

8 June 2011

CIRCULAR TO CREDITORS

Dear Sir/Madam,

**TUMUT RIVER ORCHARD MANAGEMENT LIMITED (IN LIQUIDATION)
ACN 003 501 611 ("TROM")**

**MERILBAH INVESTMENTS PTY LTD (IN LIQUIDATION)
ACN 002 979 893 ("MERILBAH")**

Shabnam Amirbeaggi and I were appointed joint liquidators of Merilbah pursuant to an Order of the Supreme Court of Western Australia on 7 February 2008.

Messrs Prentice and Barilla of PPB were appointed voluntary administrators of TROM on 20 July 1998. TROM was wound up on 28 April 1999 and on 7 January 2006 TROM was deregistered. I was appointed liquidator of TROM pursuant to an Order for reinstatement made by the Supreme Court of New South Wales on 7 July 2008.

During the period from 1991 to June 1998, TROM promoted, established, managed and operated eight horticultural projects. Approximately 2,000 investors who subscribed to the projects signed Investor Loan Agreements with TROM, which may have given rise to Investor Debts.

During the period 1996 to 1998, TROM purportedly assigned its right, title and interest in the Investor Debts to one or the other of Core Finance Pty Limited ("Core"), Symsung Pty Limited ("Symsung") and Treetop Projects Limited ("Treetop").

At some time between 15 March 2000 and 31 October 2000, each of Core, Symsung and Treetop purportedly assigned its right, title and interest in and to Investor Debts to Merilbah. On 31 August 2001, Merilbah purportedly assigned its right, title and interest in and to Investor Debts to HPM.

Since 2002, HPM has commenced and prosecuted various proceedings for the recovery of Investor Debts. The applications to appoint me as liquidator were made by a group of investors who were being sued by HP Mercantile Pty Ltd ("HPM") in respect of Investor Debts.

Various investors who resisted HPM debt recovery action funded my investigations into the veracity of HPM's entitlement to recover the Investor Debts. My investigations included several public examinations which required at least a dozen court attendances as HPM vigorously resisted and litigated my investigations.

The subject of my investigations include the validity of the assignments from TROM to Core, Symsung and Treetop, from Core Symsung and Treetop to Merilbah, and from Merilbah to HPM.

On 20 October 2009, the Federal Court of Australia held, in unrelated legal proceedings, that funding a class action constituted a Managed Investment Scheme.

In November 2009, HPM relied upon this new decision to initiate proceedings in the Federal Court of Australia alleging the funds I raised from investors to fund my investigations constituted an unregistered Managed Investment Scheme and therefore breached the *Corporations Act 2001* (the "Act"). The proceedings were not initiated by ASIC who would ordinarily run such actions and ASIC declined to participate in the proceedings.

On 10 March 2011, Justice Emmett of the Federal Court of Australia held that I was not operating an unregistered Managed Investment Scheme in contravention of the Act. Costs were awarded in my favour.

HPM has appealed the decision and the Full Federal Court is due to consider the matter in August 2011.

Settlement between HPM and liquidators

As part of a settlement due to be completed on or about 24 June 2011 between select investors and HPM, Ms Amirbeaggi and I have resolved to retire as liquidators on the following basis:

1. The Federal Court Appeal is dismissed;
2. Each party is to pay their own costs of the Appeal;
3. All costs orders of the Federal Court hearing are vacated with no order as to costs, with the intent that each party pay their own costs;
4. All costs orders of the Federal Court proceedings in respect to the Examination Summons are vacated with no order as to costs, with the intent that each party pay their own costs;
5. The parties enter into a Deed whereby the parties grant mutual releases from any claims they may have against the other party;
6. Ms Amirbeaggi and I are to resign as liquidators of TROM and Merilbah and will make an application to the Court for the appointment of a liquidator nominated by HPM. HPM will pay the reasonable costs of the liquidators in respect to the application to the Court to resign as liquidators and appoint new liquidators.
7. As between HPM and TROM, in the Supreme Court (Common Proceedings), each party releases each other party of any costs incurred and any costs orders be vacated with the intent that each party pay their own costs, up until the resignation of Ms Amirbeaggi and I as liquidators of TROM and Merilbah.
8. The liquidators defer our outstanding fees and expenses behind those of the new liquidators.
9. Approximately \$200,000 is paid to the liquidators by the select investors who are party to a settlement with HPM of or about 24 June 2011. This amount approximates the cost of the disbursements (i.e. legal expenses) that have been paid by the liquidators from personal funds to date in the various disputes with HPM. I note that further legal fees of or about \$150,000 will be written off if this settlement is accepted.

Resignation of liquidators

Should any creditor object to our resignation on the terms detailed above (which may vary), please advise my office in writing by 22 June 2011 so we may ensure details of your objection are made known to the Court when it considers our resignation.

Remuneration

I propose to be remunerated on a time basis and attach particulars of the charge out rates. The proposed remuneration for TROM for the period 7 July 2008 to of or about 7 June 2011 is \$292,652.20 (\$266,047.45 plus GST) and the proposed remuneration for Merilbah for the period 7 February 2008 to of or about 7 June 2011 is \$163,832.30 (\$148,938.45 plus GST). I estimate the costs of each matter for the period 7 June 2011 to completion will be \$44,000 (\$40,000 plus GST) (excluding legal costs if required). Please refer to the attached schedule of

proposed fees for your review. The vast majority of these fees are unlikely to be paid. I refer creditors to my receipts and payments as attached.

Meeting of creditors

I have convened a meeting of creditors and your notice is enclosed. Attendance to the meeting is encouraged but not compulsory.

I **enclose** the following for your information:

1. Notice of meeting and agenda of first meeting of creditors (Annexure A).
2. Declaration of independence and relevant relationships and indemnities (Annexure B);
3. Appointment of proxy (Form 532) (Annexure C);
4. Proof of debt (Form 535) (Annexure D);
5. Summary of proposed services and guide to hourly rates of remuneration (Annexure E);
and
6. Receipts and payments (Annexure F).

Creditors are required to complete and return the enclosed proof of debt and appointment of proxy to this office at least 48 hours prior to the forthcoming meeting of creditors in order to be eligible to vote and participate at the meeting.

To discuss this matter, please contact Carlie Neels of my office.

Yours faithfully,

**TUMUT RIVER ORCHARD MANAGEMENT LTD
MERILBAH INVESTMENTS PTY LTD**



**NICHOLAS CROUCH
OFFICIAL LIQUIDATOR**



ANNEXURE A

Sub regulation 5.6.12(2)
Corporations Act 2001

**FORM 529
NOTICE OF MEETING OF CREDITORS**

TO CREDITORS

Dear Sir/Madam,

**TUMUT RIVER ORCHARD MANAGEMENT LIMITED (IN LIQUIDATION)
ACN 003 501 611**

Notice is given that an annual meeting of creditors will be held at the Phillip Room, Level 1, 33 Erskine Street, Sydney on 24 June 2011 at 11:00am.

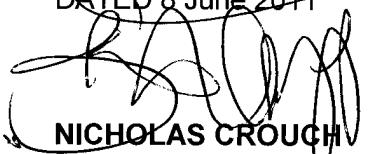
AGENDA

1. Statutory meeting requirements.
2. To consider the approval of remuneration of the official liquidator, his partners and staff for the period 7 July 2008 to of or about 7 June 2011 in the amount of \$292,652.20 (\$266,047.45 plus GST) calculated at an hourly rate by reference to the schedule of professional fees of Crouch Amirbeaggi.
3. To consider the approval of the remuneration of the official liquidator, his partners and staff for the period of or about 7 June 2011 until completion in the amount of \$44,000 (\$40,000 plus GST) calculated at an hourly rate by reference to the schedule of professional fees of Crouch Amirbeaggi. Additional remuneration may be considered in the future.
4. Any other business.

Telephone conferencing facilities will not be available on the date of the meeting, unless prior arrangement is made with my office. Please advise whether you wish to utilise this service by close of business 22 June 2011 to ensure adequate lines are allocated.

Attendance to the meeting is not compulsory, but is encouraged.

DATED 8 June 2011


**NICHOLAS CROUCH
OFFICIAL LIQUIDATOR**

Note:

1. A person is not entitled to vote as a creditor at the meeting unless he has lodged with the Chairperson of the meeting, particulars of the debt or claim which he claims to be due to him from the company c/Crouch Amirbeaggi, Suite 403, 55 Lime Street, King Street Wharf, Sydney NSW 2000 before the date of the meeting.
2. A proxy form is attached.
3. Creditors that have lodged a proof of debt form previously do not need to lodge a new one for this meeting.
4. An account of the receipts and payments has been made up and lodged with ASIC pursuant to section 539 of the Corporations Act 2001.



Liability limited by
a scheme approved
under Professional
Standards Legislation.

Suite 403, 55 Lime St, King St Wharf, Sydney NSW 2000
Tel: 02 8262 9333 | Fax: 02 8262 9300
admin@crouch.com.au | www.crouch.com.au
ABN: 26 131 856 169

ANNEXURE B

Section 60(2)
Corporations Act 2001

8 June 2011

**MERILBAH INVESTMENTS PTY LTD (IN LIQUIDATION) ("MERILBAH")
ACN 002 979 893**

**TUMUT RIVER ORCHARD MANAGEMENT LIMITED (IN LIQUIDATION) ("TROM")
ACN 003 501 611**

DECLARATION OF INDEPENDENCE RELEVANT RELATIONSHIPS & INDEMNITIES

In accordance with the code of professional practice issued by the Insolvency Practitioners Association effective 1 January 2011 and the *Corporations Act 2001* we, Nicholas Crouch and Shabnam Amirbeaggi, as the joint and several official liquidators of Merilbah Investments Pty Ltd (In Liquidation) and Nicholas Crouch as the official liquidator of Tumut River Orchard Management Limited (In Liquidation) state the following:

Nicholas Crouch is a chartered accountant, trustee in bankruptcy and official liquidator with over 18 years' insolvency experience. Shabnam Amirbeaggi is a certified practicing accountant, trustee in bankruptcy and official liquidator with over 13 years' insolvency experience. We are partners of Crouch Amirbeaggi, a firm of accountants who specialise in personal and corporate insolvency.

We have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as official liquidators of the abovenamed companies. This assessment identified no real or potential risks to our independence.

Relevant relationships

Subject to any disclosure detailed herein, neither of us, nor our firm, have, or have had within the preceding 24 months, any relationships with the companies, an associate of the companies, a former insolvency practitioner appointed to the companies or any person or entity that has a charge on the whole or substantially the whole of the companies' property, except as identified below: -

Name

Tumut River Orchard Management Limited (In Liquidation)

Nature of relationship

Shabnam Amirbeaggi and I were appointed joint liquidators of Merilbah pursuant to an Order of the Supreme Court of Western Australia on 7 February 2008.

Messrs Prentice and Barilla of PPB were appointed voluntary administrators of TROM on 20 July 1998. TROM was wound up on 28 April 1999 and on 7 January 2006 TROM was deregistered. I was appointed liquidator of TROM pursuant to an Order for reinstatement made by the Supreme Court of New South Wales on 7 July 2008.

During the period from 1991 to June 1998, TROM promoted, established, managed and operated eight horticultural projects. Approximately 2,000 investors who subscribed to the

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Since 2002, HPM has commenced and prosecuted various proceedings for the recovery of Investor Debts. The applications to appoint me as liquidator were made by a group of investors who were being sued by HP Mercantile Pty Ltd ("HPM") in respect of Investor Debts.

Reason why not an impediment or conflict

The Supreme Court of NSW and Federal Court of Australia both considered arguments by HPM that the appointment of liquidators to both companies constituted a conflict of interest. In both instances the Courts determined a conflict did not exist.

The Courts noted a potential conflict might arise if funds were available to distribute to creditors.

There are no other prior professional or personal relationships that should be disclosed.

Prior engagement with the insolvent

Neither of us, nor our firm, have undertaken any prior engagements for the companies.

There are no other known relevant relationships, including personal, business and professional relationships, from the preceding that should be disclosed.

Indemnities

I have an informal indemnity or agreement in relation to this administration from approximately 100 investors who contributed approximately \$170,000 to fund my investigations into the validity of HPM's claim to Investor Debt.

The particulars of the payments were subject to proceedings in the Federal Court of Australia in HP Mercantile Pty Limited v Tumut River Orchard Management Limited (In Liquidation) [2011] FCA 200 in File no. NSD 1267 of 2009.

Proposed fees

The proposed basis of remuneration of the official liquidators and our staff is on a time basis in accordance with the attached schedule of Crouch Amirbeaggi rates. One hour is divided into units of 6 minutes each.

Staff are allocated to duties according to relevant experience and qualifications. A full account of work done will be provided to creditors as appropriate. Requests for approval of remuneration on a prospective basis will be capped beyond which further approval will be required.

Our remuneration will include the time costs of staff of Crouch Amirbeaggi. The companies have a limited source of funds for the payment of remuneration. We refer to our statement of remuneration for further details on the process of determining our remuneration.

Details of referral

The matter was referred to me by Mr Tim Galic of Galic & Co, a solicitor who acts for a number of investors.

I had no association with Mr Galic prior to this referral.

No fee has or will be paid for such referral.

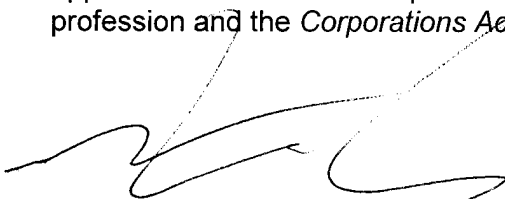
Pre appointment contact

Prior to our appointment we were requested to provide a consent to act as liquidators in anticipation of the Court Order being made to wind up the companies. No prior relationship existed with:

- a) The directors or their associated businesses;
- a) The companies, holding or subsidiary companies within the meaning of Corporate Groups;
- b) Any dominant creditor, be it a secured lender, usually a financial institution, or dominant and critical trade supplier, in advising such parties concerning the companies;
- c) Any other prior professional or advisory relationship concerning the companies, e.g. acting for employees or the dominant union.

We have consciously considered the question of independence and to the best of our knowledge there are no such prior professional or personal relationships, other than those disclosed, of which the creditors should properly be aware that would give rise to any conflict of interest.

Accordingly, we believe that we are independent for the purpose of accepting the appointment as official liquidator as required by the ethical pronouncements of our profession and the *Corporations Act 2001*.



**NICHOLAS CROUCH
CROUCH AMIRBEAGGI**



**SHABNAM AMIRBEAGGI
CROUCH AMIRBEAGGI**

DATED 8 June 2011

Note: If circumstances change, or new information is identified, I am required under the IPA code of professional practice to update this declaration and provide a copy to creditors with my next communication as well as table a copy of any replacement declaration at the next meeting of the company's creditors.

ANNEXURE C

FORM 532
APPOINTMENT OF PROXY
Regulation 5.6.29 Corporations Act 2001

TUMUT RIVER ORCHARD MANAGEMENT LIMITED (IN LIQUIDATION)
ACN 003 501 611

(Name) _____

of (Address) _____

a creditor of the abovenamed company appoint (name of person attending or chairperson) _____

or in their absence (name of alternative person attending or chairperson) _____ as general /*special
(*Circle general to permit proxy to vote as they choose or circle special to direct proxy to vote per instructions as circled below.)

proxy to vote at the meeting of creditors to be held on or about 24 June 2011 at 11:00am, or at any adjournment of that meeting.

***Circle Your Vote**

| | |
|---|----------------|
| Approve the remuneration of the liquidator, his partners and staff for the period of or about 7 July 2008 to of or about 7 June 2011 in the amount of \$292,652.20 (\$266,047.45 plus GST) calculated at an hourly rate by reference to the schedule of professional fees of Crouch Amirbeaggi. | Yes/No/Abstain |
| Approve the remuneration of the liquidator, his partners and staff for the period of or about 7 June 2011 until completion of the administration in the amount of \$44,000 (\$40,000 plus GST) calculated at an hourly rate by reference to the schedule of professional fees of Crouch Amirbeaggi. | Yes/No/Abstain |
| Pursuant to section 477(2B) of the <i>Corporations Act 2001</i> , the liquidators are entitled to settle litigation with HP Mercantile Pty Ltd on terms detailed in the report to creditors of 8 June 2011. | Yes/No/Abstain |
| Approve the resignation of Nicholas Crouch as official liquidator of the company. | Yes/No/Abstain |

 Signature and/or Company Seal

Dated ____/____/____

 Print Name

I/we authorise the person appointed as proxy detailed above to represent me/us on the committee of inspection if elected.

COMPLETE BELOW ONLY IF CREDITOR IS A BANK OR SECURED CREDITOR

I am a secured creditor and the total amount owed to me after deducting the value of my security is \$_____

COMPLETE BELOW ONLY IF CREDITOR IS BLIND - Certificate of Witness

This certificate is to be completed only where the person giving the proxy is blind or incapable of writing. The signature of the creditor must not be witnessed by the person nominated as proxy.

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 ____/____/____

Signature of witness: _____

Please return by fax 02 8262 9300 or mail to Crouch Amirbeaggi, Suite 403, 55 Lime Street, King Street Wharf, Sydney, NSW 2000. Proxies must be received at least 24 hours prior to the meeting. Contact Vassi Kalamiotis on 02 8262 9333 for assistance.

TUMUT RIVER ORCHARD MANAGEMENT LIMITED (IN LIQUIDATION)
ACN 003 501 611

To the liquidator of the abovenamed company: -

1. This is to state that the company was at 7 July 2008 and still is justly and truly indebted to

(Name) _____

Of (Address) _____

in the sum of (Amount) \$ _____ dollars.

Particulars of the debt are:

| Date | Consideration Detail goods delivered/services rendered/outstanding employee entitlements | Amount | GST | Total Amount |
|------|---|--------|-----|--------------|
| | | | | |

(Attach invoices/statements, or details of goods delivered/services rendered/employee entitlements)

DATED / /

Signature: _____

Occupation: _____

Telephone: _____

Email: _____

ABN: _____

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. Where the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, specify them).*

*3. I am employed by the creditor 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 duly 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, still remains unpaid and unsatisfied.

*Strike out whichever is not applicable

Please return completed form by fax 02 8262 9300 or mail to Crouch Amirbeaggi, Suite 403, 55 Lime Street, King Street Wharf, Sydney, NSW 2000. Contact Vassi Kalimiotis on 02 8262 9333 with any issues.

| Office Use Only | | | |
|------------------------|--|----------------------------|------------------------------|
| File No. | | Accepted | \$ |
| Processed By: | | Rejected | \$ Date Sent : |
| Date Processed | | Under Consideration | \$ |

ANNEXURE E

**TUMUT RIVER ORCHARD MANAGEMENT LIMITED (IN LIQUIDATION)
ACN 003 501 611**

**SCHEDULE OF REMUNERATION INCURRED REQUIRING APPROVAL
FROM 7 JULY 2008 TO 7 JUNE 2011**

| | Hours | Charge Rate | Total (\$) |
|--|---------------|-------------|-------------------|
| SHABNAM AMIRBEAGGI - PARTNER | 43.79 | 460.00 | 20,143.40 |
| SHABNAM AMIRBEAGGI - SENIOR MANAGER | 23.54 | 390.00 | 9,180.60 |
| SHABNAM AMIRBEAGGI - MANAGER | 12.72 | 340.00 | 4,324.80 |
| NICHOLAS CROUCH - PARTNER | 255.00 | 460.00 | 117,300.00 |
| STEVE NAIDENOV - SENIOR MANAGER | 5.30 | 390.00 | 2,067.00 |
| DAVID ROSSI - SENIOR MANAGER | 0.40 | 390.00 | 156.00 |
| DAVID ROSSI - MANAGER | 1.50 | 340.00 | 510.00 |
| CARLIE NEELS - MANAGER | 39.31 | 340.00 | 13,365.40 |
| CARLIE NEELS - SUPERVISOR | 212.56 | 275.00 | 58,454.00 |
| PATTY DONGAS - SENIOR | 2.35 | 225.00 | 528.75 |
| PATTY DONGAS - JUNIOR | 0.30 | 75.00 | 22.50 |
| REUBEN WESEK - SENIOR | 2.31 | 225.00 | 519.75 |
| MAYA SABISHCHYKOVA - SENIOR | 0.10 | 225.00 | 22.50 |
| MAYA SABISHCHYKOVA - SENIOR | 4.20 | 210.00 | 882.00 |
| MAYA SABISHCHYKOVA - INTERMEDIATE | 0.30 | 165.00 | 49.50 |
| TARNYA TKACHENKO - INTERMEDIATE | 48.10 | 165.00 | 7,936.50 |
| JADE HOOPER - INTERMEDIATE | 5.45 | 165.00 | 899.25 |
| JADE HOOPER - TYPIST | 0.72 | 75.00 | 54.00 |
| JOANNA NEWWEY - INTERMEDIATE | 4.34 | 165.00 | 716.10 |
| JOANNA NEWWEY - TYPIST | 0.20 | 75.00 | 15.00 |
| VERITY IKIN - INTERMEDIATE | 1.70 | 165.00 | 280.50 |
| VERITY IKIN - JUNIOR | 0.60 | 75.00 | 45.00 |
| VASSI KALAMIOTIS - INTERMEDIATE | 28.63 | 165.00 | 4,723.95 |
| VASSI KALAMIOTIS - TYPIST | 12.50 | 85.00 | 1,062.50 |
| ANNIE KURTZ - INTERMEDIATE | 15.00 | 165.00 | 2,475.00 |
| SUZY MIKHAIL - SENIOR | 5.60 | 225.00 | 1,260.00 |
| SUZY MIKHAIL - INTERMEDIATE | 6.80 | 165.00 | 1,122.00 |
| SUZY MIKHAIL - SECRETARY | 26.00 | 145.00 | 3,770.00 |
| SUZY MIKHAIL - SECRETARY | 0.50 | 135.00 | 67.50 |
| CLAIRE FEARON - SECRETARY | 37.92 | 145.00 | 5,498.40 |
| CLAIRE FEARON - TYPIST | 1.90 | 85.00 | 161.50 |
| CLAIRE FEARON - JUNIOR | 0.35 | 75.00 | 26.25 |
| VALERIE ATCHISON - SECRETARY | 0.50 | 135.00 | 67.50 |
| AFRI GREGORY - TYPIST | 27.71 | 85.00 | 2,355.35 |
| JI CHEN - TYPIST | 7.97 | 85.00 | 677.45 |
| JI CHEN - JUNIOR | 0.25 | 75.00 | 18.75 |
| TEMP STAFF - TYPIST | 57.85 | 85.00 | 4,917.25 |
| TEMP STAFF - JUNIOR | 4.39 | 75.00 | 329.25 |
| FAY COBURN - JUNIOR | 0.65 | 65.00 | 42.25 |
| Total Hours | 899.31 | | |
| Total Remuneration exclusive of GST | | | 266,047.45 |
| GST | | | 26,604.75 |
| Total Remuneration | | | 292,652.20 |

**TUMUT RIVER ORCHARD MANAGEMENT LIMITED (IN LIQUIDATION)
ACN 003 501 611**

SUMMARY OF WORK PERFORMED AND PROPOSED REMUNERATION

Liquidators remuneration

I detail below an extract from the IPA's creditor information sheet pertaining to remuneration.

The information sheet goes on to discuss:

- Information to be provided to creditors by administrator/liquidator
- Who may approve fees
- Deciding if fees are reasonable
- What you can do if the fees are not reasonable
- Queries and complaints

Remuneration methods

There are four basic methods that can be used to calculate the remuneration charged by an insolvency practitioner. They are:

a. Time based / hourly rates

This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.

b. Fixed fee

The total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration. Sometimes a practitioner will finalise an administration for a fixed fee.

c. Percentage

The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.

d. Contingency

The practitioner's fee is structured to be contingent on a particular outcome being achieved.

Method chosen

Given the nature of this administration we propose that our remuneration be calculated on a time basis. This is because it is the method most commonly used in the industry and our systems will permit a cost effective method of assessing the merit of the work undertaken.

Explanation of hourly rates

The rates for the remuneration calculation are set out in **the attached** together with a general guide showing the qualifications and experience of staff engaged in the administration and the role they take in the administration. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.

For time based remuneration claims, the practitioner must also include his or her best estimate of the costs of the administration to completion or to a specified milestone.

Particulars of my budgeted future costs are attached. I expect the budgeted future costs of continuing to attend to the investigations, liaison with creditors and directors and finalisation of the matter to be in the range of \$30,000 to \$60,000, varying in accordance with the complexity and volume of work to be undertaken.

Work undertaken by liquidators

The work undertaken by liquidators depends on the type of administration concerned and the issues that need to be resolved. Some issues are straightforward, while others are more complex.

However, what is common amongst all administration types is that an liquidator is, by law, required to undertake a number of tasks which may not directly benefit creditors (for example, the preparation of reports to the Australian Securities and Investments Commission or the preparation of six monthly receipts and payments). A liquidator is still entitled to remuneration for undertaking these statutory tasks.

For more information on the tasks involved in different administrations, see ASIC's information sheets: 'Liquidation: a guide for creditors' and 'Voluntary administration: a guide for creditors'.

Entitlement to fees and costs

A liquidator is entitled:

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

Liquidators are entitled to an amount of fees for the necessary work that they and their staff properly perform in the administration.

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

- legal fees
- valuer's, real estate agent's and auctioneer's fees
- trading costs involved in running the company's business during the administration (e.g. for the purchase of stock)
- stationery, photocopying, telephone and postage costs
- retrieval costs for recovering the company's computer records, and
- storage costs for the company's books and records.

Creditors have a direct interest in the level of fees and costs, as the liquidator will, generally, be paid from the company's available assets before any payments to creditors are made.

If there are not enough assets, the liquidator may arrange for a third party, for example another creditor, to pay any shortfall. As a creditor, you should receive details of such arrangements.

If there are not enough assets to pay the fees and costs, and there is no third party payment arrangement, any shortfall is not paid and the liquidator is in effect 'out of pocket'.

Calculation of fees

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

- on the basis of *time spent* by the Liquidator and their staff, according to hourly rates,
- a quoted *fixed fee*, based on an estimate of the costs, or
- a *percentage*, usually of asset realisations.

Charging on the basis of time spent is the most common method. Liquidators have a scale of hourly rates, with different rates for each category of staff working on the administration, including the liquidator.

If the liquidator intends to charge on a time basis, you should receive a copy of these hourly rates before the liquidator requests approval of their fees.

The liquidator and their staff will record the time taken for the various tasks involved, and a record will be kept of the nature of the work performed.

It is important to realise that liquidators are professionals who are required to have accounting qualifications and maintain up-to-date knowledge of accounting, business and legal issues. They have serious responsibilities under the law. Their hourly rates and those of their qualified staff reflect this.

The hourly rates do not represent an hourly wage for the liquidator and their staff. The liquidator is running a business - an insolvency practice - and the hourly rates will be based on the cost of running the business, including overheads such as rent for business premises, utilities, wages and superannuation for staff who are not charged out at an hourly rate (such as personal assistants), information technology support, office equipment and supplies, insurances, and taxes with allowance then made for profit.

Many of the costs of running an insolvency practice are fixed costs that must be paid, even if there are insufficient assets available to pay the liquidator for their services.

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

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

Travel costs

On occasion I may be appointed to a matter which requires travel outside the central business district or interstate. In the event that travel is required, the costs of travel will be charged to the administration as a disbursement. It is common for the liquidator and their staff to attend to issues arising in relation to the matter during travel time. Here, the actual time spent whilst travelling will be charged on a time basis at the scale of hourly rates set by Crouch Amirbeaggi relevant to the liquidator and their staff. In the event that the travel time is not utilised on attending to the matter, the actual time spent whilst travelling will be charged on a time basis at half the scale of hourly rates set by Crouch Amirbeaggi relevant to the liquidator and their staff.

Complaints management

As a firm, Crouch Amirbeaggi is conscious that stakeholders may be dissatisfied with the information provided to them in respect of this matter and may wish to make a complaint. In this circumstance, please forward your written complaint to my office marked to the direct attention of either Shabnam Amirbeaggi or Nicholas Crouch. We endeavour to respond to all complaints within 7 days.

More information

For more on voluntary administration, liquidation, receivership and remuneration of insolvency practitioners visit our website at <http://www.bankruptcy.net.au/creditor.html>.

Alternatively visit ASIC at www.asic.gov.au/insolvencyinfosheets or the Insolvency Practitioners Association (IPA) at www.ipaa.com.au. The IPA website also contains the Code of Professional Practice for Insolvency Practitioners.

The following publications produced by ASIC and the IPA, are available:

- Voluntary administration: a guide for creditors (info 74) | a guide for employees (info 75)
- Liquidation: a guide for creditors (info 45) | a guide for employees (info 46)
- Receivership: a guide for creditors (info 54) | a guide for employees (info 55)
- Insolvency guide for directors (info 42) | a guide for shareholders (info 43)
- Independence of external administrators: a guide for creditors (info 84)
- Approving fees: a guide for creditors (info 85)

I detail below the work performed for which I am now seeking approval, together with the budgeted fees requiring approval: -

| ASSETS | | | | |
|-------------------------------------|---|------------------------------------|---------------|--|
| General Description | | Incurred 7 Jul 08 - 7 Jun 11 | Future Budget | |
| | | | | |
| Sale of Business as a Going Concern | Preparing an information memorandum | | | |
| | Liaising with purchasers | | | |
| | Internal meetings to discuss/review offers received | | | |
| Plant and Equipment | Liaising with valuers, auctioneers and interested parties | | | |
| | Reviewing asset listings | | | |
| Sale of Real Property | Liaising with valuers, agents, and strata agent | | | |
| | Attendance at auction | | | |
| Assets subject to specific charges | All tasks associated with realising a charged asset | | | |
| Debtors | Correspondence with debtors | | | |
| | Reviewing and assessing debtors ledgers | | | |
| | Liaising with debt collectors and solicitors | | | |
| Stock | Conducting stock takes | | | |
| | Reviewing stock values | | | |
| | Liaising with purchasers | | | |
| Other Assets | Tasks associated with realising other assets | 828.00 | | |
| Leasing | Reviewing leasing documents | | | |
| | Liaising with owners/lessors | | | |
| | Tasks associated with disclaiming leases | | | |
| Other | | | | |

| CREDITORS | | | | |
|-----------------------------|--|------------------------------------|---------------|-------|
| General Description | | Incurred 7 Jul 08 - 7 Jun 11 | Future Budget | |
| | | | | |
| Creditor Enquiries | Receive and follow up creditor enquiries via telephone | 13,622.50 | 2,000 | 4,000 |
| | Maintaining creditor enquiry register | | | |
| | Review and prepare correspondence to creditors and their representatives via facsimile, email and post | | | |
| | Correspondence with committee of creditors members | | | |
| Retention of Title Claims | Receive initial notification of creditor's intention to claim | | | |
| | Provision of retention of title claim form to creditor | | | |
| | Receive completed retention of title claim form | | | |
| | Maintain retention of title file | | | |
| | Meeting claimant on site to identify goods | | | |
| | Adjudicate retention of title claim | | | |
| | Forward correspondence to claimant notifying outcome of adjudication | | | |
| | Preparation of payment vouchers to satisfy valid claim | | | |
| | Preparation of correspondence to claimant to accompany payment of claim (if valid) | | | |
| Secured creditor reporting | Preparing reports to secured creditor | | | |
| | Responding to secured creditor's queries | | | |
| Creditor reports | Preparing 439A, investigation, meeting and general reports to creditors | 9,842.30 | 2,000 | 4,000 |
| Dealing with proofs of debt | Receipting and filing POD's when not related to a dividend | 67,055.10 | 2,000 | 3,000 |
| | Corresponding with OSR and ATO regarding POD's when not related to a dividend | | | |
| Meeting of Creditors | Preparation meeting notices, proxies and advertisements | 5,828.10 | 2,000 | 4,000 |
| | Forward notice of meeting to all known creditors | | | |
| | Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes. | | | |
| | Preparation and lodgement minutes of meetings with ASIC | | | |
| | Respond to stakeholder queries and questions immediately following meeting | | | |
| Shareholder enquires | Initial day one letters | | | |
| | ITAA Section 104-145(1) declarations | | | |
| | Responding to any shareholder legal action | | | |
| Other | | | | |

THIS SPACE LEFT BLANK INTENTIONALLY

| TRADE ON | | | | |
|----------------------------------|--|------------------------------------|---------------|--------|
| General Description | | Incurred 7 Jul 08 - 7 Jun 11 | Future Budget | |
| | | | | |
| Trade On Management | Liaising with suppliers | | | |
| | Liaising with management and staff | | | |
| | Attendance on site | | | |
| | Authorising purchase orders | | | |
| | Maintaining purchase order registry | | | |
| | Preparing and authorising receipt vouchers | | | |
| | Preparing and authorising payment vouchers | | | |
| | Liaising with superannuation funds regarding contributions, termination of employees employment | | | |
| | Liaising with OSR regarding payroll tax issues | | | |
| Processing receipts and payments | Entering receipt and payments into accounting system | | 2,000 | 4,000 |
| Budgeting & financial reporting | Reviewing company's budgets and financial statements | | | |
| | Preparing budgets | | | |
| | Preparing weekly financial reports | | | |
| | Finalising trading profit or loss | | | |
| | Meetings to discuss trading position | | | |
| INVESTIGATION | | | | |
| Conducting investigation | Collection of company books and records | | | |
| | Correspondence with ASIC to receive assistance in obtaining company's books & records and Report as to Affairs | | | |
| | Reconstruction of financial statements | | | |
| | Reviewing company's books and records | | | |
| | Review and preparation of company nature and history | | | |
| | Conducting and summarising statutory searches | | | |
| | Preparation of comparative financial statements | 60,663.00 | 5,000 | 10,000 |
| | Preparation of deficiency statement | | | |
| | Review of specific transactions and liaising with directors regarding certain transactions | | | |
| | Liaising with directors regarding certain transactions | | | |
| | Preparation of investigation file | | | |
| | Lodgement of investigation with the ASIC | | | |
| | Preparation and lodgement of supplementary report if required | | | |
| Examinations | Preparing brief to solicitor | | | |
| | Liaising with solicitor(s) regarding examinations | | | |
| | Attendance at examination | 79,741.35 | 5,000 | 10,000 |
| | Reviewing examination transcripts | | | |
| | Liaising with solicitor(s) regarding outcome of examinations and further actions available | | | |
| Litigation / Recoveries | Internal meetings to discuss status of litigation | | | |
| | Preparing brief to solicitors | | | |
| | Liaising with solicitors regarding recovery actions | | 5,000 | 10,000 |
| | Attending to negotiations | | | |
| | Attending to settlement matters | | | |
| ASIC reporting | Preparing statutory investigation reports | | | |
| | Preparing affidavits seeking non lodgements assistance | 2,399.35 | 2,000 | 4,000 |
| | Liaising with ASIC | | | |
| Other | | | | |

| DIVIDEND | | | | |
|--|--|------------------------------------|---------------|---------------|
| General Description | | Incurred 7 Jul 08 - 7 Jun 11 | Future Budget | |
| Processing proofs of debt | Preparation of correspondence to potential creditors inviting lodgement of POD | | | |
| | Receipt of PODs | | | |
| | Maintain POD register | | | |
| | Adjudicating PODs | | | |
| | Request further information from claimants regarding POD | | | |
| | Preparation of correspondence to claimant advising outcome of adjudication | | | |
| Dividend procedures | Preparation of correspondence to creditors advising of intention to declare dividend | | | |
| | Advertisement of intention to declare dividend | | | |
| | Obtain clearance from ATO to allow distribution of company's assets | | | |
| | Preparation of dividend calculation | | | |
| | Preparation of correspondence to creditors announcing declaration of dividend | | | |
| | Advertise announcement of dividend | | | |
| | Preparation of distribution | | | |
| | Preparation of dividend file | | | |
| | Preparation of payment vouchers to pay dividend | | | |
| | Preparation of correspondence to creditors enclosing payment of dividend | | | |
| ADMINISTRATION | | | | |
| Correspondence | | 9,832.35 | | |
| Document maintenance/file review/checklist | First month, then 6 monthly administration review | | | |
| | Filing of documents | | | |
| | File reviews | 8,002.50 | | |
| | Updating checklists | | | |
| Insurance | Identification of potential issues requiring attention of insurance specialists | | | |
| | Correspondence with Willis regarding initial and ongoing insurance requirements | | | |
| | Reviewing insurance policies | | | |
| | Correspondence with previous brokers | | | |
| Bank account administration | Preparing correspondence opening and closing accounts | | | |
| | Requesting bank statements | | | |
| | Bank account reconciliations | 5,186.50 | 1,000 | 3,000 |
| | Correspondence with bank regarding specific transfers | | | |
| ASIC Form 524 and other forms | Prepare & lodge ASIC forms including 505/524 etc | | | |
| | Correspondence with ASIC regarding statutory forms | 1,381.80 | 1,000 | 2,000 |
| ATO & other statutory reporting | Notification of appointment | | | |
| | Preparing BAS' | 1,502.50 | | |
| | Completing group certificates | | | |
| Finalisation | Notifying ATO of finalisation | | | |
| | Cancelling ABN / GST / PAYG registration | | 1,000 | 2,000 |
| | Completing checklists | | | |
| | Finalising WIP | | | |
| Planning / Review | Discussions regarding status of administration | | | |
| Books and records / storage | Dealing with records in storage | | | |
| | Sending job files to storage | 162.10 | | |
| Total: | | 266,047.45 | 30,000 | 60,000 |

GUIDE TO HOURLY RATES OF REMUNERATION

| CLASSIFICATION | RATE | EXPERIENCE |
|----------------|--------|--|
| Partner | 460.00 | Registered Liquidator/Trustee. Partner bringing his/her specialist skills to Administrations and/or Insolvency tasks. |
| Senior Manager | 390.00 | 10 years experience. May be qualified to take appointments in own name or have specialist commercial abilities. Well developed technical skills. |
| Manager | 340.00 | 6-10 years experience. May be qualified to take appointments in own name. Well developed technical and commercial skills. |
| Supervisor | 275.00 | 4-6 years experience. Typically Qualified. Will have conduct of minor administrations and control junior staff. |
| Senior | 225.00 | 2-4 years experience. Typically Graduate/Qualified. Assist in planning and control of small to medium sized jobs as well as performing some of the more difficult work on larger jobs. |
| Intermediate | 165.00 | Up to 2 years experience. Graduate with little or no professional experience. |
| Secretary | 145.00 | Appropriate skills including machine usage. |
| Clerk | 105.00 | Appropriate skills including machine usage. |
| Typist | 85.00 | Appropriate skills including machine usage. |
| Junior | 75.00 | Appropriate skills including machine usage. |

The hourly rates are exclusive of GST.

Notes:

1. Time spent on matters is recorded and charged in six (6) minute intervals.
2. The firm rates are effective as at 1 October 2008.
3. Photocopying: - 45 cents per page plus GST
4. Facsimiles: - \$1.50 per page (local), \$2.00 per page (STD), \$3.00 per page (International) - All add GST
5. Postage charged at \$0.80 (Standard), \$1.50 (Large) – All add GST
6. All clients incur a stationery and administration fee between \$100 - \$700 plus GST, depending on size of matter.

Receipts and Payments for period between 7 February 2008 and 7 June 2011

| Receipt Type | Received to | | Estimated Future Receipts \$ | Total Estimated Receipts \$ | Payment Type | Paid to | | Estimated Future Payments \$ | Total Estimated Payments \$ |
|---------------------------------------|-------------|-------------|------------------------------------|-----------------------------------|-----------------------------------|------------|-------------|------------------------------------|-----------------------------------|
| | Date \$ | Receipts \$ | | | | Date \$ | Payments \$ | | |
| Cash at Bank @ Appointment | 2,179.58 | 2,179.58 | | 2,179.58 | Legal Fees-John Baird | 9,570.00 | | 9,570.00 | 9,570.00 |
| Funding for Investigations | 110,000.00 | 110,000.00 | | 110,000.00 | Legal Fees-Yates Beaggi | 89,586.28 | | 89,586.28 | 89,586.28 |
| Funds trf back from TROM for fees | 13,845.93 | 13,845.93 | | 13,845.93 | Liquidators' Fees & Disbursements | 0.00 | 18,065.10 | 18,065.10 | 18,065.10 |
| GST Refunds | 10,966.00 | 10,966.00 | | 10,966.00 | Repay funding to Galic & Co | 50,000.00 | | 50,000.00 | 50,000.00 |
| Interest Received | 15.59 | 15.59 | | 15.59 | Trf balance of acc to TROM | 74,835.72 | | 74,835.72 | 74,835.72 |
| 1st round fighting fund contributions | 105,050.00 | 105,050.00 | | 105,050.00 | | | | | |
| | 242,057.10 | 242,057.10 | 0.00 | 242,057.10 | | 223,992.00 | 18,065.10 | 242,057.10 | 242,057.10 |
| | | | | | Balance of Funds | | | | 0.00 |

Note: All figures are inclusive of GST where applicable

Tumut River Orchard Management Ltd (In Liquidation) A.C.N. 003 501 611
Receipts and Payments for period between 7 July 2008 and 7 June 2011

| Receipt Type | Received to | | Estimated Future Receipts \$ | Total Estimated Receipts \$ | Payment Type | Paid to | | Estimated Future Payments \$ | Total Estimated Payments \$ |
|---------------------------------------|-------------|-------------|------------------------------------|-----------------------------------|-----------------------------------|-----------|-------------|------------------------------------|-----------------------------------|
| | Date \$ | Receipts \$ | | | | Date \$ | Payments \$ | | |
| Balance of funds from Merlibah | 77,030.89 | 77,030.89 | | 77,030.89 | Legal Fees - John Baird | 13,200.00 | | 13,200.00 | 13,200.00 |
| BAS Refunds | 9,254.55 | 9,254.55 | | 9,254.55 | Liquidators' Fees & Disbursements | 0.00 | 91,538.45 | 91,538.45 | 91,538.45 |
| Funding for Investigations | 2,000.00 | 2,000.00 | | 2,000.00 | Trf to Merlibah to fund fees | 16,041.10 | | 16,041.10 | 16,041.10 |
| Interest Received | 36.65 | 36.65 | | 36.65 | | | | | 0.00 |
| Trf funds from joint acc to fund fees | 32,457.46 | 32,457.46 | | 32,457.46 | | | | | |
| | 120,779.55 | 120,779.55 | 0.00 | 120,779.55 | | 29,241.10 | 91,538.45 | 120,779.55 | 120,779.55 |
| | | | | | Balance of Funds | | | | 0.00 |

Note: All figures are inclusive of GST where applicable

Joint Account Tumut River Orchard Management Ltd (In Liquidation) A.C.N. 003 501 611 & Merlibah Investments Pty Ltd (In Liquidation) A.C.N. 002 979 893
Receipts and Payments for period between 21 April 2010 and 7 June 2011

| Receipt Type | Received to | | Estimated Future Receipts \$ | Total Estimated Receipts \$ | Payment Type | Paid to | | Estimated Future Payments \$ | Total Estimated Payments \$ |
|---------------------------------------|-------------|-------------|------------------------------------|-----------------------------------|-----------------------------------|-----------|-------------|------------------------------------|-----------------------------------|
| | Date \$ | Receipts \$ | | | | Date \$ | Payments \$ | | |
| 2nd round fighting fund contributions | 68,600.00 | 68,600.00 | | 68,600.00 | Legal Fees - Addison | 9,095.02 | | 9,095.02 | 9,095.02 |
| | | | | | Legal Fees - John Baird | 3,396.25 | | 3,396.25 | 3,396.25 |
| | | | | | Liquidators' Fees & Disbursements | 0.00 | 23,651.27 | 23,651.27 | 23,651.27 |
| | | | | | Trf to TROM to fund fees | 32,457.46 | | 32,457.46 | 32,457.46 |
| | 68,600.00 | 68,600.00 | 0.00 | 68,600.00 | | 44,948.73 | 23,651.27 | 68,600.00 | 68,600.00 |
| | | | | | Balance of Funds | | | | 0.00 |

Note: All figures are inclusive of GST where applicable