

**Sozay Pty Limited (In Liquidation)
ACN 126 873 336 (the “Company”)**

Statutory Report to Creditors

10 May 2021

We refer to our initial correspondence to creditors dated 25 February 2021 in which we advised you of our appointment as Liquidators and your rights as a creditor in the liquidation.

The purpose of this report is to:

- provide you with an update on the progress of the liquidation; and
- advise you of the likelihood of a dividend being paid in the liquidation.

1. Update on the progress of the liquidation

1.1. Background

The Company was incorporated on 3 August 2007. The Company acted as trustee for the Sozay Family Trust. The Company did not operate a business in its own capacity.

From our discussions with the Company’s director, Mr Nicholas Borg (**Director**), and our investigations, we understand the following:

- The Company owned several properties in Sydney, NSW in its capacity as Trustee of the Sozay Family Trust, a summary of the properties is provided in **Section 2.1.3**.
- Four of the six properties were sold six or more years prior to our appointment on 11 February 2021;
- In or around the twelve month period prior to our appointment the Company owned the following two properties:
 - 7 Jane Place Dural NSW 2158; and
 - 1 Graham Street Auburn 2144.
- These properties were dispersed in accordance with a marital arrangement between the Director and his ex-partner Myriam Borg; and
- In February 2021, Rajiv Goyal and Andrew McCabe were appointed Joint and Several Liquidators of the Company.

1.2. Statutory information

An ASIC search reveals the following details on the Company:



Statutory Information

Company details

| | |
|-----------------------------|--|
| Date of incorporation | 3 August 2007 |
| Registered office | Saweres & Associates Suite 1 33 Windsor Road Kellyville NSW 2155 |
| Principal place of business | Suite 1 7 Jane Place Dural NSW 2158 |

| | |
|-----------------|------------------------------|
| Director | Appointment from / to |
| Nicholas Borg | 15 November 2015 to Present |

| | |
|-------------------------|-----------------------------------|
| Former Directors | Appointment from / to |
| Myriam Borg | 3 August 2007 to 15 November 2015 |

| | |
|--------------------|------------------|
| Shareholder | Share (%) |
| Nicholas Borg | 100 |

Source: ASIC Company Search dated 10 February 2021

From our review of the Company records we have not identified any discrepancies with ASIC's records.

2. Estimated assets and liabilities

The Director of the Company is required to complete and provide to the Liquidators a statement about the Company's business, property, affairs and financial circumstances, also known as the Report on Company Activities and Property (**ROCAP**).

The ROCAP is a snapshot at the date of our appointment of the assets and liabilities of the Company, disclosing Book Values (**BV**) and the Director's opinion on the estimated realisable value (**ERV**) for assets.

On 11 February 2021, we received a completed ROCAP from the Director which was lodged with the Australian Securities and Investments Commission (**ASIC**) on 15 February 2021.

Below is a summary of the assets and liabilities of the Company, and comparison to the ROCAP as provided by the Director and the Liquidators' ERV:

Summary of Financial Position

| Description \$' | Note | Director's BV | Director's ERV | Liquidators' ERV |
|-----------------------------|-------|-----------------|-----------------|------------------|
| Assets | | | | |
| Cash at bank | 2.1.1 | - | - | - |
| Motor Vehicles | 2.1.2 | - | - | - |
| Real Property | 2.1.3 | - | - | - |
| Total assets | | - | - | - |
| Liabilities | | | | |
| Secured creditors | 2.2.1 | - | - | - |
| Employee Liabilities | 2.2.2 | - | - | - |
| Unsecured creditor claims | 2.2.3 | (77,553) | (77,553) | (77,553) |
| Total Liabilities | | (77,553) | (77,553) | (77,553) |
| Net asset deficiency | | (77,553) | (77,553) | (77,553) |

Source: Director ROCAP dated 11 February 2021, Creditor Proof of Debts and WXA Reasonable Assessment



2.1. Assets

2.1.1. Cash at bank

We conducted a search of all major financial institutions in Australia to determine any bank accounts held in the name of the Company.

From our searches we received confirmation the Company held two bank accounts with Commonwealth Bank of Australia (**CBA**). Details of the bank accounts are detailed below.

| Company Bank Accounts | | |
|---------------------------|----------------|--------------|
| Account Name | Account Number | Balance (\$) |
| Sozay Pty Ltd | 222311126771 | 2 |
| Normandie Honey | 231310305318 | (122) |
| Total Cash at Bank | | - |

Source: CBA

No recoveries are expected from the Company's cash at bank.

From our searches we are also not aware of any further bank accounts in the name of the Company.

2.1.2. Motor Vehicles

The Director's ROCAP discloses the Company owned no motor vehicles at our appointment date.

During our appointment we have conducted a motor vehicle search with the Roads and Maritime Services (**RMS**) in NSW to identify any motor vehicles in the name of the Company. As at the date of this report, we currently await on their response. However, we do not expect the Company to currently own any motor vehicles.

2.1.3. Real Property

The Director's ROCAP discloses the Company owned no real property at our appointment date.

On appointment, we conducted land title searches in NSW, VIC and QLD to identify any property in the name of the Company.

From our searches we identified the Company was the owner of six properties during the period July 2012 to January 2020 (summarised below). We are not aware of any current properties owned by the Company. As noted in **Section 1.1** we understand properties one and two below were disposed of in accordance with a marital separation arrangement between the Director and his ex-partner Myriam Borg. We have requested further particulars of the separation arrangements and disposal of the two relevant properties and our investigations are ongoing.



Sozay Pty Limited (In Liquidation) - Property

| # | Address | Suburb | Postcode | Purchased | Sold |
|---|-------------------------|-------------|----------|-----------|--------|
| 1 | 7 Jane Place | Dural | 2158 | Mar-12 | Jan-20 |
| 2 | 1 Graham Street | Auburn | 2144 | Mar-13 | Jan-20 |
| 3 | 2/15-17 Morwick Street | Strathfield | 2135 | Jan-11 | Mar-14 |
| 4 | 16 Howard Street | Strathfield | 2135 | Feb-12 | Apr-14 |
| 5 | 10/17-21 Russell Street | Strathfield | 2135 | Feb-10 | Apr-14 |
| 6 | 69 Bayline Drive | Point Clare | 2250 | Jul-12 | Nov-13 |

Source: ASIC Property Searches, Land Registry Services and Domain Real Estate

The above has been prepared using searches in the name of the Company, we do not warrant the accuracy of the information provided. The dates the properties were purchased and sold were sourced from domain.com.au.

2.2. Liabilities

2.2.1. Priority employee creditors

The Director's ROCAP disclosed the Company did not have any outstanding employee entitlements.

At the date this report, we are not aware of any outstanding employee entitlements.

2.2.2. Secured Creditors

From a review of an ASIC Company search dated 10 February 2021, we are not aware of any secured creditors of the Company.

2.2.3. Unsecured Creditors

The Director's ROCAP discloses an amount owing of \$78K to ordinary unsecured creditors. As at the date of this report, we have received proof of debts from two unsecured creditors totalling \$78K.

A summary of the ordinary unsecured creditors is provided below:

| Sozay Pty Limited (In Liquidation - Creditor Listing) | ROCAP(\$) | Proof of Debt (\$) | Related Party |
|---|---------------|--------------------|---------------|
| Creditor | | | |
| Revenue NSW | 71,063 | 71,063 | No |
| Saweres & Associates | 6,490 | 6,490 | No |
| Total | 77,553 | 77,553 | |

Source: Director's ROCAP dated 11 February 2021 and Creditor Proof of Debts

As there is unlikely to be any dividend to unsecured creditors, we do not propose to formally call for proof of debts or adjudicate on unsecured creditor claims at this stage of the liquidation.

Creditors who have not already submitted a Proof of Debt Form, are invited to complete the enclosed Proof of Debt Form at **Annexure A** and return it to Patrick Skippen at pskippen@wexted.com.



3. Receipts and payments to date

A summary of the receipts and payments for the period 11 February 2021 to 11 May 2021 is provided below:

| Receipts & Payments | | | |
|---|-------------------|-------------------|---------------------|
| Description | Net \$ | GST \$ | Gross \$ |
| Receipts | | | |
| Contribution to Liquidator's remuneration | 11,000 | - | 11,000 |
| Total Receipts | 11,000 | - | 11,000 |
| Payments | | | |
| Liquidators' remuneration | 10,000 | 1,000 | 11,000 |
| Total Payments | 10,000 | 1,000 | 11,000 |
| Balance | 1,000 | (1,000) | - |

Source: Liquidators' accounts

The Liquidator's expect a GST refund of \$1K will be received from the ATO after lodgement of the Company's June 2021 Quarter Business Activity Statement. This refund will be applied towards the Liquidators remuneration in full. Details of the Liquidators approved remuneration is provided in **Section 6** of this report.

4. Investigation and recovery actions

The Liquidators have obtained books and records in relation to the affairs of the Company, which has included financial statements from the Company's accountant for the periods ending 30 June 2018 and 30 June 2019 together with Company Tax Returns for FY18 and FY19.

We have commenced our investigations into the affairs of the Company prior to our appointment and any potential recovery actions that may be available to the Joint and Several Liquidators to pursue.

To date, we have undertaken the following investigations:

- contacted major banks to obtain details of any bank accounts in the Company's name;
- reviewed the Director's ROCAP;
- liaised with the creditors of the Company;
- conducted a review and analysis of the available Company books and records including bank statements and financial records;
- conducted searches including with ASIC and Land Registry offices;
- conducted preliminary investigations into the Company's affairs; and
- provided reports to creditors and ASIC.

Our findings from these investigations are detailed below.

4.1. Adequacy of books and records

Section 286 of the Act requires a company to keep written financial records that correctly record and explain its transactions, financial position and performance, to enable true and fair financial statements to be prepared and audited. Financial records must be kept for seven years after the completion of the transaction to which the records pertain.



On 16 February 2021 we requested all books and records of the Company in the Director's possession. On 16 February 2021 we also requested all books and records in the possession of the Company's Accountant.

On 22 March 2021 we received the following records from the Company's Accountant:

- FY18 and FY19 Financial Statements;
- Company Tax Returns for FY18 and FY19; and
- Trust Distribution documentation for FY18.

On 22 March 2021 we received confirmation from the Company's Director that no financial statements were maintained by the Company for FY20 as there was no income being received and no assets held by the Trust, we also received bank statements for July 2019 to December 2019.

We are still waiting for further documentation to explain the property disposals discussed in **Section 2.1.3**.

It is our preliminary assessment, sufficient books and records were maintained by the Company in accordance with Section 286 of the Act, notwithstanding that financial statements were not maintained in FY20.

4.2. Insolvent trading

Pursuant to section 588G of the Act, a director has a duty to prevent a company from incurring debts when there are reasonable grounds for suspecting that the company will be unable to pay its debts as and when they fall due.

Section 588M of the Act provides that a Liquidator is entitled to recover compensation from a director equal to the loss or damage suffered by the Company as a result of a breach of section 588G.

The Company was a trustee of a family trust and did not trade in its own right.

The Company was responsible for holding assets on behalf of the trust, other than holding assets the Company did not trade or operate any business.

It is our preliminary view that the Company did not trade whilst insolvent. Further, any insolvent trading claim would be limited to the debts incurred by the Company, post the date of insolvent. Given the total quantum of known unrelated creditors is \$78K, any insolvent trading claim is unlikely to be uncommercial given the Company has no assets for a Liquidator to pursue such a claim.

Should any creditor wish to fund us to undertake further detailed investigations, obtain legal advice and, if applicable, commence an insolvent trading action against the directors, please advise our office in writing by no later than **5pm Tuesday 18 May 2021** so that the matter can be considered accordingly.

4.3. Voidable transactions

Pursuant to section 588FE of the Act, there are a number of different types of transactions that may be voidable by a liquidator. Voidable transactions include unfair preferences, uncommercial transactions, unfair loans, unreasonable director related transactions and circulating security interests created within six months of the relation back day (i.e. date of appointment of the liquidators). However, the transaction can relate back further in certain circumstances. At this stage, our investigation in respect of potential voidable transactions has focused on the books and records received to date.

Our investigations to date in respect of voidable transactions is detailed below.



4.3.1. Unfair preference claims

Our investigations have not revealed any such transactions.

4.3.2. Uncommercial transactions

Our investigations have not revealed any such transactions.

4.3.3. Unfair loans

We have not identified any unfair loans.

4.3.4. Unreasonable Director-related transactions

Our investigations have not revealed any such transactions.

4.4. Director's capacity to pay

Records available at the NSW Land Registry Services confirm the Director, may be the registered proprietor of five properties in New South Wales. A summary of the properties is provided below:

Sozay Pty Limited (In Liquidation) - Nicholas Borg Schedule of Property

| # | Address |
|----------|------------------------------------|
| 1 | 63 Argyle Street Camden 2570 |
| 2 | 3 Graham Street Auburn 2144 |
| 3 | 38 Queens Road Leura 2780 |
| 4 | 79 Canberra Street Oxley Park 2760 |
| 5 | 95 Taylor Street Woy Woy Bay 2256 |

Source: SAI Global - Land Title Searches

Creditors are advised these searches are name based and the noted properties may or may not be owned by the Directors.

As it is our preliminary view that there is no insolvent trading claim available for the Liquidators to pursue, it is unlikely we will undertake further investigations to determine the net realisable values of the properties.

4.5. Statutory report to ASIC

Section 533 of the Act requires a Liquidator to report to ASIC if it appears that:

- A past or present officer, or member, of the company may have been guilty of an offence in relation to the company; or
- A person who has taken part in the formation, promotion, administration, management or winding up of the company may have misapplied money or property of the company or may have been guilty of negligence, default, breach of duty or trust in relation to the company; or
- The company may be unable to pay its unsecured creditors more than 50 cents in the dollar.

As the Company is unable to pay a dividend, we have completed our preliminary investigations and lodged our report pursuant to section 533 of the Act with ASIC on 7 April 2021. This report is confidential between the Liquidators and ASIC and we are unable to disclose any further details. In response to our section 533 report, ASIC advised that it did not intend to take further action at this time.



4.6. Further investigations and estimated cost

Subject to any creditors wishing to fund further investigations, we do not see any commercial benefit to creditors in continuing the liquidation. Accordingly, in the event no funding proposals are received from creditors prior the deadline of **5pm Tuesday 18 May 2021**, we propose to commence the process of applying for the Company to be deregistered.

5. Likelihood of a dividend

Unless funding is available to undertake further investigations and successfully litigate claims, there will be insufficient asset realisations available for any dividend to unsecured creditors. A further update will be provided to creditors if this position changes. Otherwise, please refer to our website www.wexted.com for any further updates.

6. Cost of the liquidation

In our report to creditors dated 25 February 2021, we successfully sought approval from creditors for the following resolutions in respect of our remuneration:

1. accrued remuneration for the period 11 February 2021 to 23 February 2021 of \$5,475.00, exclusive of GST; and
2. estimated future remuneration for the period 24 February 2021 to finalisation of the Liquidation of \$9,525.00, exclusive of GST.

As at the date of this Report, we have incurred and drawn remuneration in the amount of \$10,000.00, exclusive of GST. Subject to receiving creditor funding and any litigation recoveries, we do not anticipate drawing any further remuneration.

Total remuneration incurred for the period of the liquidation to date is \$14,603.00. We propose to write off the balance of our time incurred to date.

7. What happens next?

We will proceed with the liquidation, including:

- Securing funding from creditors to undertake further investigations (if any);
- Finalising our investigations into the Company's affairs;
- Pursuing any litigation claims (subject to funding);
- Finalising the liquidation of the Company; and
- Applying to ASIC to deregister the Company.

If we receive a request for a meeting that complies with the guidelines set out in the initial information provided to you, we will hold a meeting of creditors.

Due to the lack of funds in the Liquidation, no further reports are expected to be provided to creditors. However, creditors are referred to our website www.wexted.com for any further updates. Also, creditors are welcome to contact my office to obtain an update on the progress of the liquidation.

We expect to have completed this liquidation within the next two months.



8. Where can you get more information?

You can access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors; and
- ASIC at www.asic.gov.au (search for “insolvency information sheets”).

Should creditors have any further information that may assist us in our investigation or require further information in regard to this matter, please contact Patrick Skippen of this office on telephone number (02) 9210 1711 or via email at pskippen@wexted.com.

Yours faithfully

Sozay Pty Limited (In Liquidation)

Rajiv Goyal

Joint and Several Liquidator

List of attachments

Appendix A – Proof of Debt Form

Appendix B – ARITA Information Sheet – Offences, recoverable transactions and insolvent trading

FORM 535
CORPORATIONS ACT 2001

ACN: 126 873 336

Subregulation 5.6.49(2)

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

1. To the Joint and Several Liquidators of Sozay Pty Limited (In Liquidation)
This is to state that the company was, on 11 February 2021 ⁽¹⁾ and still is, justly and truly indebted to⁽²⁾ (full name):

.....
(‘Creditor’)

.....
of (full address)

for \$ dollars and cents.

Particulars of the debt are:

| Date | Consideration ⁽³⁾ state how the debt arose | Amount \$ | GST included \$ | Remarks ⁽⁴⁾ 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 manner of 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 in a schedule in the following form:

| Date | Drawer | Acceptor | Amount \$ c | Due Date |
|------|--------|----------|-------------|----------|
| | | | | |

- I am **not** a related creditor of the Company ⁽⁵⁾
- I am a related creditor of the Company ⁽⁵⁾
relationship: _____

If the form is being used for the purpose of voting at a meeting:

Is the debt you are claiming assigned to you?

No Yes

If yes, attach written evidence of the debt, the assignment and consideration given.

Attached

If yes, what value of consideration did you give for the assignment (eg, what amount did you pay \$ for the debt?) _____

3A.^{(6)*} 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, still remains unpaid and unsatisfied.

3B.^{(6)*} I am the creditor's agent authorised to make this statement in writing. I know that the debt was incurred and for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

DATED this day of 2021

Signature of Signatory.....

NAME IN BLOCK LETTERS

Occupation

Address

See Directions overleaf for the completion of this form

OFFICE USE ONLY

| | | | |
|---|-----|--|----|
| POD No: | | ADMIT (Voting / Dividend) - Ordinary | \$ |
| Date Received: | / / | ADMIT (Voting / Dividend) – Preferential | \$ |
| Entered into CORE IPS: | | Reject (Voting / Dividend) | \$ |
| Amount per ROCAP | \$ | Object or H/Over for Consideration | \$ |
| Reason for Admitting / Rejection | | | |
| PREP BY/AUTHORISED | | TOTAL PROOF | \$ |
| DATE AUTHORISED | / / | | |

Proof of Debt Form Directions

- * Strike out whichever is inapplicable.
- (1) Insert date of Court Order in winding up by the Court, or date of resolution to wind up, if a voluntary winding up.
- (2) Insert full name and address (including ABN) 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.
- (3) Under "Consideration" state how the debt arose, for example "goods sold and delivered to the company between the dates of", "moneys advanced in respect of the Bill of Exchange".
- (4) Under "Remarks" include details of vouchers substantiating payment.
- (5) Related Party / Entity: Director, relative of Director, related company, beneficiary of a related trust.
- (6) If the Creditor is a natural person and this proof is made by the Creditor personally. In other cases, if, for example, you are the director of a corporate Creditor or the solicitor or accountant of the Creditor, you sign this form as the Creditor's authorised agent (delete item 3A). If you are an authorised employee of the Creditor (credit manager etc), delete item 3B.

Annexures

- A. If space provided for a particular purpose in a form is insufficient to contain all the required information in relation to a particular item, the information must be set out in an annexure.
- B. An annexure to a form must:
 - (a) have an identifying mark;
 - (b) and be endorsed with the words:
 - i) "This is the annexure of *(insert number of pages)* pages marked *(insert an identifying mark)* referred to in the *(insert description of form)* signed by me/us and dated *(insert date of signing)*;
and
 - (c) be signed by each person signing the form to which the document is annexed.
- C. The pages in an annexure must be numbered consecutively.
- D. If a form has a document annexed the following particulars of the annexure must be written on the form:
 - (a) the identifying mark; and
 - (b) the number of pages.
- E. A reference to an annexure includes a document that is with a form.

Creditor Information Sheet

Offences, Recoverable Transactions and Insolvent Trading



Offences

A summary of offences under the Corporations Act that may be identified by the administrator:

| | |
|---------|--|
| 180 | Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties. |
| 181 | Failure to act in good faith. |
| 182 | Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage. |
| 183 | Making improper use of information acquired by virtue of the officer's position. |
| 184 | Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence. |
| 198G | Performing or exercising a function or power as an officer while a company is under administration. |
| 206A | Contravening a court order against taking part in the management of a corporation. |
| 206A, B | Taking part in the management of corporation while being an insolvent, for example, while bankrupt. |
| 206A, B | Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences. |
| 209(3) | Dishonest failure to observe requirements on making loans to directors or related companies. |
| 254T | Paying dividends except out of profits. |
| 286 | Failure to keep proper accounting records. |
| 312 | Obstruction of an auditor. |
| 314-7 | Failure to comply with requirements for the preparation of financial statements. |
| 437D(5) | Unauthorised dealing with company's property during administration. |
| 438B(4) | Failure by directors to assist administrator, deliver records and provide information. |
| 438C(5) | Failure to deliver up books and records to the administrator. |
| 590 | Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors. |

Recoverable Transactions

Preferences

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under the Corporations Act.

Uncommercial Transaction

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to:

- the benefit or detriment to the company;
- the respective benefits to other parties; and,
- any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years.

The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Unfair Loan

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only must be entered into before the winding up began.

Arrangements to avoid employee entitlements

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person. It will only be necessary to satisfy the court that there was a breach on the balance of probabilities. There is no time limit on when the transaction occurred.

Unreasonable payments to directors

Liquidators have the power to reclaim '*unreasonable payments*' made to directors by companies prior to liquidation. The provision relates to payments made to or on behalf of a director or close associate of a director. The transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

Voidable charges

Certain charges over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six months of its creation.

Insolvent trading

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they did so expect;
- they did not take part in management for illness or some other good reason; or
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

Important note: This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.