

19 October 2012

## **NOTICE TO DEBENTUREHOLDERS**

Dear Debentureholder

**Provident Capital Limited  
ACN 082 735 573**

**(Receivers and Managers Appointed) (Administrators Appointed) (“the Company”)**

We refer to our appointment as Joint and Several Receivers to the Company pursuant to an Order of the Federal Court of Australia on 3 July 2012 and to our subsequent appointment as Joint and Several Receivers and Managers to the Company pursuant to a fixed and floating charge granted by the Company in favour of Australian Executor Trustees Limited (“AET”) on 10 July 2012.

On 18 September 2012, Tony McGrath and Joseph Hayes of McGrathNicol were appointed as Joint and Several Voluntary Administrators to the Company by AET pursuant to Section 436C of the Corporations Act 2001 (*Cth*). Further detail in respect to this appointment is contained within this notice.

### **Purpose**

The purpose of this communication is to provide you with an update as to the status of the Voluntary Administration and the issuance of the Administrators’ Report to Creditors dated 17 October 2012, a copy of which is attached to this Notice . Due to the nature of this communication, this notice is only being published to our website (at [www.ppbadvisory.com](http://www.ppbadvisory.com)).

We recommend that this letter be read in conjunction with our Notices to Debentureholders dated 4 July 2012, 2 August 2012 and 28 September 2012. Copies of these letters are available on our website at [www.ppbadvisory.com](http://www.ppbadvisory.com) under ‘Provident Capital Limited’ in the Creditors Information section.

### **Voluntary Administration**

As detailed above, Messrs Tony McGrath and Joseph Hayes of McGrathNicol were appointed on 18 September 2012 as Joint and Several Voluntary Administrators to the Company.

The appointment of Voluntary Administrators is another step which AET has undertaken to preserve potential actions that the Company may have against third parties which could give rise to future recoveries to repay Debentureholder claims.

Debentureholders are not required to prove their claim in the Voluntary Administration given that all Debentureholders are secured creditors by virtue of AET’s security interest. Further, AET in its capacity as Trustee, is representing all Debentureholders and will be responsible for lodging claims and voting at meetings in the Voluntary Administration.

Control of the Company’s assets and business operations will otherwise remain with the Receivers and Managers.

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## **Proposed Deed of Company Arrangement (“DOCA”)**

The Directors of the Company provided the Voluntary Administrators with a draft DOCA proposal on 21 September 2012, which was further revised on 5 October 2012. Both proposals are similar.

The Voluntary Administrators have issued a Report to Creditors dated 17 October 2012, which amongst other items examines the affairs of the Company, including the DOCA proposal, as well as a making a recommendation as to the Company's future. As you will note from the report, the Voluntary Administrators have recommended that the Company be wound up on the basis that the DOCA proposal (amongst other reasons) is not in a form capable of acceptance.

AET has indicated that it does not support the DOCA proposal on the basis that it is not in the best interests of Debentureholders. Reasons for AET's decision are detailed in their letter dated 16 October 2012, a copy of which is also available from our website at [www.ppbadvisory.com](http://www.ppbadvisory.com).

### **Further information**

Further information in respect to the Receivership is available on our website at [www.ppbadvisory.com](http://www.ppbadvisory.com) under 'Provident Capital Limited' in the Creditors Information section.

Otherwise, please direct any further queries to the Debentureholder registry service maintained by Link.

Link's contact details are as follows:

Address: Provident Capital Limited (Receivers and Managers Appointed)  
(Administrators Appointed)  
C/- Link Market Services Limited  
Locked Bag A14, Sydney South,  
NSW 1235, Australia

Telephone: +61 2 8280 7110

Facsimile: +61 2 9287 0303

Email: [provident@linkmarketservices.com.au](mailto:provident@linkmarketservices.com.au)

Yours faithfully



**Phil Carter, Tony Sims and Marcus Ayres**  
Joint and Several Receivers and Managers  
Provident Capital Limited

**Circular to Creditors****Provident Capital Limited  
(Receivers and Managers Appointed) (Administrators Appointed)  
ACN 082 735 573 (the "Company")**

My partner, Joseph Hayes and I were appointed Joint and Several Administrators of the Company on 18 September 2012 by a secured creditor, Australian Executor Trustees Limited ("the Trustee"), pursuant to Section 436C of the Corporations Act 2001 ("the Act"). The purpose of this Circular is to provide creditors with information about the business, property, affairs and financial circumstances of the Company in preparation for the second statutory meeting of creditors which will be held on 24 October 2012.

The second statutory meeting of creditors has been convened to be held at Cliftons, 190-200 George Street, Sydney NSW 2000 on **Wednesday, 24 October 2012 at 10:30 AM**.

The following documents are attached:

- + Administrators' Report to Creditors pursuant to Section 439A of the Act;
- + Notice convening the meeting of creditors (Form 529);
- + Proof of debt form (Form 535) along with an information sheet to assist you in completing the proof of debt; and
- + Proxy form (Form 532).

At the meeting, creditors will be entitled to vote on whether:

- (1) the Company should execute a Deed of Company Arrangement; or
- (2) the administration should end; or
- (3) the Company be wound up; or
- (4) the meeting be adjourned.

Creditors who intend to vote at the meeting must lodge a formal proof of debt with the Administrators prior to the meeting. If you have already lodged a proof of debt, you are not required to do so again.

**Debenture holders should note that their interests in the administration are represented by the Trustee who will attend the meeting of creditors on their behalf.**

Creditors who are unable to attend the meeting and wish to be represented should ensure that either a proxy form, power of attorney, or evidence of appointment of a company representative pursuant to Section 250D of the Act is validly completed and provided to the Administrators prior to the meeting.

Proof of debt and proxy forms may be lodged with me prior to the meeting or may be brought to the meeting.

If a faxed copy of a proxy or power of attorney is provided prior to the meeting, the original of the instrument must be received by me either prior to or at the meeting.

Corporate creditors who wish to attend the meeting should note that they may only be represented by an individual if that person is validly granted a proxy or power of attorney by that corporation, or appointed as a company representative pursuant to Section 250D of the Act.

M<sup>C</sup>N<sup>+</sup>

McGRATHNICOL

Creditors who wish to discuss any aspects of the above should please contact Mitchell Mansfield on (02) 9338 2686.

Dated Wednesday, 17 October 2011

Yours faithfully

*Provident Capital Limited (Receivers and Managers Appointed) (Administrators Appointed)*



A G McGrath  
*Joint & Several Administrator*

*Enclosures:*

Administrators' Report to Creditors

Notice of Meeting

Proof of Debt

Instructions for completion of Proof of Debt

Proxy Form

Information for attendance at meeting

McN+

McGRATHNICOL

CORPORATE RECOVERY

Provident Capital Limited  
(Receivers and Managers Appointed)  
(Administrators Appointed)

ACN 082 735 573

Report to creditors pursuant to Section 439A of the  
Corporations Act 2001

17 October 2012

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**Annexure “A” – Deed of Company Arrangement proposal dated 12 October 2012**

## 1 Introduction

Anthony Gregory McGrath and Joseph David Hayes (“Administrators”) were appointed Joint and Several Administrators of Provident Capital Limited (“PCL” or the “Company”) on 18 September 2012 by a secured creditor, Australian Executor Trustees Limited (“AETL” or “the Trustee”), pursuant to Section 436C of the Corporations Act 2001 (“the Act”).

The first meeting of creditors was held on 28 September 2012. At this meeting, a Committee of Creditors was not formed and there were no nominations to appoint an alternative Administrator.

The purpose of the appointment of an Administrator is to allow an Insolvency Practitioner to control the affairs of a potentially insolvent company during a moratorium and investigation period, at the end of which, the creditors of the company determine the company’s future.

The purpose of this report is to inform creditors about the Company’s business, property, affairs and financial circumstances in preparation for the second meeting of creditors, and to provide creditors with our opinion as the course of action which should be adopted.



## 2 Executive summary

PCL was incorporated in May 1998 and shortly thereafter commenced its business of issuing debentures to retail investors and advancing funds raised to third party borrowers for property investment on a first mortgage basis.

Following significant growth in its debenture book, the Company added the following additional mortgage fund operations to its business:

- + 2007: Mortgage fund business funded via a \$100 million wholesale facility from Bendigo and Adelaide Bank Limited (“ABL”); and
- + 2009: Two mortgage fund managed investment schemes known as High Yield Fund (“HYF”) and Monthly Income Fund (“MIF”) funded by equity investment from individual unit holders.

As at 3 July 2012, the date of the Receivers’ appointment (see further below), total loans under management were as follows: debenture book: \$150 million, ABL book: \$74 million, HIF: \$712,000, and MIF: \$31.4 million.

Whilst ABL and the HIF/MIF investors have first recourse to their individual loan books, AETL holds a first ranking security interest over all assets and undertakings of the Company (and the debenture loan book).

Following the general reduction in property values in recent years, the debenture loan book (in particular) began experiencing an increased level of arrears. In February 2012, AETL appointed an Investigating Accountant (“IA”) to review PCL. Based on the review and a number of security property revaluations, the IA formed a view that PCL was insolvent on a ‘net assets’ basis (at this time, circa 90% of the debenture loan book was in default).

On 3 July 2012, on application by AETL, the Court appointed Anthony Sims, Philip Carter and Marcus Ayres of PPB Advisory (“the Receivers”) as Receivers of PCL. Subsequently, on 10 July 2012, AETL appointed the Receivers as Receivers and Managers under the terms of its security interest.

Since their appointment, the Receivers have been in control of the PCL business and assets.

On 18 September 2012, Tony McGrath and Joseph Hayes were appointed Administrators of PCL by AETL. The purpose of our appointment is to deal with unsecured claims and preserve any rights of action.

In the limited time available, we have conducted a review of the books and records of PCL and have met with the Directors, Receivers, the Australian Securities and Investments Commission (“ASIC”) and the Trustee.

Our preliminary investigations indicate that there are a number of matters that raise concerns however, detailed additional investigations are required to ascertain whether there are any actionable claims.

Michael O’Sullivan and Michael Bersten (two of PCL’s Directors) have proposed a DOCA for the Company. The DOCA essentially involves the transfer of debenture holder interests (and the debenture holder loan book) into HYF, the retirement of the Receivers, and the resumption of control of the Company’s operations by the Directors.

The Directors have noted that a key advantage of the DOCA is the reduction in costs that would occur if the Receivers are retired. At this stage, we are unable to form a clear view as to whether the proposed DOCA will generate a superior return for creditors than a liquidation. In particular, the relative costs attributable to a DOCA or liquidation will be dependent on property realisation strategies adopted by each party (which are yet to be determined).

In order for the DOCA to be implemented, the Trustee (in its capacity as secured creditor) is required to vote in favour of it.

On 12 October 2012, we were advised by the Trustee’s lawyers that the Trustee does not support the DOCA and will be voting for the Company to be wound up at the second meeting of creditors.

Given the Trustee's position, the DOCA is incapable of implementation and, as the Company is insolvent, there are no options other than to place the Company into liquidation.

As Liquidators, we would attend to our statutory requirements and undertake additional investigations into the Company and the various transactions dealt with later in this Report.

The second meeting of creditors has been convened for Wednesday, 24 October 2012 at 10:30am to be held at Cliftons, 190-200 George Street, Sydney, NSW. The purpose of the meeting is to consider the matters detailed in this Report and the options available to creditors as to the Company's future.

Our recommendation is that creditors vote for the Company to be wound up.

### 3 Administrators' prior involvement

In accordance with Section 436DA of the Act and the Insolvency Practitioners' Association of Australia ("IPA") *Code of Professional Practice*, a Declaration of Independence, Relevant Relationships and Indemnities for the Company was enclosed with our first circular to creditors (and tabled at the first meeting of creditors).

This declaration disclosed information regarding our independence, prior personal or professional relationships with the Company or related parties and indemnities received in relation to this appointment. For convenience, this has been restated below.

#### 3.1 Independence

We, Anthony Gregory McGrath and Joseph David Hayes of the firm McGrathNicol have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Administrators of the Company in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to our independence. We are not aware of any reasons that would prevent us from undertaking this appointment.

##### Prior personal or professional relationships

We, or members 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
The Company and its Directors (Michael O'Sullivan, Trevor Seymour, Malcolm Bersten and John Sweeney)	Prior to and following the appointment of the Receivers, we met with the Company's Directors to discuss the possible appointment of Voluntary Administrators and to consider restructure and workout options either prior to or following such an appointment.	Our contact with the Directors was limited to considering the available alternative courses of action and options open to the Board in the case of insolvency (including restructuring options) and the appointment of an Administrator. This firm was not formally engaged and no fee was received.  We note that such advice is permitted in accordance with Section 6.8.1 of the IPA Code of Professional Practice which recognises that pre-appointment advice on insolvency options is necessary and does not amount to an impediment to accepting an appointment.
Baker and McKenzie Lawyers	In June 2012, we were contacted by Baker and McKenzie (on behalf of the Company) to prepare a report in relation to the estimated likely costs of a receivership of the Company.	Whilst we prepared a draft report, our engagement was never formalised, the report was never finalised and we were not remunerated for these services.  Our independence in acting as voluntary administrator of the Company has not been affected because of the limited scope of the potential engagement which was never completed. The nature of the work undertaken here was such that it would not be subject to review and challenge during the course of the administration. Nor would the advice influence our ability to be able to fully comply with the statutory and fiduciary obligations associated with the administration in an objective and impartial manner.

	Baker and McKenzie undertakes legal work from time to time on various corporate advisory and corporate recovery engagements under McGrathNicol's instructions.	Each professional engagement conducted by Baker and McKenzie in relation to a particular entity or group of entities is conducted on an entirely separate basis which has no bearing on this appointment. We have not had any dealings with Baker and McKenzie in relation to the Company other than the limited dealings described above.
Henry Davis York Solicitors	Henry Davis York act as solicitors for both AETL and the Receivers.  Henry Davis York undertakes legal work from time to time on various corporate advisory and corporate recovery engagements under McGrathNicol's instructions.	Each professional engagement conducted by Henry Davis York in relation to a particular entity or group of entities is conducted on an entirely separate basis which has no bearing on this appointment.  McGrathNicol has not undertaken an engagement for Henry Davis York in respect of the Company. Our independence in acting as voluntary administrator of the Company has not been affected.

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In addition to the above relationships, we note that we have been provided with an initial indemnity from the Receivers for our remuneration and expenses in the amount of \$75,000 (plus GST and expenses), which was then revised to \$105,000 (plus GST and expenses).

Since the date of our appointment, we have continued to assess whether our prior involvement had caused any potential conflict of interest.

At the date of this Report, our opinion has not changed and we remain of the view that our prior professional relationships, as outlined above, do not present any potential conflict of interest.

## 4 Background and statutory information

### 4.1 Background

- + Provident was incorporated in 1998 as a non-bank property lender offering debenture investments.
- + Provident's primary business involved raising monies through the issue of debentures and advancing funds raised to third party borrowers primarily for property investment purposes. Since the Company's inception it has raised over \$1 billion in funds.
- + In 2007, the Company established a wholesale funding facility with ABL. The Company issued loans under the facility which it managed on behalf of ABL, collecting a margin on the interest differential.
- + In 2008, the Company expanded its business with the registration of two managed investment schemes, known as MIF and HYF, in respect of which it acted as responsible entity ("RE"). MIF and HYF commenced operations in 2009 as mortgage funds.
- + In February 2012, the Trustee appointed an IA to review the Company's business and financial position.
- + Following the IA's review, supplementary work, and dialogue between the Trustee and the Company, the concerns of AETL remained unresolved and AETL applied to the Federal Court of Australia ("the Court") for the appointment of Receivers. On 3 July 2012, the Court appointed the Receivers as Receivers of the Company.
- + Subsequently on 10 July 2012, AETL appointed the Receivers as Receivers and Managers of the Company pursuant to its registered security interest. The control of the Company's business, assets and loans has remained with the Receivers since 3 July 2012.
- + On 18 September 2012, AETL appointed Tony McGrath and Joseph Hayes as Administrators of PCL in accordance with Section 436C of the Act.
- + The primary purpose of the Administrators' appointment is to deal with the unsecured claims against the Company, conduct investigations and preserve the right to any potential recoveries available to a Liquidator (should one be appointed).

### 4.2 Timeline of key events

#### 1998

- + May 1998 – PCL was incorporated.
- + December 1998 – Debenture Trust Deed was executed with AETL.

#### 1998 to 2007

- + Various prospectuses were issued from time to time.

#### 2007

- + Wholesale funding facility established with ABL.

#### 2008

- + December 2008 – The Company registered MIF and HYF.

#### 2009

- + August 2009 – MIF operations commenced.
- + October 2009 – HYF operations commenced.

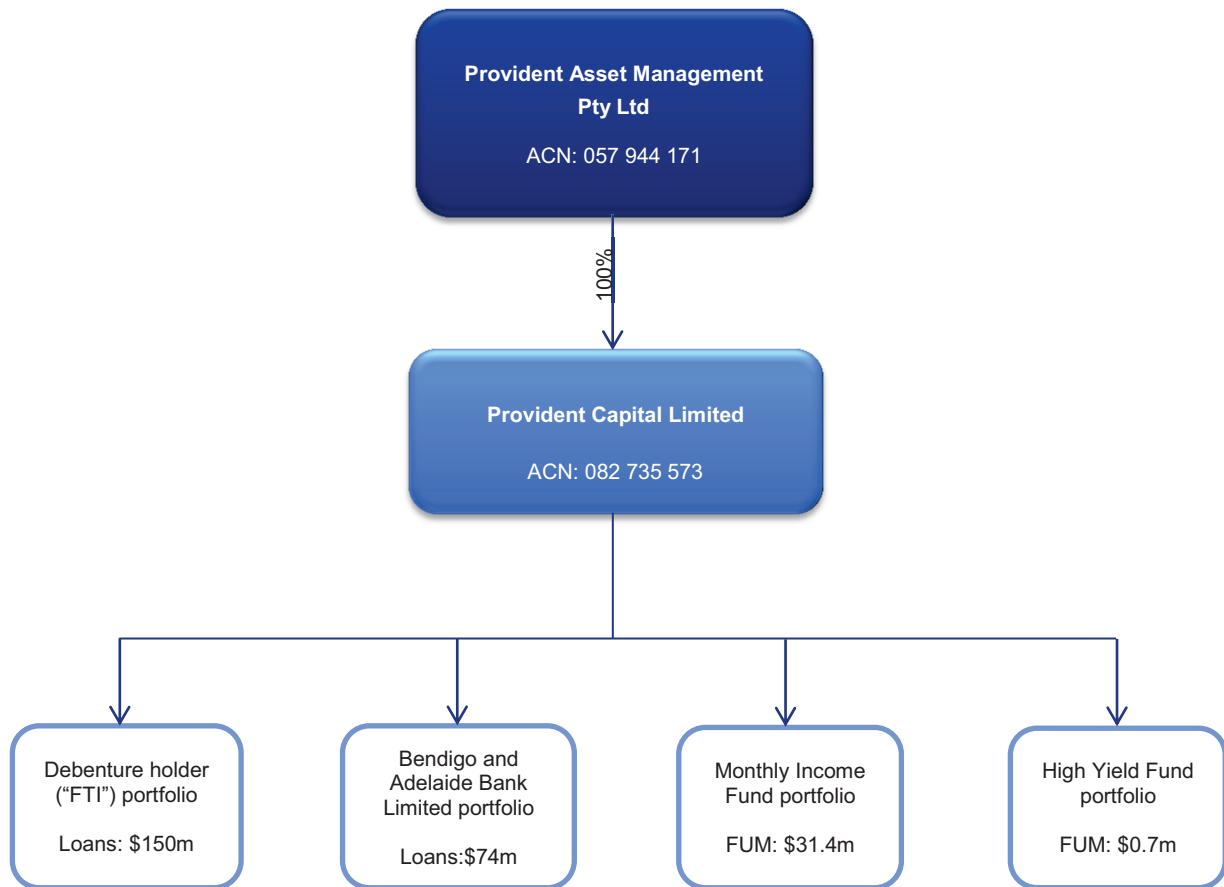
**2011**

- + The Trustee and ASIC raised concerns surrounding various disclosures and the Company's financial position (in particular loan impairments and arrears)

**2012**

- + March 2012 – The ABL facility matured and no extension was granted.
- + March 2012 – PPB Advisory issued an IA report regarding the Company's business and financial affairs for the Trustee.
- + July 2012 – Receivers appointed by the Court/Trustee.
- + September 2012 – Tony McGrath and Joseph Hayes appointed as Joint and Several Administrators of PCL.

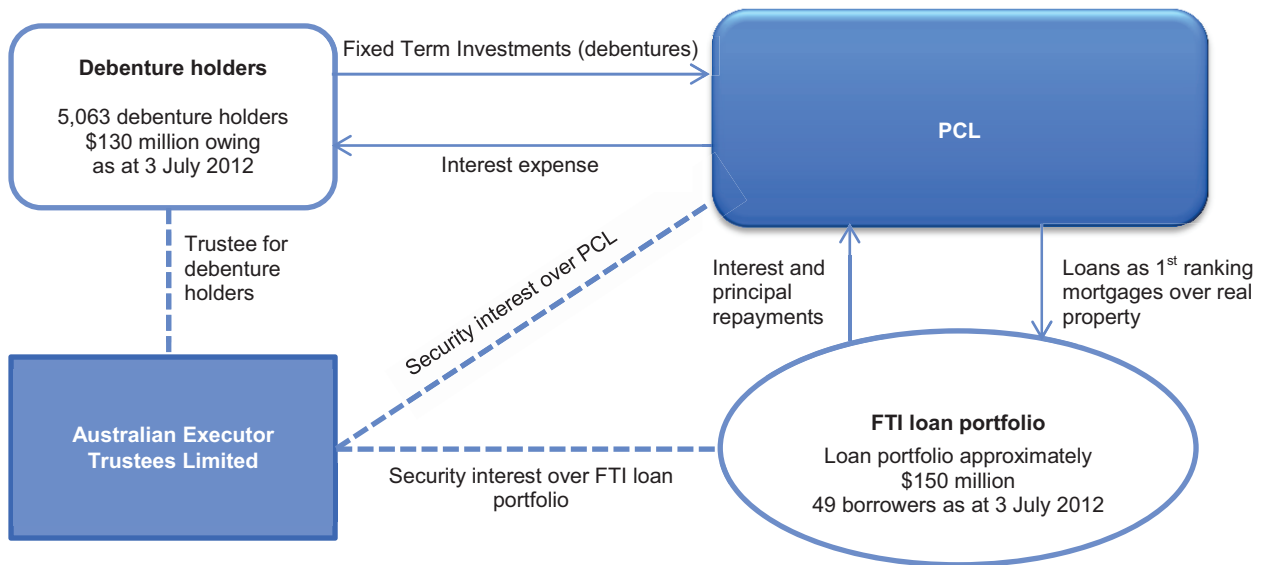
### 4.3 Organisational structure



- + Provident Asset Management Pty Ltd (“PAMPL”) is the sole shareholder of the Company as trustee for the Provident Trust and O’Sullivan Trust.
- + Michael O’Sullivan is the sole shareholder of PAMPL.
- + The Company operates four separate non-bank property lending businesses (discussed below).

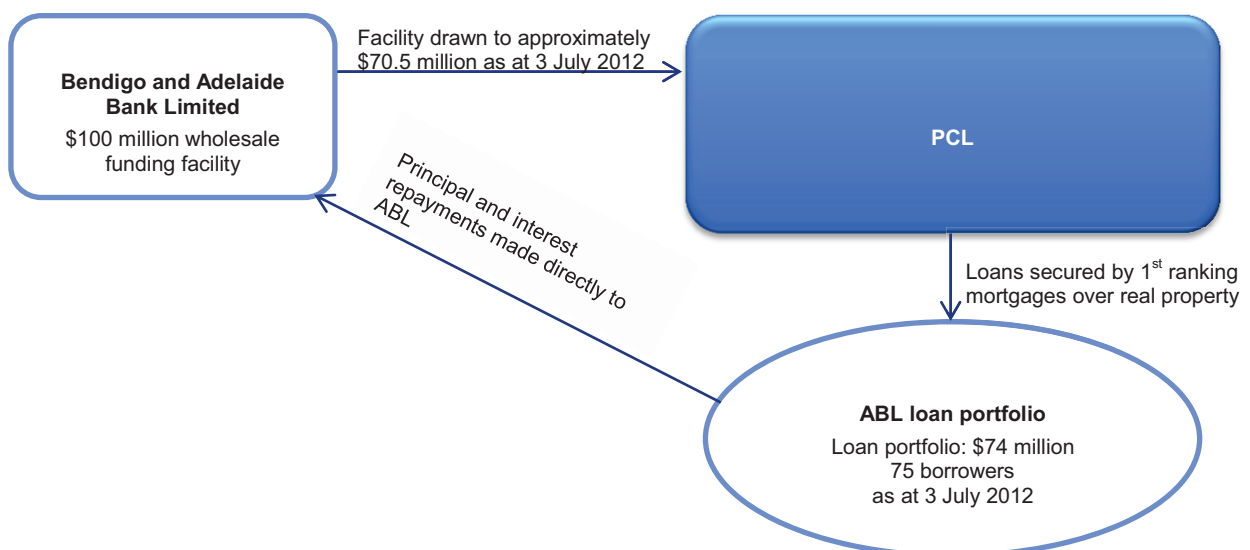
#### 4.3.1 Debenture holder (“FTI”) portfolio

- + PCL raised funds from debenture holders and advanced funds raised to third party borrowers for property investment purposes (secured by first ranking mortgages).
- + At the date of the Receivers’ appointment, there were 49 borrowers owing approximately \$150 million.
- + Debenture holders receive interest either at maturity or at periodic intervals (monthly, quarterly, half yearly or annually), with the principal repayable upon redemption.
- + PCL generated profit from the difference between the interest charged to borrowers and the interest payable to debenture holders.
- + AETL holds first ranking security over the FTI portfolio and over all assets and undertakings of PCL (which includes any surplus from the ABL portfolio).



#### 4.3.2 ABL facility

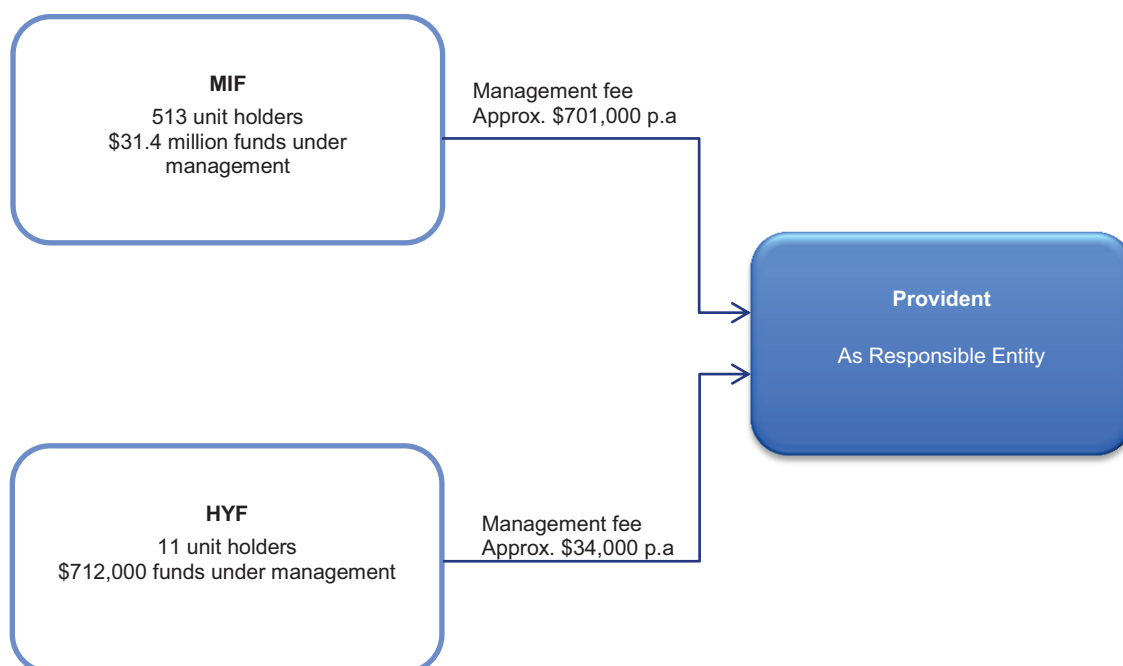
- + ABL granted a \$100 million wholesale funding facility to the Company. Similarly to the FTI portfolio, the ABL facility was utilised for advancing loans to third party borrowers on a first mortgage basis for property investment.
- + As at 3 July 2012, 75 borrowers owed \$74 million.
- + ABL and PCL both recognise the loan books on their balance sheets and have an equity sharing agreement in place. This agreement is structured such that ABL has the right to all funds repaid by borrowers up to the outstanding balance owing, with PCL entitled to any surplus (additionally, PCL earns a margin on the interest rate 'spread').
- + As at 3 July 2012, ABL held \$12 million in a 'cash collateral' account securing PCL's obligations under the funding facility.
- + The Receivers have advised that ABL is accruing all mortgage interest received under its facility and withholding the cash collateral until the facility is repaid in full. We note that the Receivers anticipate a return to PCL from the ABL loan book.





### 4.3.3 MIF and HYF

- + The Company acts as Responsible Entity (“RE”) for MIF and HYF and receives a management fee for this role.
- + The schemes raised funds from unit holders (equity holders) and advanced those funds raised to third parties to fund the purchase and development of real property. Each fund has separate equity holders and assets.
- + As at 3 July 2012, MIF and HYF had 513 unit holders with an investment of \$31.4 million and 11 unit holders with an investment of \$712,000 respectively.
- + The Receivers are currently undertaking a sale campaign in respect of PCL’s role as RE.



## 4.4 Statutory details, shareholders and officers

A search of the records maintained by the ASIC database as at the date of our appointment reveals the following statutory details:

### Company details

Company name	ACN	Registered office	Incorporation date
Provident Capital Limited	082 735 573	Goldfields House' Level 11, 1 Alfred Street, SYDNEY NSW 2000	25/05/1998

Source: SAI Global Company Search

Outlined below is PCL’s shareholder at the date of our appointment:

### Shareholder details

Shareholder	Class	Shares held
Provident Asset Management Pty Ltd	Ordinary	100,000

Source: PPB Advisory

Outlined below are PCL’s office holders at the date of our appointment:

#### Current office holders

Name	Position	Appointment date
Michael Roger O'Sullivan	Director and Secretary	25/05/1998
Treveor John Seymour	Director	25/05/1998
Malcolm Phillip Bersten	Director	1/07/2000
John Patrick Sw eeeney	Director	30/07/2008
Salman Haq	Secretary	25/07/2000

*Source: SAI Global Company Search*

## 4.5 Security interests

A search of the PPSR database has identified the following security interests over the Company:

#### Charges

Financier	Security
Australian Executor Trustees Limited	All present and after acquired property (FTI and PCL loans)
Bendigo and Adelaide Bank Limited	All present and after acquired property (ABL loans)

*Source: PPSR Database*

## 5 Administrators' actions to date

The Administrators and our staff have attended to the following matters since our appointment:

- + met with the Company's Directors and Receivers to understand the background to the Company and arrange for copies of relevant books and records;
- + issued written requests for the Directors to complete a Report as to Affairs, Directors' questionnaire and deliver any books and records not currently in the Receivers' possession to the Administrators;
- + reviewed the books and records of the Company to ascertain its financial position, the key issues affecting the Company and any transactions that may be recoverable by a Liquidator;
- + answered unsecured creditors' enquiries in relation to the administration;
- + attended to statutory duties including informing ASIC, the Australian Taxation Office and other relevant authorities of our appointment and advertising our appointment;
- + issued our Notice of Appointment and first Circular to Creditors;
- + convened the first meeting of creditors held on 28 September 2012;
- + attended and chaired the first meeting of creditors held on 28 September 2012 (and lodged minutes with respect to same);
- + conducted investigations in relation to the business, property, affairs and financial circumstances of the Company;
- + liaised with the Directors, ASIC, Receivers and AETL (including AETL's legal advisers) in relation to the proposed DOCA ; and
- + attended to other general and statutory requirements.

## 6 Books and records

We are required to provide an opinion as to whether the Company's books and records were maintained in accordance with Section 286 of the Act.

The Act requires that a company must keep written financial records that:

- + Correctly record and explain its transactions and financial position and performance; and
- + Would enable true and fair financial statements to be prepared and audited.

Failure to maintain books and records in accordance with Section 286 of the Act provides a presumption of insolvency. This presumption can be relied upon by a Liquidator in an application for compensation for insolvent trading and other actions for recoveries pursuant to the Act from Directors and related parties.

The administrative functions of PCL, including the day to day accounting function and the maintenance of books and records, were performed internally by staff with specific responsibility for same.

We have secured copies of the key books and records of the Company from its Receivers, including copies of financial, banking, creditor and asset information.

We consider that a company operating PCL's business should, as a minimum, maintain the following books and records in order to comply with Section 286 of the Act:

- + Accounting files and associated working papers

PCL's accounting files were recorded and maintained using purpose built software (New Technology Business Solutions) which was operated and maintained internally by the Company's staff.

- + Financial statements

The Company prepared audited financial statements and taxation lodgements for the period to 30 June 2011. Additionally, PCL prepared monthly management accounts, including cash flow forecasts, loan analysis, balance sheet and profit and loss statements.

- + All banking records including account statements, cheque and deposit books

The banking records of the Company were maintained internally by the Company's staff. Our review of banking records does not raise any issues.

- + Borrower files including loan agreements and registers

We have reviewed a sample of borrower files and confirm that they appear to be in order. The Receivers have not raised any issues in this regard.

- + Debenture holder registers and documentation

Following our appointment we were furnished with a comprehensive debenture holder register. The Receivers have advised that the Company maintained adequate records of debenture holdings.

- + Asset registers

The Company maintained appropriate asset registers.

- + Company registers and board minutes

PCL maintained adequate records with respect to board reports and board minutes.

- + Property valuations

Whilst we have not sighted the valuation reports for the Company's security properties, the Receivers have indicated that the Company maintained valuations for its properties. Having regard to the number of loans in default, in our opinion, it would have been appropriate for the Company to have obtained regular valuations to assist with considering impairments and the recoverability of its loan portfolio. In this regard, we understand from the Receivers that the Company is likely to have under provisioned its bad debt impairments for a number of years.

*Summary*

Overall, the Company appears to have maintained the types of records one would expect of companies of this nature. With the exception of the valuation/impairment comments set out above, we conclude at this time, that the Company maintained its records in accordance with the requirements of Section 286 of the Act. Our investigations are ongoing and our opinions may change should new information come to hand.

At this time we do not believe we can rely on the presumption of insolvency based on a failure to maintain books and records in accordance with Section 286 of the Act.

## 7 Historical financial performance and position

This section of the Report sets out historical financial information for PCL.

The historical financial information for the years ended 30 June 2010 and 30 June 2011 has been sourced from PCL's statutory accounts. For the year ended 30 June 2012, unaudited management accounts have been used, as statutory accounts had not been prepared prior to our appointment.

Please note we have not conducted an audit of PCL's financial records and accordingly, we are unable to comment on the accuracy or completeness of the information provided.

### 7.1 Financial performance

A summary of the historical financial performance of the Company is as follows:

Statement of Financial Performance			
	Year ended		
	Audited	Audited	Unaudited
	30 June 2010	30 June 2011	30 June 2012
<b>Income</b>			
Revenue	27,475,674	27,297,270	26,646,735
<b>Gross profit</b>	<b>27,475,674</b>	<b>27,297,270</b>	<b>26,646,735</b>
<b>Expenses</b>			
Interest expense	(14,340,023)	(16,205,208)	(16,930,318)
Employee benefits expense	(4,020,622)	(4,264,152)	(3,593,623)
Professional fees	(671,662)	(674,670)	(598,394)
Occupancy expenses	(773,759)	(788,077)	(785,866)
Impairment of loans and receivables	(2,612,904)	(1,337,756)	(15,244,766)
Other expenses	(2,247,749)	(2,368,751)	(2,423,189)
<b>Total expenses</b>	<b>(24,666,719)</b>	<b>(25,638,614)</b>	<b>(39,576,156)</b>
<b>Operating profit</b>	<b>2,808,955</b>	<b>1,658,656</b>	<b>(12,929,421)</b>

*Source: Management Accounts for the period ended 30 June 2012 and Audited Financial Statements for the periods ending 30 June 2010 and 30 June 2011*

Key points:

- + The main contributor to PCL's revenue is interest earned and establishment/rollover fees on borrower loans, whereas the major expense item is interest paid to debenture holders and ABL.
- + PCL's accounts indicate that the Company remained profitable until recent provisioning resulted in a substantial impairment expense of \$15.2 million during the year ended 30 June 2012.
- + The Receivers have advised us that the provisions made during 30 June 2012 are insufficient and that based on updated property valuations, significant further provisions are required.
- + Given certain loans have been 'non-performing' for some time, it is likely that a higher impairment expense should have been recognised in prior periods.
- + Additionally, it is possible that revenues have been overstated as interest receivable included in revenue may not have been recoverable (due to impairment).

- + In the event that impairment expenses/reduced revenue are taken into account in earlier periods, this would reduce the Company's profit (and may mean it incurred losses in earlier years).

## 7.2 Financial position

A summary of the historical financial position of the Company is as follows:

	Year ended		
	Audited	Audited	Unaudited
	30 June 2010	30 June 2011	30 June 2012
<b>Statement of Financial Position</b>			
<b>Assets</b>			
Cash and cash equivalents	8,000,641	17,249,024	1,987,206
Interest receivable	10,482,177	13,105,946	23,951,299
Loans and advances	192,599,346	178,306,246	169,864,822
Commercial bills	945,417	1,065,016	1,450,116
Property plant and equipment	501,807	221,109	232,599
Other assets	14,096,821	12,064,484	12,107,501
<i>Total assets</i>	<i>226,626,209</i>	<i>222,011,825</i>	<i>209,593,543</i>
<b>Liabilities</b>			
Trade and other payables and provisions	5,811,699	5,222,706	2,421,003
Financial liabilities	206,221,357	202,768,424	201,251,488
Other liabilities	25,785	-	-
<i>Total liabilities</i>	<i>212,058,841</i>	<i>207,991,130</i>	<i>203,672,491</i>
<b>Net assets</b>	<b>14,567,368</b>	<b>14,020,695</b>	<b>5,921,052</b>

*Source: Management Accounts for the period ended 30 June 2012 and Audited Financial Statements for the periods ending 30 June 2010 and 30 June 2011*

### Key points:

- + The Company maintained a positive net asset position throughout the period examined.
- + Key movements from 30 June 2011 to 30 June 2012 include:
  - A reduction in cash due to repayments of the ABL facility of circa \$10 million;
  - An increase in interest receivable due to a greater number of borrowers failing to remit interest when due; and
  - A decline in net assets as a result of increased impairment provisioning.
- + Whilst the Company's financial statements indicate a positive net asset position throughout the period examined, given the Receivers have advised that significant additional impairment/provisioning is required (based on updated valuations), it is likely that the "interest receivable" and "loans and advances" balances are overstated.
- + If this were reflected in the financial statements, the Company would have a net asset deficiency at 30 June 2012 (and this may be the case for several years prior to our appointment).



### 7.3 Cash flow

A summary of PCL's cash holdings over the period from 1 July 2009 to 31 December 2011 is as follows:

#### Statement of Cash Flows

	Year ended		Half Year ended
	Audited	Audited	Audited
	30 June 2010	30 June 2011	31 December 2011
<b>Cash at the beginning of the period</b>	<b>8,000,641</b>	<b>17,249,024</b>	<b>19,249,760</b>
Net increase/decrease for the period	9,248,383	2,000,736	(8,233,443)
<b>Cash at the end of the period</b>	<b>17,249,024</b>	<b>19,249,760</b>	<b>11,016,317</b>

*Source: Audited Financial Statements for the periods ending 30 June 2010, 30 June 2011 and 31 December 2011*

Key points:

- + The Company maintained a positive cash balance throughout the period examined.
- + The net cash decrease during the period ending 31 December 2011 was due to the Company paying down its wholesale funding facility with ABL.

## 8 Financial position based on Report as to Affairs

### 8.1 Report as to Affairs

The Directors have advised that we should rely on the Report as to Affairs (“RATA”) prepared as at the date of the appointment of the Receivers on 3 July 2012 as their best estimate of the Company’s financial position. They have noted that as the Receivers have been in control of the Company’s business, they are unable to update the RATA to a more recent date in line with our appointment. We acknowledge and agree with this position.

A summary of the RATA is as follows:

#### Summary of Directors' RATAs as at 3 July 2012

	Net realisable value as at 3 July 2012
<b>Assets</b>	<b>(\$)</b>
Cash	2,178,074
Loans and advances	187,472,880
Property, plant and equipment	232,599
Other	17,728,881
<b>Total</b>	<b>207,612,434</b>
<b>Liabilities</b>	<b>(\$)</b>
Secured creditors	200,745,545
Unsecured creditors	1,112,895
<b>Total</b>	<b>201,858,440</b>
<b>Estimated surplus</b>	<b>5,753,994</b>

Source: Directors' RATA

### 8.2 Assets

#### 8.2.1 Cash

The Receivers have taken control of the Company’s cash holdings.

#### 8.2.2 Loans and advances

Loans and advances include the principal and accrued interest balances of all loans funded by debenture holders and ABL (the HYF and MIF portfolios do not appear on PCL’s balance sheet).

A summary of the debenture holder (FTI) and ABL funded portfolios as at 3 July 2012 is as follows:

#### Loan Portfolio summary as at 3 July 2012

	FTI				ABL			
	Number	% of total	Value	% of total	Number	% of Total	Value	% of total
Performing	13	27%	7,914,172	5%	49	65%	39,028,431	53%
Non-performing	36	73%	142,133,324	95%	26	35%	35,156,359	47%
<b>Total loan balance</b>	<b>49</b>	<b>100%</b>	<b>150,047,496</b>	<b>100%</b>	<b>75</b>	<b>100%</b>	<b>74,184,790</b>	<b>100%</b>

Source: Receivers and Managers analysis of the books and records

FTI key points:

- + At 3 July 2012, the FTI portfolio consisted of 49 loans totalling approximately \$150 million.
- + Approximately 95% of the portfolio was non-performing at the time of the Receivers' appointment.
- + We note that many of the loans have been in arrears for an extended period of time.
- + The Receivers are obtaining a revised valuation for each underlying security property and advise that this process is continuing. We understand from the Receivers that valuation evidence indicates that the FTI loan portfolio is significantly impaired and under provisioned.

ABL key points:

- + At 3 July 2012, the ABL portfolio consisted of 75 loans totalling approximately \$74 million. Approximately 47% of the portfolio was non-performing at the time of the Receivers' appointment.
- + The Receivers continue to manage this portfolio on behalf of ABL, including collecting interest on the performing loans. Under the terms of its facility, all interest (including PCL's 'spread') is 'locked up' until ABL has been repaid.
- + The amount owing to ABL as at the date of the Receivers' appointment was approximately \$70 million and additionally, ABL holds a 'cash collateral' account with a balance of approximately \$12 million. Accordingly, once ABL has been repaid, PCL will obtain the balance of funds available (if any). Based on the RATA there is approximately \$16 million of equity in the ABL portfolio (but this has not been verified).

The 'loans and advances' balance shown in the Directors' RATA includes an amount of approximately \$9 million in contingent assets. These assets relate to litigation that is currently being undertaken by PCL to recover funds from various parties. The Receivers continue to manage these matters on behalf of the Company.

### 8.2.3 Property, plant and equipment

Property, plant and equipment represents the Company's interests in office equipment, computers and various software packages (which make up the majority of this amount). We understand that certain software was purpose built and we are unsure of realisable values (given its specialised nature).

### 8.2.4 Other

The major other assets of PCL include the \$12 million held by ABL as cash collateral for its loan portfolio and deferred tax assets of approximately \$5 million. Having regard to PCL's insolvency, it is unlikely that the deferred tax assets will represent significant value for creditors.

## 8.3 Liabilities

### 8.3.1 Secured creditors

The majority of the Company's liabilities consist of the amount owing to AETL as Trustee (on behalf of debenture holders) and ABL on its wholesale funding facility.

As at 3 July 2012, AETL and ABL were owed approximately \$130 million and \$71 million respectively.

AETL holds a registered security interest over all assets and undertakings of PCL whereas ABL's security interest is limited to the ABL funded loan portfolio and the \$12 million cash collateral account.

Based on preliminary feedback from the Receivers, we understand that AETL/debenture holders are expected to suffer a significant shortfall on their secured claim whereas ABL may be repaid their debt in full.

### 8.3.2 Unsecured creditors

The unsecured creditor balance as at the date of the Receivers and Managers appointment included approximately \$430,000 owing in employee entitlements, some of which may have a priority ranking to other unsecured creditor claims.

Apart from preferential employee entitlements (and excluding any recoveries from antecedent transactions detailed at Section 10), there is unlikely to be a return to unsecured creditors of the company (given the anticipated shortfall to AETL as secured creditor).

## 9 Key events leading up to insolvency

- + In late 2011, AETL raised concerns in relation to disclosures in PCL's product disclosure statements and accounts. AETL met with PCL's auditor and ASIC regarding these concerns and requested for an IA to be appointed to PCL. ASIC issued a notice for certain books and records to be produced to ASIC for review.
- + After a review of PCL's books and records, further disclosure concerns were raised by ASIC. ASIC recommended PCL to release an Information Booklet to supplement disclosures and to appoint an IA.
- + PPB Advisory were engaged by AETL in early 2012 to undertake an independent review of the Company's financial performance, position and prospects. PPB Advisory raised a number of concerns during the course of their review including; the substantial number of loans in arrears in both the FTI and ABL portfolios, whether these loans were appropriately impaired/provisioned for and whether certain other assets were realisable at the values ascribed in PCL's accounts.
- + Following PPB Advisory's review, additional work by PPB Advisory and ongoing dialogue between the Trustee, ASIC and the Company, AETL applied to the Court for the appointment of Receivers on 3 July 2012.
- + Following the Court appointment, AETL appointed the Receivers as Receivers and Managers under the terms of its security instrument on 10 July 2012 and we were appointed Administrators on 18 September 2012.

### 9.1 Outstanding winding up applications

We are not aware of any outstanding winding up applications against the Company.

## 10 Offences, insolvent trading and voidable transactions

### 10.1 Offences

The IPA has issued an “Offences, Recoverable transactions and Insolvent trading” information sheet providing general information for creditors about insolvent trading and voidable transactions.

This information sheet is available from the IPA website ([www.ipaa.com.au](http://www.ipaa.com.au)). If you are unable to access this website, please contact Adam Blogg on (02) 9248 9950 to obtain a copy.

### 10.2 Insolvent trading

Other than in cases of fraud, the Directors of a company may only be sued for insolvent trading if the company is in liquidation. Where a Voluntary Administrator has been appointed, assessment of the issue of insolvent trading can be important to creditors if they are being asked to choose between a DOCA or a liquidation. In that instance, creditors have to assess the advantages to them of a DOCA (which does not include proceeds from insolvent trading actions) compared to the likely return to them in a liquidation (which could include the proceeds of any successful insolvent trading action). A liquidation also preserves the possibility of individual creditors taking action in their own right.

Before a Court will order that a person pay compensation in respect of insolvent trading, a Liquidator must establish that:

- + The person was a Director of the company at the time the company incurred the debts that are the subject of the claim;
- + The company was insolvent at that time or became insolvent by incurring the debt;
- + At that time, there were reasonable grounds for suspecting that the company was insolvent or would become insolvent by incurring the debt; and
- + The debt the subject of the claim was wholly or partly unsecured and the creditors to whom debts are owed have suffered loss and damage.

In determining whether the Directors traded the Company at a time when it was insolvent, we have considered both a cash flow assessment and the net asset position of the Company.

#### 10.2.1 Cash flow assessment

Assessment of a company’s solvency position on a cash flow basis requires a review of the company’s ability to meet its ongoing liabilities from its available cash resources.

We comment as follows:

- + Having regard to the Company’s primary business (of advancing monies raised from debenture holders and ABL for property investment purposes), the relevant consideration is whether the Company would receive timely loan repayments from its borrowers sufficient to meet redemption/interest payments to debenture holders and ABL, construction draw downs and operational expenses.
- + From our investigations, the Company maintained a positive cash balance for the entire period it traded and was able to meet operational expenses and all debenture redemptions/interest payments as and when they fell due. We have seen no evidence of a build-up of statutory liabilities, deferral of creditors or other symptoms of cash flow shortages.
- + Further, as at the date of the appointment of the Receivers, the Company held a positive cash balance of \$2.1 million.
- + A separate analysis of the Company’s creditors reveals that:
  - The Company had a policy of paying its creditors fortnightly; and

- As at the date of our appointment, the Company's creditor profile consisted predominantly of the preceding month's trading liabilities.
- + Based on our investigations to date, the Company appeared to be cash flow solvent up to the date of the appointment of the Receivers. Specifically, the Company had sufficient cash resources to pay its debts as and when they fell due.
- + However, in assessing cash flow solvency it is important to consider the timing of future receipts and commitments which in the case of PCL will be reliant on the profile of loan recoveries and redemptions. This issue requires further review.

#### 10.2.2 Net assets assessment

- + Considering the net asset position of a company requires a review of the assets and liabilities disclosed in its balance sheet. The Company's summarised balance sheets and RATA are reproduced in Section 7 and Section 8 above.
- + The RATA prepared by the Directors reveals that as at the date of our appointment, the Directors considered that Provident had a net asset surplus of \$5.75 million. We note that the RATA assumes that all outstanding loan advances are recoverable at full book value.
- + In our experience, where loans are non-performing or the lender has entered into possession of the security property, there is frequently a shortfall to the lender upon realisation of the underlying security property. Given that a significant proportion of the loan portfolio is 'non-performing' (circa 95%) and Provident is mortgagee in possession of a substantial number of security properties (circa 61%), it is likely that Provident will suffer a shortfall on recoveries on a range of loans once the underlying security properties have been realised.
- + We note that the Receivers are obtaining updated valuations of the various security properties and will communicate the likely return to debenture holders in due course. Notwithstanding the revaluation process, the Receivers have indicated that there will be a significant deficiency in assets to meet the claims of debenture holders.
- + Based on the above, it would appear that the Company was balance sheet insolvent at the date of our appointment.
- + Given that a number of the Company's loans have been in default for an extended period of time prior to our appointment (some in excess of four years), it is possible that the Company was insolvent on a net assets basis at a point in time prior to our appointment.
- + In order to determine the exact date the Company became insolvent (on a net assets basis), it may be necessary to instruct valuers to prepare historical security property valuations.

#### 10.2.3 Director defences

Section 588H of the Act sets out statutory defences available to the Directors in respect of a claim for insolvent trading. These include:

- + At the time of incurring debts, the Director had reasonable grounds to expect that the company was solvent.
- + The Director relied on information provided by a competent and reliable person which concluded that the company was solvent at the time debts were incurred.
- + The Director was ill at the time the debts were incurred and could not take part in the management of the company.
- + Reasonable steps were taken to prevent the incurring of debt.

#### 10.2.4 Administrators' conclusions regarding solvency

As stated above, solvency is a question of fact to be ascertained from a consideration of a company's financial position as a whole.

Whilst the Company may have remained cash flow solvent prior to our appointment, given the length of time certain loans were in default, it is possible that the Company was balance sheet insolvent at some stage prior to our appointment. This means that the Directors may have caused the Company to incur fresh liabilities at time when it was insolvent.

Having regard to the above and the various defences available, the Directors could establish a range of counter arguments to this position, including:

- + The Company had access to alternative sources of equity to improve its position (if and when this was needed);
- + It was possible to restructure the terms of debenture holdings to alleviate the cash flow pressures from redemptions and interest payments;
- + It was possible to improve the value of the Company's security property through procuring planning consents and undertaking development activities; and
- + General economic conditions resulted in a depressed property market which negatively impacted the Company's loan book and asset values. It was expected that the general economy would recover over time and consequently, the Company's asset values would also improve.

Each of the above defences requires further consideration in order to form a view on insolvent trading.

Based on our preliminary investigations, it is possible that the Directors traded the Company at a time when it was insolvent however, more work is required to form a proper view.

In the event that we are appointed Liquidators, we will consider this issue further.

### 10.3 Voidable transactions

Corporations Regulation 5.3A.02 requires an Administrator to specify whether there are any transactions that appear to the Administrator to be voidable transactions in respect of which money, property or other benefits may be recoverable by a Liquidator under Part 5.7B of the Act (these are known as 'voidable transactions'). As with the insolvent trading analysis above, this issue is relevant to creditors if they are being asked to choose between a DOCA or a liquidation, because voidable transactions are only recoverable if a liquidation occurs.

Voidable transactions include:

- + *unfair preference claims*: transactions between PCL and a creditor, resulting in the creditor receiving from PCL, in relation to an unsecured debt owed to the creditor, a greater amount than it would have received in relation to the debt in a winding up of the company;
- + *uncommercial transactions*: being transactions which a reasonable person in the place of the company would not have entered into, taking into account the benefits and the detriment to the company, the respective benefits to the other parties involved and any other related matters; and
- + *unfair loans*: being a loan agreement where the interest or charges are considered to be extortionate. Unfair loans made to the company any time prior to the appointment of the Administrator may potentially be overturned by a subsequently appointed Liquidator, whether or not the company was insolvent at the time that the loan was entered into.

To the extent that information has been available, we have conducted the following investigations to determine the existence of voidable transactions:

- + reviewed the Company's material asset disposals and acquisitions for the last two years to ascertain whether any were acquired at overvalue or disposed of at undervalue;
- + reviewed the books and records to determine whether there have been any unfair loans made to or from the Company; and
- + reviewed all deposits and withdrawals into, or out of, PCL's bank accounts since 1 January 2012 to determine whether any creditor has been preferred over the general body of creditors as a result of any transaction.



In addition, the Receivers have also conducted their own preliminary investigations and shared the outcomes of same with us.

From our investigations and briefings from the Receivers, we note the following potentially voidable transactions:

<b>Potential voidable transactions</b>		
<b>Type</b>	<b>Potential value \$</b>	<b>Description</b>
Unfair preference claim	203,000	A number of payments were made to the Company's pre-appointment legal advisers in the weeks leading to the appointment of Receivers.
Unfair preference claim	147,208	A number of payments were made to certain creditors in the week prior to the appointment of Receivers. We understand that one of the creditors had a relationship with the Company and its Directors.
Uncommercial transaction	Unknown	The Receivers have identified instances where vendor finance was provided in respect of properties PCL was in possession of to a party who holds a close relationship with the Company and its Directors, on a seemingly uncommercial basis.

- + There are a range of defences that may be available to the parties involved in the above transactions that would need to be considered and investigated prior to commencing recovery action.
- + We note that our investigations to date are preliminary. If the Company is wound up, further investigations and a cost benefit analysis of pursuing recovery action will need to be undertaken in relation to the matters referred to above. Additionally, if proceedings are commenced, there is a risk that the claim will not be established or that a defence will be sustained. Further, even if a judgement is obtained, there is a risk that it may not be satisfied or that the amount recovered will not be sufficient to meet the costs of investigating and prosecuting the claim.

## 10.4 Related party transactions and claims

### 10.4.1 Cash flow Finance Solutions Pty Limited (“CFS”)

- + A review of the Company’s books and records has identified a number of transactions with a related party, CFS. We understand that the equity in CFS is held by certain PCL Directors.
- + The Company advanced a loan of \$2.95 million to CFS secured by a second ranking security interest. Whilst the loan to CFS was on commercial terms, we understand that no interest was ever received.
- + In 2010, the Company purchased the first ranking security interest from the first ranking charge holder. We understand that this purchase may have involved the release of certain related party obligations.
- + Furthermore, it is unclear whether the acquisition was appropriately considered given CFS’s inability to service either facility.
- + We understand that the Receivers are conducting their own investigations into the above transactions and have appointed Receivers to CFS under the terms of their security.
- + Further investigations are required to consider whether these transactions are uncommercial.

### 10.4.2 PCL Holdings Pty Limited (“PCLH”)

- + PCLH is a related entity to PCL (there are common ultimate shareholders).

- + The Receivers have advised us that the Company assigned a range of loans (subject to the ABL facility) on various occasions to PCLH.
- + Further investigations are required to determine the nature of these transactions, the consideration received and whether they were at appropriate market value.

#### 10.4.3 Other related party transactions

- + The Receivers have raised a number of concerns with us in relation to certain other related party transactions.
- + We have not had an opportunity to fulsomely consider these matters since our appointment and note that these transactions will be investigated further by a Liquidator should creditors resolve for the Company to be wound up.

#### 10.4.4 Related party debenture holdings

In addition to the above matters, our investigations reveal certain related party debenture holdings of approximately \$1.8 million.

We have seen no evidence to suggest that these debenture holdings were treated preferentially to the broader debenture holder group. As a matter of course, related party holdings are considered further if a company is placed into liquidation.

#### 10.5 Breach of Directors' duties

Sections 180 to 184 of the Act sets out the duties, obligations and responsibilities imposed on Directors which are designed to promote good governance and ensure that Directors act in the interests of the company. These duties include:

- + Duty of care and diligence;
- + Duty of good faith;
- + Duty not to make improper use of position; and
- + Duty not to make improper use of information.

We note that the transactions identified above may also constitute breaches of duty under the Act.

We will give further consideration to the Directors' discharge of their duties if the Company is wound up.

#### 10.6 Directors' disclosures

This section of the Report deals with our review of statements made by the Directors in PCL's disclosure documents which, if found to be deliberately or carelessly misleading, may represent an actionable claim of the Trustee or individual debenture holders.

In this regard, we note that in the period leading to our appointment, ASIC and the Trustee raised a number of concerns regarding the Company's disclosures, including (amongst others):

- + The 'positive' manner in which the PCL investment opportunity was described despite the number of problem loans and security properties the Company had entered into possession of; and
- + The incomplete and inaccurate quantification and disclosure of arrears and impairments. This issue may mean that the Company's profitability, asset base and equity levels have been overstated and consequently, debenture holders made an investment decision based on incorrect information.

These matters will be considered further if the company is wound up.

## 11 Other claims

It is possible that the Company may have claims against other third parties including valuers, auditors, quantity surveyors, insurers or other parties associated with the Company.

These claims fall under the Trustee's security and will therefore be subject to the Receivers' appointment.

## 12 Alternative courses of action

As Administrators, we are required to provide creditors with a statement of our opinion about each of the courses of action in respect of which creditors are entitled to vote at the meeting on 24 October 2012.

The matters requiring our opinion are:

- + whether it would be in the creditors' interests for the company to execute a DOCA;
- + whether it would be in the creditors' interests for the administration to end with control of the company reverting to its Directors; or
- + whether it would be in the creditors' interests for the company to be wound up.

In addition, creditors are entitled to adjourn the meeting for up to 45 business days.

### 12.1 Deed of Company Arrangement

A DOCA is a binding arrangement between a company and its creditors governing how the company's affairs will be dealt with. It aims to maximise the chances of the company, or as much as possible of its business, continuing, or to provide a better return for creditors than an immediate winding up. A DOCA binds all unsecured creditors, even if they voted against the proposal.

On 21 September 2012, Michael O'Sullivan and Malcolm Bersten (Directors of PCL) submitted an outline of a DOCA proposal for the Company. This DOCA was subsequently amended and an outline of the amended DOCA was submitted on 11 October 2012.

The Directors have provided the Trustee and ASIC with a copy of the DOCA outline and have met with these parties to discuss their views on same.

A copy of the DOCA outline is attached at Annexure "A" to this document.

Whilst creditors should refer to the full DOCA outline (as annexed), the key terms of the DOCA are as follows:

- + The FTI loan book and the interests of debenture holders will be transferred into HYF (one of the Company's managed investment schemes);
- + The unit holders of this scheme will have their investment repaid from the assets of the scheme (via a return of capital);
- + A personal contribution of \$50,000 will be paid by the Directors of PCL to fund a distribution to unsecured creditors;
- + Costs incurred by the Receivers and Trustee will be paid from the assets of PCL and the Receivers, Trustee and Administrators will be retired;
- + Day to day control of the Company, its loan book and operations will return to the Directors;
- + Management of the loan book will occur via PCL remaining as RE of HYF (subject to ASIC's approval of PCL's AFSL remaining in place);
- + The ABL loan book will continue being managed by PCL (under the control of its Directors) with any equity in the loan book and management fees due to PCL forming part of the assets available for debenture holders;
- + The Directors will 'wind down' the loan books (and PCL's operations), paying pro-rata distributions to debenture holders from time to time;
- + A (major) security property (located in Burleigh Views, QLD) will be developed by PCL (the Company would require third party funding for this to occur);

- + At least one new and independent Director will be added to the Company's board, either as a replacement or in addition to current board members; and
- + The Trustee's security will be discharged and debenture holders' claims as secured creditors (via the Trustee's charge) would convert to an 'equity' unit holding in HYF.

The Directors have expressed that the DOCA presents a number of benefits to creditors, including:

- + A superior return to debenture holders due to a lower cost structure than what pertains to a liquidation and receivership;
- + The ability for debenture holders to replace PCL with an alternative RE (and therefore choose who administers the Company's assets); and
- + A superior return to unsecured creditors due to the Directors' proposed equity injection of \$50,000 (versus, in their opinion, an unlikely return in a receivership).

Comments:

- + It is unclear whether the DOCA will generate a superior return to creditors than the receivership – i.e. the respective costs and realisations under a DOCA versus a receivership will be dependent on the realisation strategy adopted by the Receivers/Directors (e.g. completion of construction, loan portfolio sales etc.).
- + Debenture holder rights will be 'downgraded' from a secured creditor interest (via the Trustee) to an equity position in HYF (this exposes debenture holders to higher ranking claims).
- + Whilst the Directors propose to contribute \$50,000 towards a Deed Fund for unsecured creditors, we are unable to comment on whether this will exceed recoveries (if any) from antecedent transactions available to a Liquidator.

As creditors may be aware, the Trustee represents debenture holder interests in the administration and holds its security on their behalf. Given an essential aspect of the DOCA is to restructure debenture holder claims, the DOCA cannot be implemented without the Trustee voting in favour of it.

On 12 October 2012, we were informed by the solicitors acting for the Trustee that the Trustee is not supportive of the DOCA and would be voting to place the Company into liquidation at the meeting scheduled for 24 October 2012.

Having regard to the above, we cannot recommend the DOCA as it is incapable of implementation in its current form.

**In our opinion, it is not in the best interests of creditors to vote in favour of the proposed DOCA.**

## 12.2 Administration to end

Creditors may consider ending the administration and returning the control of the company to its Directors. We do not believe this to be a viable option given the company is insolvent and the Trustee has enforced its security.

**In our opinion, it is not in the best interests of creditors to vote for the administration to end.**

## 12.3 The company to be wound up

The liquidation of PCL would involve:

- + the completion of a more detailed investigation into the affairs of PCL and the conduct of its Directors;
- + further enquiries with regard to potential insolvent trading and voidable transaction actions including taking legal action if necessary (subject to funding); and
- + reporting to ASIC and creditors in relation to offences committed by the Directors (if any).

The costs of administering the liquidation would depend to a large extent on the:

- + nature of further investigations in relation to voidable transactions and other recovery actions; and
- + whether funding was made available to conduct such investigations.

If no funding can be secured, then the Liquidators will be unable to undertake detailed further investigations or commence recovery action. In these circumstances, our fees are likely to be approximately \$100,000. On the other hand, if our further investigations conclude that there are significant actionable claims (and funding is secured to further consider and pursue same), our remuneration may reach approximately \$500,000. As creditors will appreciate it is difficult to forecast likely costs given the broad range of outcomes.

Given that the Company is insolvent and the proposed DOCA is not capable of implementation, we recommend that the Company be wound up.

**In our opinion, it is in the best interests of creditors to vote for the Company to be wound up.**

## 12.4 Anticipated return to creditors

We note that the Company's main assets consist of interests in its two loan books (i.e. the FTI and ABL portfolios). Having regard to the nature of the loans and the level of defaults, the return to PCL from its loan books will be dependent on the value of the underlying security property supporting the loans.

In this regard, we note that the Receivers are obtaining valuations for each of the security properties and have not yet determined the likely return to debenture holders. Based on valuations received to date, the Receivers have advised us that there will be a substantial shortfall to debenture holders and therefore no return to ordinary unsecured creditors (unless there are recoveries from antecedent transactions).

Whilst we note that the proposed DOCA cannot be implemented as the Trustee does not support it, we are nevertheless required to provide an opinion on the estimated return to creditors from a liquidation versus a DOCA of the Company.

We comment as follows:

### Realisations

- + Under both a liquidation and a DOCA, the Company will have the same loan book assets to manage/realise.
- + In a liquidation, it is possible that recoveries will be made for creditors from the various transactions detailed in Section 10 of this Report.
- + Whilst the Directors propose to contribute \$50,000 towards a Deed Fund for unsecured creditors, we are unable to comment on whether this will exceed recoveries (if any) from antecedent transactions available to a Liquidator.

### Costs

- + The Directors consider that a key benefit of their DOCA proposal is the cost saving that may accrue in the event that control of the Company reverts to the Directors (and the Receivers are retired). In this regard, the Directors have proposed a capped fee of \$1.5 million per annum which will diminish over time.
- + We are unable to predict whether the Receivers' remuneration will exceed the proposed fees of the Directors. This will depend on a number of factors including the strategies adopted by the Directors/Receivers to realise the Company's assets (for example completion of construction, loan portfolio sales etc.). Additionally, professional fees are only one example of costs that would be incurred in this matter (other costs will be dependent on loan realisation strategies).

### **Overall commentary**

As the Receivers have not yet determined the return to debenture holders (based on valuation advice), we are unable to estimate the return to unsecured creditors from a winding up. In our opinion, there will be no return to unsecured creditors from the tangible assets of the Company but there may be a return from antecedent transactions. Further investigations are required to determine the strength of claims. In a DOCA, the return to unsecured creditors will be minimal.

### **12.5 Overall opinion and recommendation**

Given that the Company is insolvent and the proposed DOCA is not capable of implementation, we recommend that creditors vote for the Company to be wound up.

## 13 Creditor information on remuneration

Sections 14 to 16 of this Report deal with remuneration incurred to date, future remuneration required to deal with the remainder of the administration and, an initial remuneration estimate for the DOCA or liquidation of PCL (depending on the outcome of the meeting of creditors convened for 24 October 2012).

The IPA has issued an “Approving remuneration in external administrations” information sheet providing general information for creditors on the approval of an administrator’s fees in a liquidation, a voluntary administration or a deed of company arrangement.

This information sheet is available from the IPA website ([www.ipaa.com.au](http://www.ipaa.com.au)). If you are unable to access this website, please contact Adam Blogg on (02) 9248 9950 to obtain a copy.



## 14 Administrators' remuneration

An Administrator's remuneration can only be fixed by resolution of a committee of creditors, the company's creditors or by application to the Court.

In accordance with Section 449E of the Act and the IPA *Code of Professional Practice*, a Schedule of Remuneration Methods and Hourly Rates was provided to creditors with our first circular and tabled at the first meeting of creditors held on 28 September 2012.

Our remuneration to date has been calculated on time spent by the Administrators and their staff for the period from 18 September 2012 to 12 October 2012. In addition, we will also be seeking creditor approval of our remuneration incurred and (expected) to be incurred over the period from 13 October 2012 to the later of 24 October 2012 (should creditors resolve that PCL be wound up) or the date upon which a DOCA is executed.

### 14.1 Remuneration incurred from 18 September 2012 to 12 October 2012

The following resolution will be proposed at the meeting of creditors convened for 24 October 2012:

**“That the remuneration of the Administrators, their partners and staff, for the period from 18 September 2012 to 12 October 2012, calculated on hours spent at the rates detailed in the Schedule of Remuneration Methods and Hourly Rates provided to creditors, in the amount of \$83,846.25 (excluding GST), is hereby approved for payment.”**

This remuneration has been calculated in accordance with the Schedule of Remuneration Methods and Hourly Rates previously provided in this administration.

#### 14.1.1 Description of work completed

Task Area	General Description	Includes
<b>Assets</b> <b>1.0 hours</b> <b>\$256.50 (ex GST)</b>	Assets	+ Preliminary review of the Company's asset position.
<b>Creditors</b> <b>68.0 hours</b> <b>\$27,126.00</b> <b>(ex GST)</b>	Creditor liaison	+ Preliminary review of ABL facility agreement including liaison with ABL with respect to same. + Liaison with the Receivers regarding the debenture holder position generally. + Regular liaison with creditors in relation to their claims and the administration generally. + Review and prepare correspondence to creditors and their representatives via facsimile, email and post.
	Creditor reports	+ Preparing creditor reports and notifications (including our initial circular to creditors and this report pursuant to Section 439A of the Act).
	Meeting of Creditors	+ Preparation for and attendance at first meeting of creditors including the preparation of the meeting circular, notices, proxies, and advertisement. + Preparation of meeting file including; Chairman's notes, agenda, certificate of postage, attendance

Task Area	General Description	Includes
		<ul style="list-style-type: none"> <li>register and list of creditors.</li> <li>+ Preparation and lodgement of minutes of first meeting of creditors with ASIC.</li> <li>+ Responding to creditors' queries and questions immediately following the meeting of creditors.</li> </ul>
<p><b>Investigations</b> <b>65.5 hours</b> <b>\$24,201.00</b> <b>(ex GST)</b></p>	<p>Conducting investigation</p>	<ul style="list-style-type: none"> <li>+ Attendance at meetings with the Receivers regarding the financial position and history of PCL.</li> <li>+ Reviewing PCL's bank statements to identify any potential voidable transactions.</li> <li>+ Analysing the Company's historical profit and loss, balance sheet and cash flow statements.</li> <li>+ Review of IA report for PCL.</li> <li>+ Reviewing Prospectuses and information booklets issued by the Company.</li> <li>+ Reviewing the Federal Court judgment appointing the Receivers on 3 July 2012.</li> <li>+ Conducting a solvency review on a 'cash flow' and 'net assets' basis.</li> <li>+ Reviewing a sample of loan agreements entered into by the Company to ascertain the appropriateness of same.</li> <li>+ Reviewing the terms of the Trust Deed and analysing the Company's compliance with the requirements of same.</li> <li>+ Reviewing the FTI and ABL loan book position, including analysing the provisioning and arrears position for same.</li> <li>+ Reviewing the debenture holder register to ascertain the existence of related party debenture holdings.</li> <li>+ Preliminary investigations with respect to related party transactions between PCL, CFS, PCLH and other parties.</li> </ul>
<p><b>DOCA</b> <b>45.7 hours</b> <b>\$23,293.80</b></p>	<p>DOCA</p>	<ul style="list-style-type: none"> <li>+ Attendance at various meetings with the Directors regarding the DOCA proposal and the mechanics of same.</li> <li>+ Considering the DOCA proposal and responding to the Directors accordingly.</li> <li>+ Preparation of correspondence to key stakeholders seeking their views on the Directors' DOCA proposal.</li> <li>+ Attendance at meetings with the Receivers and AETL's legal advisers regarding the DOCA proposal generally.</li> <li>+ Liaison with ASIC regarding the Directors' DOCA proposal including attendance at a meeting regarding</li> </ul>

Task Area	General Description	Includes
		<p>same.</p> <ul style="list-style-type: none"> <li>+ Liaising with AETL and their legal advisers regarding their views on the DOCA proposal.</li> <li>+ Considering the terms of the DOCA and incorporating same in our report pursuant to Section 439A of the Act.</li> <li>+ Comparing the expected outcome to creditors under the DOCA as compared with a liquidation.</li> <li>+ Preparation of our recommendation in respect of the DOCA proposal including our analysis of same.</li> </ul>
<p><b>Administration and statutory</b>  <b>29.3 hours</b>  <b>\$8,968.95</b>  <b>(ex GST)</b></p>	<p>Planning / Review</p>	<ul style="list-style-type: none"> <li>+ Internal discussions regarding the status of the administration.</li> <li>+ Internal strategy meetings and work plans.</li> </ul>
	<p>Dealing with directors and their advisers</p>	<ul style="list-style-type: none"> <li>+ Reviewing the separate RATA's prepared by the Directors and Receivers.</li> <li>+ General liaison with the Directors regarding the administration.</li> <li>+ Preparation of various correspondence to the Directors.</li> </ul>
	<p>Statutory Notices</p>	<ul style="list-style-type: none"> <li>+ Preparation and lodgement of statutory notices<sup>0</sup> with ASIC.</li> <li>+ Advising other statutory authorities (e.g. the ATO, Office of State Revenue and Sherriff's office) of our appointment.</li> </ul>
	<p>Books and records</p>	<ul style="list-style-type: none"> <li>+ Liaising with the Receivers and obtaining copies of the Company's key books and records.</li> </ul>

14.1.2 Calculation of remuneration

Summary of Administrators' remuneration by category of work for the period from 18 September 2012 to 12 October 2012														
				Task area										
Employee	Position	\$/hour	Total		Assets		Creditors		Investigations		Deed of Company Arrangement		Statutory and Administration	
		(ex GST)	hrs	\$ (ex GST)	hrs	\$ (ex GST)	hrs	\$ (ex GST)	hrs	\$ (ex GST)	hrs	\$ (ex GST)	hrs	\$ (ex GST)
Joseph Hayes	Partner	621	12.5	7,762.50	-	-	3.5	2,173.50	-	-	8.5	5,278.50	0.5	310.50
Tony McGrath	Partner	621	14.0	8,694.00	-	-	5.0	3,105.00	-	-	8.5	5,278.50	0.5	310.50
Barry Kogan	Director 1	563	42.0	23,625.00	-	-	15.0	8,437.50	11.5	6,468.75	14.0	7,875.00	1.5	843.75
Mitchell Mansfield	Manager	369	74.8	27,601.20	-	-	20.0	7,380.00	34.5	12,730.50	9.7	3,579.30	10.6	3,911.40
Stephen Nikolovski	Assistant Manager	333	1.0	333.00	-	-	1.0	333.00	-	-	-	-	-	-
Adam Blogg	Senior Accountant	257	56.7	14,543.55	1.0	256.50	20.0	5,130.00	19.5	5,001.75	5.0	1,282.50	11.2	2,872.80
Thomas Scarf	Undergraduate	189	1.4	264.60	-	-	1.4	264.60	-	-	-	-	-	-
Various	Support Staff	144	7.1	1,022.40	-	-	2.1	302.40	-	-	-	-	5.0	720.00
<b>Totals</b>			<b>209.5</b>	<b>83,846.25</b>	<b>1.0</b>	<b>256.50</b>	<b>68.0</b>	<b>27,126.00</b>	<b>65.5</b>	<b>24,201.00</b>	<b>45.7</b>	<b>23,293.80</b>	<b>29.3</b>	<b>8,968.95</b>
GST				8,384.63	25.65		2,712.60		2,420.10		2,329.38		896.90	
<b>Total inc GST</b>				<b>92,230.88</b>	<b>282.15</b>		<b>29,838.60</b>		<b>26,621.10</b>		<b>25,623.18</b>		<b>9,865.85</b>	
<i>Average hourly rate</i>				<i>400.22</i>	<i>256.50</i>		<i>398.91</i>		<i>369.48</i>		<i>509.71</i>		<i>306.11</i>	

## 14.2 Estimated Administrators' remuneration from 13 October 2012

In addition to our remuneration incurred to 12 October 2012, we will also be seeking creditor approval of our remuneration incurred and (expected) to be incurred over the period from 13 October 2012 to the later of 24 October 2012 (should creditors resolve that PCL be wound up) or the date upon which a DOCA is executed.

Subject to the creditors' resolution on the future of the Company, one of the following resolutions will be proposed at the meeting of creditors convened for 24 October 2012:

### Creditors vote in favour of liquidation

**“That the Administrators' remuneration for the period from 13 October 2012 to 24 October 2012 shall be a sum equal to the time cost spent by the Administrators, their partners and their staff, calculated at the rates detailed in the Schedule of Remuneration Methods and Hourly Rates provided to creditors, in the amount of \$22,000 (exclusive of GST).**

**Creditors acknowledge that if actual costs incurred are below the amount approved, the Administrators are only authorised to draw the amount incurred. Creditors also acknowledge that if actual costs incurred exceed the amount approved, the Administrators will seek further approval from creditors.**

**The Administrators are approved to draw their remuneration as and when it is incurred from funds under their control or that come to hand.”**

### Creditors vote in favour of the DOCA

**“That the Administrators' remuneration for the period from 13 October 2012 to the date upon which the DOCA is executed shall be a sum equal to the time cost spent by the Administrators, their partners and their staff, calculated at the rates detailed in the Schedule of Remuneration Methods and Hourly Rates provided to creditors, in the amount of \$50,000 (exclusive of GST).**

**Creditors acknowledge that if actual costs incurred are below the amount approved, the Administrators are only authorised to draw the amount incurred. Creditors also acknowledge that if actual costs incurred exceed the amount approved, the Administrators will seek further approval from creditors.**

**The Administrators are approved to draw their remuneration as and when it is incurred from funds under their control or that come to hand.”**

The above remuneration has been calculated in accordance with the Schedule of Remuneration Methods and Hourly Rates previously provided at the commencement of the administration.

The future remuneration being sought represents the current estimate of the work required to be completed up to the later of when creditors resolve that PCL be wound up or the execution of a DOCA. It does not consider an adjournment of the forthcoming meeting of creditors. In the event that the meeting is adjourned and additional time costs are incurred, we will seek further approval from creditors.

### 14.2.1 Description of major tasks to be completed and explanation of estimated fees

Task area	General description	Includes
<b>Creditors \$7,500 (ex GST)</b>	Creditor enquiries	<ul style="list-style-type: none"> <li>+ Liaison with creditors in relation to their claims and the administration generally.</li> <li>+ Receive and follow up creditor enquiries generally.</li> <li>+ Review and prepare correspondence to creditors and their representatives via facsimile, email and post.</li> </ul>

Task area	General description	Includes
	Creditor reports	+ Preparation of our report pursuant to Section 439A of the Act.
	Dealing with proofs of debt	+ Review of proofs of debt received by the Administrators.
	Meeting of Creditors	+ Preparation for and attendance at second meeting of creditors including the preparation of the meeting circular, notices, proxies, and advertisements. + Forwarding notice of second meeting to all known creditors. + Preparation of meeting file including; Chairman's notes, agenda, certificate of postage, attendance register, list of creditors, and advertisement of meeting.
<b>Investigations \$12,000 (ex GST)</b>	Conducting investigation	+ Review of potential liquidation recoveries including unfair preferences, insolvent trading and uncommercial transactions. + Reconstruct historical financial information of PCL. + Reviewing the FTI and ABL loan book position, including analysing the provisioning and arrears position. + Preliminary investigations with respect to related party transactions between PCL, CFS, PCLH and other parties. + Further comprehensive investigations to enable the completion of the Section 439A report to creditors.
<b>Administration and statutory \$2,500 (ex GST)</b>	Planning / review	+ Internal discussions regarding the status of the administration.
	Dealing with Directors and their advisers	+ Liaising with the Directors and their representatives in relation to the administration generally.
	Statutory notices	+ Preparation and filing of statutory lodgements with ASIC.
<b>DOCA \$28,000 (ex GST) (If applicable)</b>	DOCA	+ Liaising with the Directors and their advisers in relation to the proposed DOCA. + Review of the DOCA including liaison with AETL, ABL, the Directors and their respective legal advisers with respect to same. + Liaison with AETL, ABL, the Directors and legal advisers with respect to the execution of the DOCA. + Execution and lodgement of the executed DOCA.

## 15 Estimated Deed Administrators' remuneration

Should creditors vote in favour of the DOCA at the meeting on 24 October 2012, we will also put a resolution to creditors for approval of the Deed Administrators' remuneration calculated on the basis of time spent by the Deed Administrators and their staff in the (initial) amount \$50,000 (exclusive of GST).

In the event that our remuneration is below the amount approved, we will only draw the amount incurred. In the event that our remuneration exceeds the amount approved, we will seek further approval from creditors.

The following resolution will be proposed at the forthcoming meeting:

**“That the remuneration of the Deed Administrators for the period of the Deed, shall be a sum equal to the time cost spent by the Deed Administrators, their partners and their staff, calculated at the rates detailed in the Schedule of Remuneration Methods and Hourly Rates provided to creditors, in the amount of \$50,000 (exclusive of GST).**

**Creditors acknowledge that if actual costs incurred are below the amount approved, the Deed Administrators are only authorised to draw the amount incurred. Creditors also acknowledge that if actual costs incurred exceed the amount approved, the Deed Administrators will seek further approval from creditors.**

**The Deed Administrators are approved to draw their remuneration as and when it is incurred from funds under their control or that come to hand.”**

### 15.1 Description of major tasks to be completed and explanation of estimated fees

The future remuneration being sought for PCL represents the current estimate of the work required and the associated remuneration to the completion of the DOCA. Our estimate assumes that our role as Deed Administrators is limited to administering a Deed Fund for unsecured creditors and that claims received are broadly in accordance with the books and records of the Company.

In the event that our role is broadened or there are disputes with creditors as to their claims, additional remuneration will be incurred (and further approval will be sought from creditors).

Task Area	General Description	Includes
<b>Creditors \$5,000 (ex GST)</b>	Creditor enquiries	+ Review and prepare correspondence to creditors and their representatives via facsimile, email and post.
<b>Dividend \$40,000 (ex GST)</b>	Processing proofs of debt	+ Preparation of correspondence to potential creditors inviting lodgement of Proofs of Debt (“POD”). + Receipt of PODs. + Maintain POD register. + Adjudicating PODs. + Request further information from claimants regarding their POD.
	Dividend procedures	+ Preparation of correspondence to creditors advising of intention to declare dividend. + Preparation of dividend calculation. + Preparation of distribution. + Preparation of dividend file.

		<ul style="list-style-type: none"> <li>+ Preparation of payment vouchers to pay dividend.</li> <li>+ Preparation of correspondence to creditors enclosing payment of dividend.</li> </ul>
<b>Administration and statutory \$5,000 (ex GST)</b>	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>+ First month, then 6 monthly administration review.</li> <li>+ Filing of documents.</li> <li>+ File reviews.</li> <li>+ Updating checklists.</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>+ Requesting bank statements.</li> <li>+ Bank account reconciliations.</li> </ul>
	ASIC Form 524 and other forms	<ul style="list-style-type: none"> <li>+ Preparing and lodging ASIC forms including 505 and 524.</li> <li>+ Correspondence with ASIC regarding statutory forms.</li> </ul>
	ATO & other statutory reporting	<ul style="list-style-type: none"> <li>+ Notification of appointment.</li> <li>+ Preparing BAS returns.</li> </ul>
	Finalisation	<ul style="list-style-type: none"> <li>+ Notifying ATO and ASIC of finalisation.</li> <li>+ Cancelling ABN / GST / PAYG registration.</li> <li>+ Completing checklists.</li> <li>+ Finalising WIP.</li> </ul>
	Planning / Review	<ul style="list-style-type: none"> <li>+ Internal discussions regarding status of administration.</li> </ul>
	Books and records / storage	<ul style="list-style-type: none"> <li>+ Dealing with records in storage.</li> <li>+ Sending job files to storage.</li> </ul>



## 16 Estimated Liquidators' remuneration

Should creditors vote to place PCL into liquidation at the second meeting of creditors, we will also put a resolution to creditors for approval of the Liquidators' remuneration in the amount of \$100,000 (exclusive of GST).

In the event that our actual remuneration is below the amount approved, we will only draw the amount incurred. In the event that our actual remuneration exceeds the amount approved, we will seek further approval from creditors.

The following resolution will be proposed at the forthcoming meeting:

**“That the initial remuneration of the Liquidators, shall be a sum equal to the time cost spent by the Liquidators, their partners and their staff, calculated at the rates detailed in the Schedule of Remuneration Methods and Hourly Rates provided to creditors, in the amount of \$100,000 (exclusive of GST).**

**Creditors acknowledge that if actual costs incurred are below the amount approved, the Liquidators are only authorised to draw the amount incurred. Creditors also acknowledge that if actual costs incurred exceed the amount approved, the Liquidators will seek further approval from creditors.**

**The Liquidators are approved to draw their remuneration as and when it is incurred from funds under their control or that come to hand.”**

### 16.1 Description of major tasks to be completed and explanation of estimated fees

At this stage, it is difficult to predict the likely Liquidators' remuneration as this will depend on the nature of further investigations undertaken and the availability of funding for same.

If no funding can be secured, then the Liquidators will be unable to undertake detailed further investigations or commence recovery action. In these circumstances, our remuneration is expected to be approximately \$100,000 (plus GST). On the other hand, if our further investigations conclude that there are significant actionable claims (and funding is secured to further consider and pursue same), our remuneration may materially exceed this amount.

In the event that work undertaken exceeds current estimates, a further Remuneration Report will be provided and approval sought for further remuneration.

Task Area	General Description	Includes
<b>Assets \$5,000 (ex GST)</b>	Assets	+ Monitoring the progress of the receivership to ascertain whether residual funds become available for unsecured creditors.
<b>Creditors \$35,000 (ex GST)</b>	Creditor reporting	+ Liaising with creditors in relation to the liquidation. + Preparation of reports and updates to creditors from time to time. + Preparation for and attendance at Annual General Meetings of Members and Creditors.
<b>Investigation \$50,000 (ex GST)</b>	Conducting investigation	+ Conducting further investigations in relation to (potential) voidable transactions including seeking legal advice and liaising with (potential) defendants and their advisers. + Preparation and lodgement of report pursuant to Section 533 of the Act with ASIC.

Task Area	General Description	Includes
	Litigation/recoveries	<ul style="list-style-type: none"> <li>+ Obtaining preliminary legal advice on recovery matters.</li> <li>+ Liaising with legal advisers.</li> </ul>
<b>Administration and statutory \$10,000 (ex GST)</b>	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>+ First month review.</li> <li>+ Filing of documents.</li> <li>+ File reviews.</li> <li>+ Updating checklists.</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>+ Arranging for liquidation bank account to be set up.</li> <li>+ Requesting bank statements.</li> <li>+ Bank account reconciliations.</li> <li>+ Correspondence with bank regarding specific transfers.</li> </ul>
	ASIC Form 524 and other forms	<ul style="list-style-type: none"> <li>+ Preparing and lodging ASIC forms including 505, 524, 911 etc.</li> <li>+ Correspondence with ASIC regarding statutory forms.</li> <li>+ Lodging minutes of meetings with ASIC from time to time.</li> </ul>
	ATO & other statutory reporting	<ul style="list-style-type: none"> <li>+ Notification of appointment.</li> <li>+ Preparing and lodging BAS returns.</li> </ul>
	Planning / Review	<ul style="list-style-type: none"> <li>+ Internal discussions regarding status of liquidation.</li> </ul>

## 17 Receipts and payments

As the Receivers control the Company's assets, the Administrators have not made any recoveries to date.

As such, there are no receipts and payments to report to creditors.

## 18 Committee of Inspection

In the event that creditors resolve that the Company executes a DOCA or that the Company be wound up, the Act provides that a Committee of Inspection (“COI”) may be formed.

In both circumstances, a COI may be useful to provide the Administrator or Liquidator with a sounding board as to likely creditor views, and in approving any matters which require authorisation by the committee, creditors or the Court.

At the second meeting, detailed below, creditors will be invited to consider whether a COI should be formed, and if so, to nominate members.

## 19 Creditor meeting details

The second statutory meeting of creditors has been convened to be held at Cliftons, 190 – 200 George Street, Sydney, NSW 2000 on 24 October 2012 commencing at 10.30am.

Creditors who have already lodged a proof of debt do not need to complete a new proof.

Under the Act, the proxy forms lodged by creditors for the first meeting cannot be used for the second meeting. Accordingly, creditors who are unable to attend the meeting and wish to be represented should ensure that either a proxy form, power of attorney or evidence of appointment of a company representative is completed. Documents may be lodged with this office prior to the meeting or may be brought to the meeting.

A formal notice of meeting, proof of debt form and proxy form are enclosed with the circular to creditors.

**Debenture holders should note that AETL represents their interests in the administration and will attend the meeting of creditors on their behalf.**

Creditors who require further details should please contact Adam Blogg of this office on (02) 9248 9950.



A G McGrath  
*Joint and Several Administrator*



J D Hayes  
*Joint and Several Administrator*

# ANNEXURE “A”

## Summary of proposed deed of company arrangement

### Objectives

The objectives of this proposal are:

- i. to provide the Company’s debenture holders with a better return than is likely under the current receivership of the Company;
- ii. to provide the Company’s unsecured creditors with a better return than is likely under the current receivership and a liquidation of the Company; and
- iii. at the same time to maximise the chance of the Company remaining in business.

### Proposal

The proposal involves the following features:

1. The interests of the debenture holders and the assets currently under administration by the receivers (or their equivalent \$ value) would be transferred to the Provident Capital High Yield Fund (to be renamed). As a preliminary process, all current assets in the Fund will be applied to repay the current unit holders and the current scheme operated by the Fund wound up [section 601NA(a) - at a specified time per clause 3.3(a) of the Constitution]. If necessary the Fund constitution would be modified to reflect the requirements of this proposal. The Fund would involve the following features:
  - 1.1. Each debenture holder will have a beneficial interest in the Fund equal to the face value of debentures held and interest accrued but not paid as at 3 July 2012, being the date of appointment of the receivers less any payments made by the receivers in reduction of that amount .
  - 1.2. The Company will transfer into the Fund:
    - 1.2.1. all loan assets funded by the debenture programme (including all securities and related court actions);
    - 1.2.2. the right to receive any repayment from the wind up of Bendigo and Adelaide Bank wholesale loan funded portfolio (“BEN portfolio”);
    - 1.2.3. an amount equal to the highest offer made to the receivers to acquire the responsible entity rights for the managed investment schemes formerly operated by the Company plus \$1.00;
    - 1.2.4. all cash in excess of \$500,000.
  - 1.3. The Fund will be responsible for the following expenses:
    - 1.3.1. the costs of the administration;

# ANNEXURE "A"

- 1.3.2. all of the receivers costs and all costs incurred by the receiver (e.g. solicitor fees) if not already paid by the Company;
  - 1.3.3. the trustee's costs in connection with the appointment of the receivers including the legal costs in the Federal Court proceedings if not already paid by the Company;
  - 1.3.4. the costs of implementing this proposal;
  - 1.3.5. paying all loan transaction costs being the costs associated with the management or collection of a loan or realisation of the loan security (e.g. legal costs, valuer fees, selling agent fees, etc); this would include reimbursing the Company any of these costs paid by the receivers but not recouped from the loan recovery;
  - 1.3.6. paying the operating costs of the Fund including custodian and fund administration fees and paying the Company a management fee for managing the asset recovery and administration of the trust equal to 1.5% of the aggregate value of debenture holders interests in the trust from time to time and capped at \$1.5 million per annum plus GST if applicable (note: this will diminish over time as the debenture holders are repaid their investment);
  - 1.3.7. paying the Company a portfolio management fee for the wind up of the BEN portfolio of 1.5% (note: this will diminish over time as the portfolio reduces);
  - 1.3.8. any termination and redundancy costs of the Company's employees associated with this proposal .
- 1.4. The Fund will receive:
- 1.4.1. all loan transaction payments (interest and principal), including from the disposal of loan securities and litigation recoveries;
  - 1.4.2. the interest earned on the cash balances and any other the earnings on other assets;
  - 1.4.3. any repayment from the wind up of BEN portfolio.
- 1.5. The Fund will repay all debenture holders periodically from available funds pro rata to their entitlements in the Fund.
2. At the same time as the assets are beneficially transferred to the Fund, the debenture programme will terminate and the charge over the Company will be released.
  3. The Company will be re-capitalised so that it is able to satisfy the financial conditions of its AFSL.
  4. Unsecured creditors of the Company will be paid \$50,000 in full payment of the amounts owing at 3 July 2012, with payment to be made by within 90 days. Michael O'Sullivan and Malcolm Bersten will waive their entitlements as unsecured creditors.

# ANNEXURE “A”

- At least one new and independent director will be added to the Company’s board, either in addition to or as replacement of current board members.

## Preconditions

The pre-conditions for putting this proposal into place include:

- Satisfying ASIC that PCL is able to satisfy the conditions of the current AFSL which allows it to act as responsible entity of the Fund and of the Provident Capital Monthly Income Fund; alternatively each fund will need to appoint a new responsible entity;
- ASIC will also need to be satisfied that the DOCA documents are sufficient compliance with the requirements of the Corporations Act
- The current custodian of the Fund (Perpetual) and fund accountants and registry providers (Mainstream BPO) confirming that they will continue to act in those capacities under the current arrangements.
- Court approval if required (note that the receivers were initially appointed by the court);
- Obtaining an opinion on the possible tax consequences for the debenture holders.

The beneficial transfer of the loan assets into the Fund can occur immediately after the existing Fund investors have been repaid. Transfer of legal title will require the registration of transfers to the Custodian of the related loan securities and notices to the borrowers and guarantors. This registration process takes different times under the different registries (i.e. different States and PPS Register).

## Process

The process and timing would be as follows:

### *Pre- approval process*

	Date	Action
1.	Fri 12/10/12	Directors to provide Administrators with feedback on the proposal from ASIC, AET and possibly BEN
2.	Wed 17/10/12	Second creditors meeting - adjourn meeting to enable following steps to be completed
3.		Administrators to seek court approval for adjournment of second creditors meeting, if required
4.		Directors to prepare DOCA information memorandum for circulation to proposed debenture holders meeting
5.		AET to convene a meeting of debenture holders to seek a direction on how to vote on the DOCA at adjourned creditors meeting
6.		Directors to finalise preparation of DOCA documents
7.		Administrators to convene adjourned second creditors meeting to consider DOCA



# ANNEXURE “A”

## *Post-approval process*

Dates are dependent on relevant documents being prepared etc and are included to give an idea of the relationship between actions

Day		Action
1	1.	DOCA approved; includes termination of receivership and return of control of the Company to directors subject to Administration by the current Administrators
	2.	File with ASIC the termination of receivership documents
	3.	The Company issues notice to investors in HYF that the Fund will be terminated
	4.	Company implements board changes
7-15	5.	HYF investors repaid and scheme terminated
16	6.	All necessary constitutional and other structural changes made to HYF including renaming, and appointment of new RE if required
17	7.	Debenture holder assets beneficially transferred to Fund and units issued to debenture holders
	8.	Debenture programme terminated and charge over PCL discharged
	9.	Debenture holder assets title documents delivered to custodian
	10.	Lodge transfers of mortgage/security for debenture holder loan assets with respective state registries and PPSR
18	11.	Re-capitalise PCL as required for AFSL compliance, and for payment to unsecured creditors
90	12.	Last day for payment to unsecured creditors
	13.	Administrator retires after unsecured creditors paid

## **Benefits to stakeholders**

The benefits to debenture holders include:

A. A better likely return than under the current receivership/administration arrangements as a result of:

A.1. A lower cost of administration of the wind up of the programme; these costs include:

A.1.1. the receivers costs and the costs associated with the maintenance of the receivership (mainly legal fees);

A.1.2. transaction related costs (mainly legal fees at more commercially acceptable rates);

A.1.3. the trustees costs including its associated legal fees;

# ANNEXURE “A”

- A.1.4. the costs of the administration;
- A.1.5. no general operating costs such as premises rental, staff costs etc as these are absorbed in the management fee payable to the Company.
- A.2. Capped custody, accounting and registry services for the Fund (\$125,000) and management fee for the wind up of the debenture programme and BEN portfolio (see 1.3.6 and 1.3.7 above).
- A.3. Loan transaction management by people skilled in the area resulting in better loan recovery outcomes.
- A.4. Completion of the Burleigh Views development to optimise the return on this loan rather than a sale of the property “as is”; (the Fund will need to borrow funds to do this and give appropriate security);
- A.5. Avoiding the cost of future redundancy payments to Company staff except those related to effecting this proposal.
- B. An established structure that is administered under the Corporations Act involving:
  - B.1. ASIC oversight;
  - B.2. the participation of a custodian to hold the assets of the Fund for the debenture holders;
  - B.3. regular reporting requirements;
  - B.4. a structure better understood by financial advisers.
- C. If debenture holders are not satisfied with the way the Company is managing the programme, then they can replace it with another entity of their choosing. The debenture holders can act directly, rather than through the interposition of another entity.
- D. A better alignment of the interests of the debenture holders and those responsible for the wind up of the debenture programme (ie the Company’s interests are in maximising the return to debenture holders whereas the receivers interests appear to the generation of fees without risk, and the trustee’s interest appears to be the avoidance of risk).
- E. Tax treatment of the return to debenture holders being similar to proposal by receivers and under the receivership/administration arrangements.
- F. Whilst the proposal discharges the debenture holders’ claims against the Company under the Debenture Trust Deed, it does not involve any waiver or release of other rights that may exist or come into existence (whether against the Company or any other person or entity).

The benefits to unsecured creditors include receiving a payment of a substantial part of the debt owed by the Company whereas it is likely that under the receivership/administrator arrangements, these creditors will receive nothing.

# ANNEXURE “A”

The benefit to the Company’s shareholders is a restoration of the opportunity to recover value for their investment in the Company.

**NOTICE OF SECOND MEETING OF  
CREDITORS OF COMPANY UNDER ADMINISTRATION**

**Provident Capital Limited  
(Receivers and Managers Appointed) (Administrators Appointed)  
ACN 082 735 573 (the "Company")**

Notice is given that a second meeting of the creditors of the Company will be held at Cliftons, 190-200 George Street, Sydney NSW 2000 at 10:30 AM on 24 October 2012.

**Agenda**

1. To consider the Administrators' report pursuant to Section 439A of the Act, in relation to the Company and any other matters raised relating to the Company's future and then to resolve either that:
  - (a) the Company execute a Deed of Company Arrangement; or
  - (b) the administration should end; or
  - (c) the Company be wound up; or
  - (d) the meeting be adjourned.
2. To consider and if thought fit approve the Administrators' remuneration.
3. To determine the remuneration of the
  - (a) Deed Administrator, if one is appointed; or
  - (b) Liquidator, if one is appointed.
4. If the Company is wound up, to consider the appointment of a Committee of Inspection.
5. To discuss any other relevant business which may arise.

Dated 17 October 2012



A G McGrath  
*Joint & Several Administrator*

**Note:**

Under the Corporations Regulations, a creditor is not entitled to vote at a meeting unless:

- his/her claim has been admitted, wholly or in part, by the Administrator; or
- he/she has lodged with the Administrator particulars of the debt or claim (regulation 5.6.23).  
Furthermore proxies must be made available to the Administrator.

A secured creditor may vote for the whole of his debt without deduction for his/her security (reg 5.6.24(4)).

McGrathNicol  
Level 31, 60 Margaret Street, Sydney NSW 2000  
Telephone: (02) 9248 9950 Facsimile: (02) 9338 2699

**FORM 535**

Subregulation 5.6.49(2)

*Corporations Act (2001)*

**FORMAL PROOF OF DEBT OR CLAIM  
(GENERAL FORM)**

To the Administrators of Provident Capital Limited (Receivers and Managers Appointed)  
(Administrators Appointed) ACN 082 735 573

- 1. This is to state that the company was on 18 September 2012, and still is, justly and truly indebted to: \_\_\_\_\_  
*(full name and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor) for \$\_\_\_\_\_ and \_\_\_\_\_ cents.*

Date	Consideration (state how the Debt arose)	Amount \$ c	Remarks (include details of voucher substantiating payment)

- 2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: *(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).*

Date	Drawer	Acceptor	Amount \$c	Due Date

- \*3. I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.
- \*3. I am the creditor's agent authorised in writing to make this statement in writing. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

.....  
Signature  
Occupation:  
Address

Dated

**Proof of Debt Reference:**

\*Do not complete if this proof is made by the creditor personally.

Address: Level 31, 60 Margaret Street, Sydney NSW 2000  
Contact Name: Adam Blogg  
Contact Number: +61 2 9248 9950

**Proofs of Debt**  
**Notes for your guidance**  
(Please read carefully before filling in Form 535 or Form 536)

It is a creditor’s responsibility to prove their claim to our satisfaction.

When lodging claims, creditors must ensure that:

- (a) the proof of debt form is properly completed in every particular; and
- (b) documentary evidence, such as that detailed below, is attached to the Form 535 or Form 536.

**Directions for completion of a Proof of Debt**

- 1 Insert the full name and address of the creditor.
- 2 Under “Consideration” state how the debt arose, for example “goods sold to the company on .....
- 3 Under “Remarks” include details of any documents that substantiate the debt (refer to the section titled “Information to support your claim” below for further information).
- 4 Where the space provided for a particular purpose is insufficient to contain all the required information in relation to a particular item, that information should be set out in an annexure.
- 5 An annexure to the form must have an identifying mark and be endorsed with the words:  
“This is the annexure of ..... pages marked ..... referred to in the Form 535/536 signed by me and dated .....  
.....  
Signature(s) Name of Signatory IN BLOCK LETTERS”  
and signed by each person signing the form to which the document is annexed.
- 6 The pages in the annexure must be numbered consecutively.
- 7 Where a document, copy of a document or other matter is annexed to a form, reference made in the form to the annexure shall be by its identifying mark, the number of pages in it, and a brief description of the nature of the document and its contents.
- 8 A reference to an annexure includes a document, copy of a document or any other matter accompanying, attaching to or annexed to a form.

**Information to support your claim**

Please note that your debt is not likely to be accepted unless evidence to support its existence is provided. Detailed below are some examples of the type of debt creditors may be claiming and a suggested list of documents, copies of which should accompany a proof of debt for that class of creditor.

**Trade Creditors**

- Statements and supporting invoices(s) showing the amount of the debt; and
- Advice(s) to pay outstanding invoice(s) (optional).

***Guarantees/Indemnities***

- Executed guarantee/indemnity;
- Notice of Demand served on the guarantor; and
- Calculation of the amount outstanding under the guarantee.

***Judgment Debt***

- Copy of the judgment; and
- Documents/details to support the underlying debt as per other categories.

***Deficiencies on Secured Debt***

- Security Documents (eg. mortgage);
- Independent valuation of the secured portion of the debt (if not yet realised) or the basis of the creditor's estimated value of the security;
- Calculation of the deficiency on the security; and
- Details of income earned and expenses incurred by the secured creditor in respect of the secured asset since the date of appointment.

***Loans (Bank and Personal)***

- Executed loan agreement; and
- Loan statements showing payments made, interest accruing and the amount outstanding as at the date of appointment.

***Tax Debts***

- Documentation that shows the assessment of debts, whether it is an actual debt or an estimate, and separate amounts for the primary debt and any penalties.

***Employee Debts***

- Basis of calculation of the debt;
- Type of Claim (eg. wages, holiday pay, etc);
- Correspondence relating to the debt being claimed; and
- Contract of Employment (if any).

***Leases***

- Copy of the lease; and
- Statement showing amounts outstanding under the lease, differentiating between amounts outstanding at the date of the appointment and any future monies.

**FORM 532**

Corporations Act 2001

Regulation 5.6.29

**Provident Capital Limited  
(Receivers and Managers Appointed) (Administrators Appointed)  
ACN 082 735 573 (the "Company")**

**APPOINTMENT OF PROXY**

I/We (1) \_\_\_\_\_ of

a creditor/member of **the Company** appoint

(2) \_\_\_\_\_ or in his/her absence

(3) \_\_\_\_\_ as my/our general/special proxy to vote at the meeting of creditors to be held on 24 October 2012 at 10:30AM or at any adjournment of that meeting.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 20

(4) Signature \_\_\_\_\_

**CERTIFICATE OF WITNESS** - only complete if the person given the proxy is blind or incapable of writing.

I, \_\_\_\_\_ of \_\_\_\_\_

certify that the above instrument appointing a proxy was completed by me in the presence of and at the request of the person appointing the proxy and read to him before he attached his signature or mark to the instrument.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 20

Signature of witness \_\_\_\_\_

Description \_\_\_\_\_

Place of residence \_\_\_\_\_

**Notes:**

- (1) If a firm strike out "I" and set out the full name of the firm.
- (2) Insert the name of the person appointed.
- (3) If a special proxy, "add the words 'to vote for' or the words 'to vote against' and specify the particular resolution".
- (4) If the creditor is a sole trader, sign in accordance with the following example: "A.B., proprietor".  
If the creditor is a partnership, sign in accordance with the following example: "A.B., a partner of the said firm."  
If the creditor is a company, then the form of proxy must be under its Common Seal or under the hand of some officer duly authorised in that capacity, and the fact that the officer is so authorised must be stated in accordance with the following example: "for the company, A.B." (duly authorised under the Seal of the Company).

**Proxy forms should have been completed and returned by no later than 5:00pm on 23 October 2012 to be eligible to vote at the meeting.**

RETURN TO: **Provident Capital Limited (Receivers and Managers Appointed) (Administrators Appointed)**  
of care of McGrathNicol  
Address: GPO Box 9986, Sydney NSW 2001  
Phone: +61 2 9338 2600  
Fax: +61 2 9338 2699



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

**General Information for Attending and Voting at Meetings of Creditors**

**Time and Place of Meeting**

Pursuant to Corporations Regulation (“Regulation”) 5.6.14 a meeting of creditors must be convened at a time and place most convenient for the majority of creditors entitled to receive notice of the meeting.

**Quorum**

- + Pursuant to Regulation 5.6.16 a meeting must not act for any purpose except:
  - the election of a chairperson; and
  - the proving of debts; and
  - the adjournment of the meeting:  
unless a quorum is present.
- + A quorum consists of:
  - if the number of persons entitled to vote exceeds two – at least two of those persons;  
or
  - if only one person is, or two persons are, entitled to vote – that person or those persons;  
  
present in person or by proxy or attorney.
- + A meeting is sufficiently constituted if only one person is present in person if the person represents personally or by proxy or otherwise a number of persons sufficient to constitute a quorum.

**Chairperson**

For the second meeting of creditors in a Voluntary Administration, the Administrator must chair the meeting pursuant to Section 439B of the Corporations Act 2001.

**Voting**

- + Pursuant to Regulation 5.6.23 creditors will not be eligible to vote at the meeting unless they have lodged particulars of their debt or claim prior to or at the meeting.
- + Accordingly, creditors who intend to vote at the meeting should ensure that they lodge a formal proof of debt with the company prior to or at the meeting.
- + Pursuant to Regulation 5.6.19 all resolutions put to the meeting will be decided on the voices unless a poll is demanded, before or on the declaration of the result of the voices.  
  
A poll may be demanded by:

- the chairperson; or
  - at least 2 (two) persons present in person, by proxy, by power of attorney or participating by telephone and entitled to vote at the meeting; or
  - a person present in person, by proxy, by power of attorney or participating by telephone and representing not less than 10% of the total voting rights of all persons entitled to vote at the meeting.
- + Pursuant to Regulation 5.6.21, should a poll be demanded:
- a resolution will be carried if a majority in number and a majority in value vote in favour of the resolution; and
  - a resolution will be lost if a majority in number and a majority in value vote against the proposed resolution.

In the event of a deadlock, the chairperson may exercise a casting vote. In such situations, the minutes of the meeting must specify the chairperson's reasons for exercising, or not exercising, their casting vote.

### **Proxies**

- + Pursuant to Regulation 5.6.28 creditors who are entitled to attend and vote at the meeting may appoint a natural person over the age of 18 years as their proxy to attend and vote at the meeting on their behalf.
- + Accordingly, creditors who are unable to attend the meeting but who wish to be represented should ensure that a validly executed proxy form is lodged with the Administrator prior to the meeting.
- + Pursuant to Regulations 5.6.28 and 5.6.36A creditors may lodge a facsimile copy of a proxy form with the Administrator prior to the meeting, however, the original of the instrument must be received by the Administrator within 72 hours of receipt of the faxed copy.
- + Pursuant to Regulations 5.6.28, 5.6.29 and 5.6.31 creditors may lodge a proxy form with the company prior to the meeting by electronic means, however electronic lodgement will only be possible where the convenor has specified an electronic address or other electronic means on the proxy form. Proxy forms lodged via electronic means must be validly executed by signing and scanning the form.
- + Pursuant to Regulation 5.6.32 a person may, should they so desire, appoint the Administrator by name or by reference to his or her office to act as his, her or its general or special proxy.

### **Corporate Creditors**

Corporate creditors who wish to attend the meeting should note that they may only be represented by an individual if that person is validly granted a proxy or power of attorney by that corporation.

Alternatively, Section 250D of the Corporations Act 2001 provides that a corporation may, by resolution of its board, provide a standing authority for a specified person to represent the

corporation at specified meeting of creditors. A copy of any such resolution should be provided to the Administrator prior to attending the meeting.

**Committee of Inspection/Committee of Creditors**

A person may only serve as a member of a Committee of Inspection/Committee of Creditors if the person is:

- + a creditor of the company personally; or
- + the attorney of a creditor under a general power of attorney; or
- + authorised in writing by a creditor.

Corporate creditors who are members of a Committee of Inspection may be represented by:

- + an officer or employee of the member; or
- + an individual authorised in writing by the member to represent the member on the committee.