

3 July 2012

**TO CREDITORS AS ADDRESSED**

Dear Sir/Madam

**Provident Capital Limited**  
**ACN 082 735 573**  
**(Receivers Appointed) (“the Company”)**

We advise that Philip Carter, Tony Sims and Marcus Ayres of this office were appointed as Joint and Several Receivers of the Company on 3 July 2012 pursuant to an Order of the Federal Court of Australia. A copy of the Court Order is attached.

We now control the Company's assets and operations and are assessing its financial position. The Director(s) of the Company have been requested to prepare a statement about the Company's business, properties, affairs and financial circumstances as at the date of our appointment.

We now raise the following matters regarding the conduct of our receivership.

**1. TRADING**

The Company is continuing to trade whilst we assess its viability.

In this regard we note that the Corporations Act 2001 (“the Act”) provides that the Receivers are liable for all charges arising from services rendered, goods bought or property hired, leased, used or occupied during the Receivership. Liability however will not be accepted by the Receivers without either of the following:

- (i) A purchase order authorised by one or more of the specified authorised signatories set out in the list accompanying this circular. Please note the authority limits; and
- (ii) A tax invoice in the name of “*Provident Capital Limited (Receivers Appointed)*”.

Accordingly, you are instructed to open a new account styled “*Provident Capital Limited (Receivers Appointed)*” addressed to the Company's premises and charge future authorised orders to that account. This account will be paid in accordance with your usual terms of credit.

If there are any outstanding or unfulfilled orders placed by the Company prior to our appointment please contact James Alexio of this office to obtain written confirmation that the order is to be completed.

It should be noted that goods sold and delivered to the Company after our appointment must be paid for in full, provided the appropriate purchase order has been signed by one of the authorised signatories attached. No lien or right of set-off may be applied against such orders in respect of any claims against the Company outstanding prior to our appointment.

## **2. CONSIGNMENT STOCK, RETENTION OF TITLE AND LIENS**

In the event that you wish to register a claim for reservation of title over stock held at the Company's premises or have supplied stock on consignment to the Company, please notify our office and furnish us with details of the same immediately otherwise, we shall proceed to realise the stock without regard to any claim which you may have.

## **3. PRIOR EXISTING CONTRACTS/AGREEMENTS**

The Receivers expressly refrain from personally adopting any of the Company's contracts existing as at the date of our appointment. All contracts are presently under review.

We further advise that pursuant to Section 419A of the Act, the Receivers' liability under hire or lease agreements does not commence until seven days after their appointment. We will accordingly write to known hire and lease creditors regarding such agreements within that period. In the event however that you hold such an agreement with the Company, we ask that you contact our office immediately so that you may provide us with details of the same.

## **4. UNSECURED CREDITORS**

You should note that the Receivers' primary duty is to the secured creditors. Payment of unsecured creditor claims as at the date of our appointment, i.e. – 3 July 2012, is deferred pending the satisfactory settlement of the secured creditor's debt.

In this regard, we request that all creditors complete the attached form detailing the amount to be claimed as owing from the Company and return it to our office as soon as practicable. This will assist reconciliation of the Company's accounts with those of creditors.

## **5. FURTHER INFORMATION**

To assist creditors, employees, and Company shareholders in being able to better understand the Receivership process, ASIC has released a package of insolvency information sheets. These have the endorsement of the Insolvency Practitioners Association (IPA).

Attached is an information sheet, which provides an index of all the information sheets that are available. You can download these as PDF files from the ASIC website.

We appreciate that you will be concerned by the news that we have been appointed as Receivers of Provident. There are various sources of further information available to you

as follows:

- We have posted a frequently asked questions schedule on the below listed websites. Updates will be posted to these websites throughout the course of the receivership.
  - Link Market Services – [www.linkmarketservices.com.au](http://www.linkmarketservices.com.au)
  - PPB Advisory – [www.ppbadvisory.com](http://www.ppbadvisory.com)
- We have organised a call centre to handle your queries. Please call Link Market Services on (02) 8280 7110.

Yours faithfully



**Philip Carter, Tony Sims & Marcus Ayres**  
Joint and Several Receivers  
Provident Capital Limited

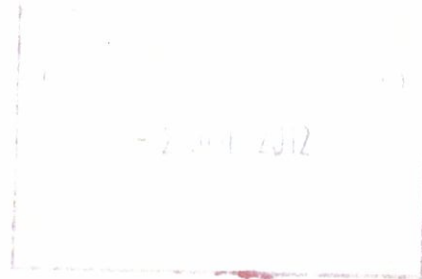
No: (P)NSD808/2012

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**AUSTRALIAN EXECUTOR TRUSTEES LIMITED**  
Plaintiff

**PROVIDENT CAPITAL LIMITED**  
Defendant

**ASIC**  
Intervener



**ORDER**

**JUDGE:** Justice Rares  
**DATE OF ORDER:** 29 June 2012  
**WHERE MADE:** Sydney



**THE COURT ORDERS THAT:**

1. Pursuant to s 283 HB(1)(c) of the *Corporations Act 2001* (Cth);
  - a. Philip Patrick Carter, Anthony Milton Sims and Marcus William Ayres of PPB Advisory be appointed as joint and several receivers of the property of the defendant secured by the fixed and floating charge dated 11 December 1998 (**the charge**) and comprising the security for the debentures issued by the defendant pursuant to the trust deed dated 11 December 1998 as amended (**the deed**)
  - b. the receivers have all of the powers prescribed by:

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Filed by: Plaintiff  
Name: Australian Executor Trustees Limited  
Address for Service: Henry Davis York  
Lawyers  
44 Martin Place  
Sydney NSW 2000

DX: 173 Sydney  
Tel: +61 2 9947 6000  
Fax: +61 2 9947 6999  
Ref: Error! Unknown document property name./Error! Unknown document property name./3128417  
Craig Ensor  
Partner, Henry Davis York

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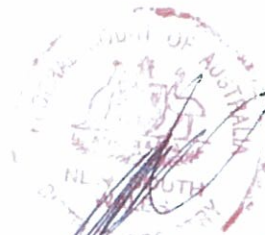
Legal practitioner with primary conduct

- i. the charge and shall be treated in all respects as if they were appointed under that charge; and
  - ii. s 420 (2) of the *Corporations Act 2001* (Cth)
- c. until further order the defendant be restrained from paying any money to debenture holders under the trust deed dated 11 December 1998.
2. The defendant pay the plaintiff's costs.
3. Upon the defendant by its Senior Counsel giving to the court the following undertakings:
  - a. the usual undertaking as to damages;
  - b. to provide immediate access to the plaintiff and its representatives to all books, records and computer passwords of the defendant;
  - c. not to make any payment to any person or engage in any transactions up to and including 4 pm on 3 July 2012;
  - d. not to destroy any records;

the orders made on 29 June 2012 by Rares J, other than order 1 c, be stayed up to and including 3 July 2012.

Date that entry is stamped:

- 2 JUL 2012



Deputy District Registrar

ORIGINAL

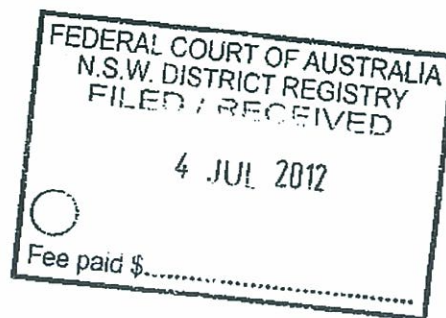
No: (P)NSD808/2012

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District Registry: New South Wales  
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**AUSTRALIAN EXECUTOR TRUSTEES LIMITED**  
Plaintiff

**PROVIDENT CAPITAL LIMITED**  
Defendant

**ASIC**  
Intervener



**ORDER**

**JUDGE:** Justice Rares  
**DATE OF ORDER:** 3 July 2012  
**WHERE MADE:** Sydney



**THE COURT ORDERS THAT:**

1. Leave be granted to the defendant to vary undertaking 3 c given by it by its counsel to the Court on 29 June 2012 so as to allow it to make arrangements for payment of its reasonable legal costs and disbursements to bring an interlocutory application on 3 July 2012 to seek an extension of the stay pending the hearing of an appeal from orders 1 and 2 made on 29 June 2012.
2. Upon the defendant, by its senior counsel, undertaking to the Court to pay all appropriate filing and hearing fees, leave be granted to the defendant to file in Court the notice of acting: change of lawyer, the interlocutory application initialled by Rares J and dated 3 July 2012 and the affidavit in support, such interlocutory application to be returnable instanter.

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Filed by: Plaintiff  
Name: Australian Executor Trustees Limited  
Address for Service: Henry Davis York  
Lawyers  
44 Martin Place  
Sydney NSW 2000

DX: 173 Sydney  
Tel: +61 2 9947 6000  
Fax: +61 2 9947 6999  
Ref: CXE/MRC/TJM/3128417

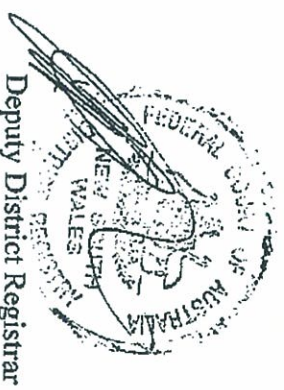
Legal practitioner with primary conduct

Craig Ensor  
Partner, Henry Davis York



3. The interlocutory application be dismissed.
4. Pursuant to s 283HB(1)(c) of the *Corporations Act 2001* (Cth) any security held by the plaintiff for the debentures issued by the defendant pursuant to the trust deed dated 11 December 1998 as amended, be enforceable immediately.
5. The defendant pay the plaintiff's costs of the interlocutory application filed on 3 July 2012.
6. The order made earlier on 3 July 2012 extending order 3 made on 29 June 2012 until midnight on 3 July 2012 be vacated.


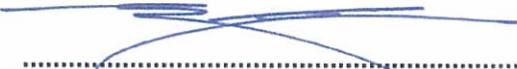







Date that entry is stamped:        - 4 JUL 2012



Deputy District Registrar

**Provident Capital Limited  
(RECEIVERS AND MANAGERS APPOINTED)  
ACN 082 735 573  
AUTHORISED SIGNATORIES**

**SPECIMEN SIGNATURES**

		<b>AUTHORITY LIMIT (\$)</b>
<b>NAME:</b> Philip Carter	<b>SIGNATURE:</b> 	Unlimited
<b>NAME:</b> Tony Sims	<b>SIGNATURE:</b> 	Unlimited
<b>NAME:</b> Marcus Ayres	<b>SIGNATURE:</b> 	Unlimited
<b>NAME:</b> Brett Lord	<b>SIGNATURE:</b> 	Unlimited
<b>NAME:</b> Stephen Edds	<b>SIGNATURE:</b> 	Unlimited
<b>NAME:</b> Leon Boyatzis	<b>SIGNATURE:</b> 	\$50,000
<b>NAME:</b> James Alexio	<b>SIGNATURE:</b> 	\$10,000
<b>NAME:</b> Catherine Duncan	<b>SIGNATURE:</b> 	\$10,000
<b>NAME:</b> Mark Andersen	<b>SIGNATURE:</b> 	\$500



**Provident Capital Limited  
ACN 082 735 573  
(RECEIVERS AND MANAGERS APPOINTED)**

**STATEMENT OF CLAIM AS AT 3 July 2012**

Name of Creditor .....

Amount of debt claimed (see Note 1 below) .....

Consideration for debt . .....

Whether debt secured or unsecured .....

If secured, give details of security including dates, etc .....

.....  
**CREDITOR** (or person authorised by creditor)

**NOTE:**

Copies of invoices/statements and other supporting documentation evidencing the amount claimed should be provided.

Please return to:      Ben Weber  
                                    PPB Advisory  
                                    GPO Box 5151  
                                    Sydney NSW 2001



ASIC

Australian Securities & Investments Commission

## INFORMATION SHEET 54

### Receivership: a guide for creditors

If a company is in financial difficulty, a secured creditor or the court may put the company into receivership.

This information sheet provides general information for unsecured creditors of companies in receivership.

#### Who is a creditor?

You are a creditor of a company if the company owes you money. Usually, a creditor is owed money because they have provided goods or services, or made loans to the company.

An employee owed money for unpaid wages and other entitlements is a creditor.

A person who may be owed money by the company if a certain event occurs (e.g. if they succeed in a legal claim against the company) is also a creditor, and is sometimes referred to as a 'contingent' creditor.

There are generally two categories of creditor: secured and unsecured.

- A secured creditor is someone who has a 'charge', such as a mortgage, over some or all of the company's assets, to secure a debt owed by the company. Lenders usually require a charge over company assets when they provide a loan. Charges over many types of assets are required to be registered with ASIC. You can find out if a company has a registered charge from ASIC's Companies Register and obtain a copy of the registered charge, on payment of the relevant fee.
- An unsecured creditor is a creditor who does not have a charge over the company's assets.

Employees are a special class of unsecured creditors. In a receivership, in certain circumstances, some of their outstanding entitlements are paid in priority to the debt of the secured creditor. If you are an employee, see ASIC's information sheet INFO 55 *Receivership: a guide for employees*.

#### The purpose of receivership

A company goes into receivership when an independent and suitably qualified person (the receiver) is appointed by a secured creditor, or in special circumstances by the court, to take control of some or all of the company's assets. (Court receiverships are not covered in this information sheet.)

The charge, or security, held by the secured creditor under which the appointment of a receiver is made may comprise:

- a fixed charge over particular assets of the company (e.g. land, plant and equipment), and/or

**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.

- a floating charge over assets that are used and disposed of in the course of normal trading operations (e.g. debtors, cash and stock).

The powers of the receiver are set out in the charge document and the *Corporations Act 2001* (Corporations Act).

If a receiver has, under the terms of their appointment, the power to manage the company's affairs, they are known as a receiver and manager.

It is possible for a company in receivership to also be in provisional liquidation, liquidation, voluntary administration or subject to a deed of company arrangement.

## The receiver's role

The receiver's role is to:

- collect and sell enough of the charged assets to repay the debt owed to the secured creditor (this may include selling assets or the company's business)
- pay out the money collected in the order required by law, and
- report to ASIC any possible offences or other irregular matters they come across.

The receiver's primary duty is to the company's secured creditor. The main duty owed to unsecured creditors is an obligation to take reasonable care to sell charged property for not less than its market value or, if there is no market value, the best price reasonably obtainable. A receiver also has the same general duties as a company director.

The receiver has no obligation to report to unsecured creditors about the receivership, either by calling a meeting or in writing. However, the receiver will usually write to all of the company's suppliers to inform them of their appointment. Unsecured creditors are not entitled to see the receiver's reports to the secured creditor.

A detailed list of the receiver's receipts and payments for the receivership must be lodged with ASIC every six months. Copies of these detailed lists of receipts and payments may be obtained from any ASIC Business Centre, on payment of the relevant fee.

## Distribution of money

The most common way a receiver will obtain money from the assets they are appointed over is to sell them. In the case of a company's business, the receiver may continue to trade the business until they sell it as a going concern.

The money from the realisation of assets must be distributed as follows:

- money from the sale of fixed charge assets is paid to the secured creditor after the costs and fees of the receiver in collecting this money have been paid, and
- money from the sale of floating charge assets is paid out as follows: first, the receiver's costs and fees in collecting this money; second, certain priority claims, including employee entitlements (if the liability for these hasn't been transferred to a new owner); and, third, repayment of the secured creditor's debt.

In both cases, any funds left over are paid to the company or its other external administrator, if one has been appointed.

If the receiver is appointed under a security comprising both fixed and floating charges, which is common, there will be costs and fees of the receivership that cannot be directly allocated to realising the fixed or floating charge assets. These costs are allocated in proportion to the fixed and floating realisation amounts.

If employee entitlements are to be paid by the receiver under a floating charge, the payments must be made in the following order:

1. outstanding wages and superannuation
2. outstanding leave of absence (including annual leave, sick leave—where applicable—and long service leave), and
3. retrenchment pay.

Each class of entitlement is paid in full before the next class is paid. If there are insufficient funds to pay a class in full, the available funds are paid on a pro rata basis (and the next class or classes will be paid nothing).

The receiver has no obligation to pay any other unsecured creditors for outstanding pre-appointment debts.

### **Purchases of goods and services by receiver**

Any debts that arise from the receiver authorising the purchase of goods or services during the receivership are paid from asset realisations as costs of the receivership. If there are insufficient funds available from asset realisations to pay these costs, the receiver is personally liable.

To have the benefit of this protection, you should ensure you receive a purchase order authorised in the manner advised by the receiver.

If the receiver continues to use, occupy or hold property owned by another party that is in the company's possession or occupied by the company, they are personally liable for any rent or amounts payable arising after seven days from the beginning of the receivership. The receiver can avoid this liability by informing the other party within seven days from their appointment that they don't intend to use the property.

### **Pre-existing contracts**

The appointment of a receiver does not automatically terminate pre-receivership contracts with the company. If you have such a contract, you may wish to seek legal advice, as the law in this area is complex. It is possible for the contract to remain current without the receiver having personal liability for the company's obligations under the contract.

### **Receiver's fees**

The receiver is generally entitled to be paid their fees from the money realised from the charged assets. How the fees are calculated is usually set out in the charge document and appointment document. Unsecured creditors have no role in setting or approving the receiver's fees.

ASIC, a liquidator, voluntary administrator or deed administrator of the company may apply to the court for the receiver's remuneration to be reviewed.

### **Other implications for unsecured creditors**

Legal action may be commenced or continued against the company despite the appointment of a receiver. This means that an unsecured creditor can apply to the court to have the company put into liquidation on the basis of an unpaid debt. Reasons you might wish to do this, particularly if the company owes you a large amount, include:

- an expectation that there will be money or property left over after realisation of the charged assets and payments by the receiver
- possible recoveries that may be available to a liquidator for the benefit of unsecured creditors, which are not available to a receiver
- a desire for a liquidator to investigate potential offences by those associated with the company, or
- the ability of the liquidator to review the validity of the appointment of the receiver and of the charge, and to monitor the progress of the receivership.

## Surplus property

If there are any assets or money left over when the receivership is complete, they will be returned to the company (and therefore the control of the company's directors) unless a liquidator or another external administrator is appointed.

If a liquidator is appointed, they must carry out the liquidation for the benefit of all unsecured creditors. For more on liquidation, see ASIC's information sheet INFO 45 *Liquidation: a guide for creditors*.

## Recoveries available to a liquidator

Recoveries that may be available to a liquidator for the benefit of unsecured creditors, and which are not available to a receiver, include:

- recovery of payments (unfair preferences) made by the company to individual creditors in the six months prior to liquidation that put those creditors in a more favourable position than other unsecured creditors
- recoveries from setting aside uncommercial transactions entered into by the company, and
- compensation from directors for amounts lost by creditors as a result of the company trading while insolvent.

## Investigation by liquidator

Although a receiver must report to ASIC on any possible offences or irregularities they come across, they don't have a specific duty to investigate and report on the affairs of the company generally.

A liquidator will usually carry out a more detailed investigation on behalf of all unsecured creditors. This investigation into the company's affairs looks into reasons for the failure of the company, what assets may be recoverable for the benefit of unsecured creditors, as well as possible offences.

The liquidator must lodge a report with ASIC if they believe that offences may have been committed or that the company may be unable to pay ordinary unsecured creditors a dividend of more than 50 cents in the dollar. ASIC may take action based on these reports. This includes, in certain circumstances, action to ban a person as a director if that person has been a director of two or more companies that have gone into liquidation. Similar grounds for banning a person as a director do not apply to directors of companies that have only gone into receivership.

## Review of receivership

If a liquidator is appointed over a company in receivership, they will review the validity of the charge and of the appointment of the receiver.

A liquidator is usually also better placed than individual unsecured creditors to monitor the progress of the receivership and report back to all unsecured creditors.

## Directors and receivership

Receivership does not affect the legal existence of the company. The directors continue to hold office, but their powers depend on the powers of the receiver and the extent of the assets over which the receiver is appointed.

Control of the charged property, which often includes the company's business, is taken away from the directors.

Directors must provide the receiver with a report about the company's affairs and must allow the receiver access to books and records relating to the charged property.

## Conclusion of receivership

A receivership usually ends when the receiver has collected and sold all of the assets or enough assets to repay the secured creditor, completed all their receivership duties and paid their receivership liabilities. Generally, the receiver resigns or is discharged by the secured creditor. Unless another external administrator has been appointed, full control of the company and any remaining assets goes back to the directors.

## Queries and complaints

You should first raise any queries or complaints with the receiver. If this fails to resolve your concerns, including any concerns about the receiver's conduct, you can lodge a complaint with ASIC at [www.asic.gov.au/complain](http://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 a receiver. Complaints against companies and their officers can also be made to ASIC. For other enquiries, email ASIC through [infoline@asic.gov.au](mailto: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](http://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 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*
- INFO 85 *Approving fees: a guide for creditors*

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