63,383.33
Settlement – unfair preference claim	60,000.00
GST refund	6,520.00
<b>Total Receipts</b>	<b>131,403.33</b>
<b>Payments</b>	
Liquidators' fees (approved and paid)	82,500.00
Liquidators' disbursements	878.25
Bank charges	5.74
GST paid	136.00
Dividend to Secured Creditor – FIFO Capital	47,883.34
<b>Total Payments</b>	<b>131,403.33</b>
<b>Cash at bank held by the Liquidators</b>	<b>-</b>

Note 1: Subject to FIFO Capital's security interest

## 5. FINALISATION

As outlined in section 2.3, if creditors are aware of any undisclosed assets or matters which require further investigation or require any further information in respect to my findings, please contact this office **by no later than Friday, 13 November 2020**. There are no outstanding matters in the liquidation. In the absence of a response from creditors **by Friday, 13 November 2020**, it is my intention to lodge the requisite documentation with the ASIC and **finalise the liquidation by Monday, 30 November 2020**.

Should you have any queries in relation to this report or the liquidation generally, please contact Jiin Heng Choong of this office on 08 6430 1366 or [JiinHeng.Choong@fticonsulting.com](mailto:JiinHeng.Choong@fticonsulting.com).



**Ian Francis**  
**Joint & Several Liquidator**



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