



TAYLOR WOODINGS

ADVISORY & TRANSACTION SERVICES | RESTRUCTURING | CORPORATE RECOVERY | FORENSIC ACCOUNTING

# **ERA Insurance Services Pty Limited (Administrators Appointed)**

**ACN 109 873 010**

## **Administrators' Report to Creditors**

**3 August 2010**

SYDNEY | MELBOURNE | PERTH



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ASSOCIATED WITH TW GERRY REA PARTNERS, AUCKLAND NZ | LIABILITY LIMITED BY A SCHEME APPROVED UNDER PROFESSIONAL STANDARDS LEGISLATION

CHARTERED ACCOUNTANTS

## Table of Contents

<b>1.</b>	<b>Introduction .....</b>	<b>1</b>
1.1	Purpose of Report .....	1
1.2	Executive Summary .....	1
1.3	Glossary .....	2
1.4	Disclaimer .....	2
<b>2.</b>	<b>Administration Milestones .....</b>	<b>2</b>
2.1	Appointment of the Former Administrators .....	2
2.2	First Meeting of Creditors .....	2
2.3	Second Meeting of Creditors .....	3
<b>3.</b>	<b>Future of the Company .....</b>	<b>3</b>
3.1	Resolutions Available to Creditors .....	3
3.2	Adjournment of the Second Meeting of Creditors .....	3
3.3	The Company Execute a DOCA .....	4
3.4	The Company be Wound Up .....	4
3.5	The Administration be Terminated .....	4
<b>4.</b>	<b>Administrators' Independence .....</b>	<b>4</b>
<b>5.</b>	<b>Background Information about the Company .....</b>	<b>5</b>
5.1	Information disclosed in ASIC records .....	5
5.2	Company Group .....	6
<b>6.</b>	<b>Business Activities of the Company and Events Leading to Administration .....</b>	<b>6</b>
6.1	Introduction .....	6
6.2	The ERA System .....	6
6.3	Joint Venture with Ken Armstrong .....	6
6.4	Expansion to the United States and Europe .....	7
6.5	Revenue and Profitability of the Company decline .....	7
6.6	Falling out between the Directors and Ken Armstrong/Peter Sellwood .....	7
6.7	Loss of NZ client base .....	8
6.8	Sellwood Proceedings .....	8
6.9	Outsourcing of Insurance Advice .....	8
6.10	Armstrong Proceedings .....	8
6.11	ERAIL withdraws financial support .....	9
6.12	Appointment of Former Administrators .....	9
6.13	Outstanding Winding Up Applications .....	9
<b>7.</b>	<b>Financial Records of the Company .....</b>	<b>9</b>
7.1	Documents received from the Company .....	9
7.2	Directors' RATA .....	9
<b>8.</b>	<b>Financial Statements for 2006 to 2009 .....</b>	<b>10</b>
8.1	Statements of Financial Performance .....	10
8.2	Statements of Financial Position .....	10
8.3	Statements of Cash Flow .....	12
<b>9.</b>	<b>Estimate of Financial Position on 7 July 2010 .....</b>	<b>13</b>
<b>10.</b>	<b>Dealings with Related Parties .....</b>	<b>16</b>
10.1	Introduction .....	16
10.2	Letter of Comfort .....	16

10.3	ERA Related Party Creditors.....	16
10.4	Armstrong Related Party Creditors.....	17
10.5	Management Fees .....	17
10.6	Dividends paid to Shareholders.....	17
10.7	Loans to Directors .....	17
<b>11.</b>	<b>Reasons for the Failure of the Company.....</b>	<b>18</b>
11.1	Explanation of the Directors .....	18
11.2	Explanation of Ken Armstrong/Peter Sellwood .....	18
11.3	Explanation of the Administrators.....	18
<b>12.</b>	<b>Administrators' Objectives and Actions .....</b>	<b>18</b>
12.1	Objective .....	18
12.2	Practical Restrictions Imposed of Administrators.....	19
12.3	Investigations and Asset Preservation.....	19
12.4	Investigations Undertaken.....	19
12.5	Further Investigatory Options .....	20
<b>13.</b>	<b>Assets and Legal Rights of the Company .....</b>	<b>20</b>
13.1	Plant and Equipment.....	20
13.2	Recovery of Receivables.....	20
13.3	AFS Licence.....	22
13.4	Sellwood Proceedings.....	23
<b>14.</b>	<b>Contraventions of the Act .....</b>	<b>23</b>
14.1	Compliance with Section 286 of the Act .....	23
14.2	Other Contraventions by the Company .....	23
14.3	Contraventions by a Current or Former Officer.....	23
<b>15.</b>	<b>Potential Claims by a Liquidator.....</b>	<b>24</b>
15.1	Introduction .....	24
15.2	Proving Insolvency .....	24
<b>16.</b>	<b>Solvency of the Company .....</b>	<b>25</b>
16.1	Definition of Insolvency .....	25
16.2	Indicators of Insolvency.....	25
16.3	Provisional Opinion on Insolvency.....	26
16.4	Matters Material to Provisional Opinion on Insolvency .....	26
16.5	Presumption of Insolvency .....	27
<b>17.</b>	<b>Liquidator Recoveries Where Insolvency Must be Proved .....</b>	<b>27</b>
17.1	Unfair Preferences (Section 588FA).....	27
17.2	Uncommercial Transactions (Section 588FB) .....	28
17.3	Loans (Section 588FD) .....	29
17.4	Insolvent Trading by Directors (Section 588G).....	29
17.5	Insolvent Trading by Subsidiary (Section 588V) .....	30
17.6	Related Party Transactions (Section 588FE(4)) .....	31
17.7	Obstruction of Creditors' Rights (Section 588FE (4)).....	31
<b>18.</b>	<b>Liquidator Recoveries Where Insolvency Does Not Need to be Proved .....</b>	<b>31</b>
18.1	Unreasonable Director Related Transactions (Section 588FDA).....	31
<b>19.</b>	<b>Financial Capacity to Pay Judgment Debt .....</b>	<b>31</b>
19.1	Asset Position of Directors .....	31
19.2	D&O Insurance .....	31
<b>20.</b>	<b>DOCA Proposal .....</b>	<b>32</b>

<b>21. Forecast return to Creditors.....</b>	<b>32</b>
<b>22. Administrators' Opinion on the Resolutions Available to Creditors .....</b>	<b>33</b>
22.1 The Company execute a DOCA.....	33
22.2 The Administration to end .....	33
22.3 The Company be Wound Up.....	33
22.4 Administrators' Recommendation.....	33
<b>23. Receipts and Payments .....</b>	<b>34</b>
<b>24. Remuneration of Administrators .....</b>	<b>34</b>
24.1 Work undertaken.....	34
24.2 Remuneration sought.....	34
<b>25. Questions, Feedback and Information .....</b>	<b>35</b>
<b>Schedule 1: Glossary.....</b>	<b>36</b>
<b>Schedule 2: DIRRI .....</b>	<b>38</b>
<b>Schedule 3: Structure of Group and Relationship to Other Entities .....</b>	<b>40</b>
<b>Schedule 4: Letter of Comfort.....</b>	<b>41</b>
<b>Schedule 5: IPA Creditor Information Sheet .....</b>	<b>42</b>
<b>Schedule 6: Forecast Return to Creditors.....</b>	<b>44</b>
<b>Schedule 7: Receipts and Payments since 19 July 2010 .....</b>	<b>45</b>

# 1. Introduction

## 1.1 Purpose of Report

This Report is designed to provide Creditors of the Company with sufficient information to allow them to make informed decisions about the future of the Company at the Second Meeting of Creditors which will be held at **9:00am on Wednesday, 11 August 2010** at Taylor Woodings Chartered Accountants, Level 15, 50 Pitt Street, SYDNEY NSW 2000.

## 1.2 Executive Summary

An Executive Summary of the preliminary findings and recommendations of the Administrators as detailed in this Report appears as Table 1. The Executive Summary must be read in conjunction with the entire report and must not be relied on without first reading the entire report including all qualifications, limitations and comments.

**Table 1: Executive Summary**

	<b>Preliminary Findings &amp; Recommendations</b>	<b>Analysis</b>
Contraventions of the Act	The Directors and Peter Sellwood may have contravened the Act, but further investigations are required before a concluded view can be reached.	Section 14
Date of Insolvency	The Company may have been insolvent from August 2009 to date. A critical factual matter for resolution with respect to this issue is whether the Company had the financial support of related parties including ERAIL during that period.	Section 16
Unfair Preferences	The Administrators have identified a number of transactions which may give rise to successful Unfair Preference recovery actions.	Section 17.1
Uncommercial Transactions	The Administrators have identified one transaction which may constitute an Uncommercial Transaction.	Section 17.2
Insolvent Trading Claim	The Administrators consider that the Company may have Insolvent Trading claims against the Directors and Fred Marfleet (Former Director) for damages of at least \$170,000 if the Company did not have the financial support of related parties including ERAIL.	Section 17.4
Estimated Return to Unsecured Creditors	The Administrators' estimated return to Ordinary Non-Priority Creditors of the Company under a number of Liquidation scenarios ranges between NIL and 15 cents in the dollar. The return will lie at the lower end of the range unless a substantial recovery from ERAIL occurs pursuant to the letter of comfort dated 6 May 2010.	Sections 10.2 & 21
Company Future	<p>The Creditors should give serious consideration to adjourning the Second Meeting of Creditors to allow the Administrators time to consider and report to Creditors on a DOCA proposal which the Administrators have been advised will be provided to them by ERAIL.</p> <p>In the absence of an acceptable DOCA proposal being received by the Administrators, the Administrators recommend that the Company be wound up.</p>	Section 22

### **1.3 Glossary**

A glossary of the defined terms used in this report appears as Schedule 1.

### **1.4 Disclaimer**

This report is based on information sourced from the Company's books and documents and information provided by Ken Armstrong (former CEO of the Company), Peter Sellwood (former General Manager), the Company's Auditor and external Accountants and clients of the Company. The Administrators have reviewed the books, documents and information and whilst limited independent verification of the information has been conducted, but no audit has been undertaken.

The Administrators have no reason to doubt the information contained in this report. The statements and opinions given in this Report are given in good faith and in the belief that such statements and opinions are not false or misleading. The Administrators reserve the right to alter any conclusions reached on the basis of any changed or additional information which may become available before the Second Meeting of Creditors.

Neither the Administrators, Taylor Woodings nor any employee thereof undertakes any responsibility in any way whatsoever to any person in respect of any errors in this Report arising from incorrect information provided to the Administrators.

This Report is not for general circulation, publication, reproduction or any other use other than to assist Creditors in evaluating their position as Creditors of the Company and must not be disclosed without the written approval of the Administrators.

The Administrators do not assume or accept any responsibility for any liability or loss sustained by any Creditor or any other party as a result of the circulation, publication, reproduction or any other use of the report.

Creditors must seek their own independent legal advice as to their rights and the options available to them at the Second Meeting of Creditors.

## **2. Administration Milestones**

### **2.1 Appointment of the Former Administrators**

On 7 July 2010, the Company appointed the Former Administrators as administrators of the Company pursuant to Section 436A of the Act.

### **2.2 First Meeting of Creditors**

The Former Administrators convened the First Meeting of Creditors pursuant to Section 436E of the Act for 19 July 2010. At that meeting:

- the Former Administrators resigned following an unproven allegation that the Former Administrators had a conflict of interest which precluded them from continuing to act as administrators of the Company; and

- the Creditors appointed the Administrators as the replacement administrators of the Company.

At the First Meeting of Creditors, Creditors were also permitted to appoint a Committee of Creditors but they did not exercise that right.

### **2.3 Second Meeting of Creditors**

The Administrators have convened the Second Meeting of Creditors pursuant to Section 439A of the Act for **9:00am on Wednesday, 11 August, 2010**. The principal function of the Second Meeting of Creditors is to decide the future of the Company by reference to the 3 options which appear in the next section of this Report.

## **3. Future of the Company**

### **3.1 Resolutions Available to Creditors**

The Creditors must pass one of the following 3 resolutions to decide the future of the Company at the Second Meeting of Creditors:

- the Company execute a DOCA;
- the Company be wound up; or
- the Administration be terminated.

The Administrators describe the effect of those resolutions below after first considering the right of Creditors to adjourn the Second Meeting of Creditors for a period not exceeding 45 business days. The Administrators' opinion on which of the 3 resolutions is in the best interests of Creditors appears at section 22 of the Report.

### **3.2 Adjournment of the Second Meeting of Creditors**

As an alternative to passing one of the above 3 resolutions on 11 August 2010, Creditors may resolve to adjourn the Second Meeting of Creditors for a period not exceeding 45 business days.

It is common for Creditors to adjourn a Second Meeting of Creditors where they consider that the additional time may allow a DOCA proposal to be formulated which may lead to Creditors receiving a better return than they would receive if the Company is wound up. The concept of a DOCA proposal is explained in greater detail below.

The Administrators anticipate receiving a DOCA proposal before the Second Meeting of Creditors from ERAIL. The Administrators consider that such a DOCA proposal has the potential to provide Creditors with a greater, timelier and more certain return than they would receive in a liquidation. The Administrators do not consider the financial position for Creditors will deteriorate or the dividend available to Creditors will diminish if the Second Meeting of Creditors is adjourned.

As such, the Administrators consider that Creditors should give serious consideration to adjourning the Second Meeting of Creditors to a future date not more than 45 business days after 11 August 2010. Creditors will then be required to pass one of the following 3 resolutions when the Second Meeting is reconvened.

The Administrators will provide a revised recommendation on the future of the Company if a DOCA proposal is received.

### **3.3 The Company Execute a DOCA**

A DOCA is intended to:

- provide the means by which Creditors receive a greater return on their debts than they would if the Company is wound up; and
- allow the Company to free itself of its debt burden and (usually) to continue (or resume) trading.

A DOCA requires a source of funds to finance the payment of a dividend to Creditors and a motivated entity to organise it. The usual procedure is that the entity proposing the DOCA submits its proposal to the Administrators who, on behalf of Creditors, consider the proposal and make a recommendation to Creditors as to whether the DOCA should be accepted and if so, on what terms.

If creditors resolve that the Company execute a DOCA:

- the Company will not be wound up; and
- Creditors will be bound by the terms of the DOCA.

### **3.4 The Company be Wound Up**

If Creditors resolve that the Company be wound up, the Company will be placed into liquidation and liquidators appointed. The liquidators will be required to complete the investigation commenced by the Administrators into the past dealings, actions and affairs of the Company, its Directors and Related Parties.

The liquidators will also:

- realise the assets of the Company;
- commence certain recovery actions (if merits and funding allow): See sections 15 to 19 for further details of those potential recovery actions; and
- make a distribution to Creditors in accordance with the Act if funds are available.

### **3.5 The Administration be Terminated**

If Creditors resolve that the Administration be terminated, control of the Company will revert back to the Directors and the Company will be placed in a position similar to that existing prior to the appointment of the Former Administrators.

## **4. Administrators' Independence**

The Act requires the Administrators:

- to be independent of the Company, its Directors and any dominant creditor; and



- to be seen to be independent of the Company, its Directors and any dominant creditor.

Immediately before the First Meeting of Creditors, the Administrators delivered a DIRRI to the Former Administrators. At the First Meeting of Creditors, the Administrators provided a copy of the DIRRI to all creditors who attended the meeting in person or by proxy. After the First Meeting of Creditors, the Administrators sent a copy of the DIRRI to all known Creditors with their initial circular.

Since signing the DIRRI, no new matters have occurred which could compromise the independence of the Administrators or preclude the Administrators from acting as the administrators of the Company. A copy of the DIRRI appears as Schedule 2.

## 5. Background Information about the Company

### 5.1 Information disclosed in ASIC records

All companies incorporated or registered in Australia have a statutory obligation to provide certain information to ASIC. The relevant information held by ASIC with respect to the Company is summarised below.

**Table 2: Company Information**

<b>Date of Incorporation:</b>	2 July 2004
<b>Registered Office:</b>	Level 1, 1049 Victoria Road WEST RYDE NSW 2114
<b>Principal Place of Business:</b>	Suite 1204 St Kilda Road Towers 1 Queens Road MELBOURNE VIC 3004

**Table 3: Directors of the Company since 2009**

Name	Domicile	Position	Appointed	Resigned
Kenneth Armstrong	Australia	Director	02-Jul-04	01-Apr-09
Frederick Marfleet	United Kingdom	Director	26-Nov-07	06-Jul-10
Ronald Clucas	United Kingdom	Director	03-Mar-08	Current
Anthony Dormer	Australia	Director	17-Nov-08	Current

**Table 4: Other Directorships and Shareholdings of the Directors**

Name	Directorships	Shareholdings
Ronald Clucas	ERAG ERAA ERA Travel Management Services Pty Ltd ERA Consulting Pty Ltd	
Anthony Dormer	ERAG ERAA Australia Business Foundation Limited Dormers Corporate Pty Limited J.S Herbert & Co Pty Limited Kreston Dormers Financial Services Pty Limited Kreston Dormers Accountants & Business Advisors Pty Ltd Kreston Dormers Consulting Pty Limited New Business Chamber Limited Olimbay Pty Ltd Prydove Pty Limited	Alime Pty Ltd Olimbay Pty Ltd

**Table 5: Existing Shareholders Structure**

Shareholder	Note	Class	Number	Value \$	Fully Paid \$
ASMM	1	Ordinary	49	49	49
ERAA		Ordinary	51	51	51

**Note 1**

ASIC has not recorded the transfer of ASMM's shares to ERAIL which occurred in about February 2009.

## **5.2 Company Group**

The Company is part of the ERA Group of Companies. A diagram showing the structure of the Group and its relationship to other entities appears as Schedule 3.

# **6. Business Activities of the Company and Events Leading to Administration**

## **6.1 Introduction**

This section is designed to provide external Creditors of the Company with a general understanding the business activities of the Company and the events leading to the Administration of the Company. The section is not designed to be a comprehensive account of all the Company's dealings since incorporation and not all events material to the claims of all Creditors are included.

## **6.2 The ERA System**

ERAG (a company associated with the Company) owns and sells ERA franchises across Australia and New Zealand. Those franchises provide franchisees with a system to help ERA clients reduce business expenditure across a range of expense categories.

In return for identifying and implementing cost savings for an ERA client, ERAG and the ERA franchisee receive a fee equivalent to 50% of the cost savings derived by the ERA client over a 2 year period. The fee is apportioned between ERAG and the ERA franchisee on a 15/85 basis.

## **6.3 Joint Venture with Ken Armstrong**

On about 1 March 2004, ERAG granted a non-exclusive franchise (then known as a licence) to Armstrong Consulting, being a company controlled by Ken Armstrong. At the time, the ERA system did not offer cost saving strategies for insurance products.

On about 31 August 2004, Ken Armstrong and ERAG formed a Joint Venture to offer cost saving strategies on insurance products across Australia and New Zealand.

As part of the joint venture:

- ERAG and ASMM (being a company associated with Ken Armstrong) incorporated the Company;
- The Company procured an AFS licence from ASIC to allow it to advise on insurance matters with Ken Armstrong being nominated as the key person;

- ERA clients retained the Company for advice on their insurance requirements;
- An ERA client paid the Company a fee equivalent to 50% of the cost savings derived by the ERA client over a 2 year period which it shared with the introducing ERA franchisee on a 60/40 or 50/50 basis (depending on the franchisee);
- The Company paid 15% of its revenue to ERAG as a royalty;
- AASM/Ken Armstrong received a total management fee/salary of \$360,000 pa indexed to CPI after 30 June 2007 (subject to certain adjustments relating to the financial performance of the Company); and
- The balance of the income of the Company (after payment of expenses and shareholder loans) was to be paid by dividend to AASM and ERAG.

#### **6.4 Expansion to the United States and Europe**

Initially, the Company's operations were profitable. In late 2007, ERAIL (a company incorporated in the UK) and Ken Armstrong sought to replicate in the United States and Europe what the Company had achieved in Australia and New Zealand.

This resulted in:

- The incorporation of ERAGICS with ERAIL and Ken Armstrong as shareholders;
- ASMM transferring its shares in the Company to ERAIL in about February 2009;
- Mr Armstrong receiving shares in ERAGICS;
- ASMM and Mr Armstrong entering into a Consultancy Agreement with ERAGICS; and
- The termination of the joint venture between ERAG and ASMM.

#### **6.5 Revenue and Profitability of the Company decline**

In about November 2007, the Company appointed Peter Sellwood as General Manager to allow Ken Armstrong to concentrate on his work for ERAGICS.

Without the day to day involvement of Mr Armstrong, the revenues and profitability of the Company declined and by 2009, the Company was dependant on financial support from ERAIL to continue trading.

In February 2009, Ken Armstrong resigned as Director of the Company and in April 2009, Ken Armstrong resigned as the key person for the ASIC AFS licence after expressing concerns about the solvency of the Company.

#### **6.6 Falling out between the Directors and Ken Armstrong/Peter Sellwood**

By mid 2009, tensions existed between the Directors on the one part and Peter Sellwood on the other. By about August 2009, the Directors of the Company held concerns that Peter Sellwood (possibly in association with Ken Armstrong) was

intending to use the intellectual property of the Company to establish a business in competition with the Company. During that month, Peter Sellwood resigned from the Company by giving 3 months notice and the 3 remaining employees of the Company were summarily dismissed. (There is an issue as to whether those dismissals are valid at law.)

On 22 October 2009, ERAG purported to terminate the non-exclusive franchise granted to Armstrong Consulting on 1 March 2004. Armstrong Consulting disputed the right of ERAG to terminate the non-exclusive franchise and asserted that ERAG had engaged in repudiatory conduct. On 2 February 2010, Armstrong Consulting accepted the repudiation of ERAG and terminated the non-exclusive franchise.

#### **6.7 Loss of NZ client base**

In about November 2009, the Company's right to provide advice to all new ERA Clients in New Zealand was terminated. This limited the future cash flows from ERA Clients in New Zealand to 50% of the cost savings derived on the insurance policy renewals in the 2010 policy year for existing ERA Clients.

The Administrators have not, as yet, determined the circumstances surrounding the purported termination and whether the Company has potential claims as a consequence of that purported termination.

#### **6.8 Sellwood Proceedings**

On 12 November 2009, Peter Sellwood commenced the Sellwood Proceedings seeking payment of unpaid employment entitlements which are estimated by Peter Sellwood to be in excess of \$150,000.

The Company is defending the proceedings. It has also filed a cross claim against Peter Sellwood and Josh Tobin (a former employee of the Company) for passing off and misleading and deceptive conduct. Peter Sellwood and Josh Tobin are defending the cross claim.

The Company has lodged \$20,000 as security for Mr Tobin's defence costs.

#### **6.9 Outsourcing of Insurance Advice**

On 29 March 2010, the Company purported to outsource the provision of advice to ERA clients in Australia to ITS. Further, details about the outsourcing arrangement appear at paragraph 13.2. This outsourcing arrangement (and the earlier loss of the right to provide services to ERA clients in New Zealand) significantly diminished the future income generating opportunities for the Company.

#### **6.10 Armstrong Proceedings**

On 5 May 2010, ASMM and Armstrong Consulting commenced the Armstrong Proceedings against, amongst other parties, the Company. ASMM claims, in part, that the Company breached a contract to pay \$117,300 to ASMM by way of dividend on account of its share of retained earnings for the calendar year ended 31 December 2007. AASM relies, in part, on assurances given to it that the payment would be made in 3 installments on 30 September 2009, 31 December 2009 and 31 March 2010. The Company is defending the proceedings.

### **6.11 ERAIL withdraws financial support**

On 6 May 2010, Fred Marfleet on behalf of ERAIL (the Company's parent in the United Kingdom) confirmed in writing to the Company's Auditor that ERAIL would provide to the Company such amounts as the Company required to pay all debts owing to "third party creditors" of the Company.

On about 6 July 2010, ERAIL purported to withdraw that financial support notwithstanding a written assurance that the financial support would remain in place until at least 6 May 2011. On the same date, Mr Marfleet also resigned as Director of the Company.

### **6.12 Appointment of Former Administrators**

The Directors of the Company formed the opinion that, in the absence of financial support from ERAIL, the Company was or may become insolvent and on 7 July 2010, the Directors appointed the Former Administrators as administrators of the Company.

### **6.13 Outstanding Winding Up Applications**

As at 7 July 2010, there were no applications to wind up the Company pending before a Court in Australia.

## **7. Financial Records of the Company**

### **7.1 Documents received from the Company**

The Company's external Accountants have provided us with:

- the audited accounts of the Company for the years ended 31 December 2006 to 31 December 2009;
- the MYOB file used to prepare the accounts of the Company which was current to 7 July 2010; and
- various source documents including bank statements and tax invoices.

A summary of the audited accounts for the period to 31 December 2009 and of the management accounts for the period after 31 December 2009 appear at Section 8.

### **7.2 Directors' RATA**

On 27 July 2010, the Directors received a RATA from the Directors. The RATA provides summary information about the assets and liabilities of the Company as at 7 July 2010. An outline of the RATA and the Administrators' comments on the RATA appear at Section 9.

## 8. Financial Statements for 2006 to 2009

### 8.1 Statements of Financial Performance

The most detailed Statements of Financial Performance extracted from the audited accounts for the calendar years 2006 to 2009 as supplemented by the MYOB file for the 6 months to June 2010 appear as Table 6.

The statements show that:

- the Company's income peaked in 2007 and then fell significantly in 2008 and 2009;
- the Company's income in 2010 has, so far, been negligible in the context of previous years; and
- the Company has been unable to reduce expenses in line with the decline in its income.

**Table 6: Statements of Financial Performance**

Note	2006 Audited	2007 Audited	2008 Audited	2009 Audited	2010 Management Accounts
	\$	\$	\$	\$	\$
Revenue	1	953,745	1,701,273	1,218,576	410,517
		<b>953,745</b>	<b>1,701,273</b>	<b>1,218,576</b>	<b>410,517</b>
Employee Costs		(177,683)	(211,914)	(434,613)	(319,636)
Depreciation and amortisation expenses		(6,412)	(4,329)	(6,227)	(8,969)
Marketing Expenses		(2,266)	(20,641)	(14,514)	(30,882)
Administration expenses		(544,676)	(538,226)	(178,840)	(243,521)
Occupancy expenses		(36,755)	(55,579)	(66,577)	(50,002)
Client Billings - AU Assoc Share					(13,965)
Royalty Payable - ERAG					(5,528)
		<b>(767,792)</b>	<b>(830,689)</b>	<b>(700,771)</b>	<b>(653,010)</b>
Finance costs		(662)	(1,932)	(5,195)	(4,887)
Other expenses from ordinary activities		(238,750)	(552,833)	(522,081)	(378,950)
Profit/ (loss) before income tax		6,541	315,819	(9,471)	(626,330)
Income tax benefit / (expense)		(5,852)	(96,893)	7,605	0
Profit/ (loss) after income tax		<b>689</b>	<b>218,926</b>	<b>(1,866)</b>	<b>(626,330)</b>

**Note 1 - Revenue**

	2006 Audited	2007 Audited	2008 Audited	2009 Audited	2010 Management Accounts
	\$	\$	\$	\$	\$
Fees	953,745	1,698,999	1,211,212	402,688	33,303
Interest Received	0	2,274	7,364	7,829	0
Royalty Income	0	0	0	0	753
Override Fee Income	0	0	0	0	502
Marketing Levy Income	0	0	0	0	151
	<b>953,745</b>	<b>1,701,273</b>	<b>1,218,576</b>	<b>410,517</b>	<b>34,709</b>

### 8.2 Statements of Financial Position

The most detailed Statements of Financial Position at 31 December of the years 2006 to 2009 as extracted from the audited accounts as supplemented by the MYOB file appear as Table 7.

The statements show that:

- the Company (like many professional service firms) has not owned significant plant and equipment;
- the Company first experienced negative equity in 2009; and
- during 2010, the Company's liability to related entities has nearly doubled from \$179,643 to \$356,043, which is consistent with the Company being reliant on related entity support to pay trade creditors during that period.

**Table 7: Statements of Financial Position**

	Notes	31-Dec-06 Audited	31-Dec-07 Audited	31-Dec-08 Audited	31-Dec-09 Audited	30-Jun-10 Management Accounts
		\$	\$	\$	\$	\$
<b>Assets</b>						
<b>Current Assets</b>						
Cash and Cash Equivalents	1	162,496	219,538	232,823	52,734	4,122
Trade and other receivables	2	206,112	453,769	553,474	204,364	101,719
Current tax receivable		0	0	0	1,484	0
Prepayments		12,959	10,210	38,480	10,263	4,314
<b>Total Current Assets</b>		<b>381,567</b>	<b>683,517</b>	<b>824,777</b>	<b>268,845</b>	<b>110,155</b>
<b>Non-Current Assets</b>						
Property, Plant And Equipment	3	11,397	16,876	16,393	14,311	14,310
Intangible assets		825	0	0	0	0
<b>Total Non-Current Assets</b>		<b>12,222</b>	<b>16,876</b>	<b>16,393</b>	<b>14,311</b>	<b>14,310</b>
<b>Total Assets</b>		<b>393,789</b>	<b>700,393</b>	<b>841,170</b>	<b>283,156</b>	<b>124,465</b>
<b>Liabilities</b>						
Trade and other payables	4	363,372	373,024	561,926	676,181	693,736
Short-term borrowings		14,173	0	0	0	0
Current tax liabilities	5	0	92,199	45,939	0	28,767
<b>Total Liabilities</b>		<b>377,545</b>	<b>465,223</b>	<b>607,865</b>	<b>676,181</b>	<b>722,503</b>
<b>Net Assets</b>		<b>16,244</b>	<b>235,170</b>	<b>233,305</b>	<b>(393,025)</b>	<b>(598,038)</b>

**Note 1 - Cash assets**

	31-Dec-06 Audited	31-Dec-07 Audited	31-Dec-08 Audited	31-Dec-09 Audited	30-Jun-10 Management Accounts
	\$	\$	\$	\$	\$
Cash on Hand	100	100	100	100	100
Bank Balances	67,806	124,848	130,835	18,004	4,022
Short-term deposits	94,590	94,590	101,888	34,630	0
	<b>162,496</b>	<b>219,538</b>	<b>232,823</b>	<b>52,734</b>	<b>4,122</b>

**Note 2 - Recievables**

	31-Dec-06 Audited	31-Dec-07 Audited	31-Dec-08 Audited	31-Dec-09 Audited	30-Jun-10 Management Accounts
	\$	\$	\$	\$	\$
Trade Receivables	198,629	450,178	629,255	200,023	111,352
Provision for impairment of receivables	(3,349)	0	(79,372)	(13,224)	(13,224)
Other related parties	0	0	0	13,974	0
Other receivables	10,832	3,591	3,591	3,591	3,591
	<b>206,112</b>	<b>453,769</b>	<b>553,474</b>	<b>204,364</b>	<b>101,719</b>

**Note 3 - Plant, Property & Equipment**

	31-Dec-06	31-Dec-07	31-Dec-08	31-Dec-09	30-Jun-10 Management Accounts
	Audited \$	Audited \$	Audited \$	Audited \$	\$
Plant and equipment at cost	17,963	23,957	33,756	40,643	40,642
Less: Accumulated depreciation	(7,209)	(10,349)	(20,465)	(29,124)	(29,124)
Total plant and equipment	10,754	13,608	13,291	11,519	11,518
Furniture, fixtures and fittings at cost	709	3,697	3,697	3,697	3,697
Less: Accumulated depreciation	(66)	(429)	(595)	(905)	(905)
Total plant and equipment	643	3,268	3,102	2,792	2,792
	<b>11,397</b>	<b>16,876</b>	<b>16,393</b>	<b>14,311</b>	<b>14,310</b>

**Note 4 - Trade and other payables**

	Notes	31-Dec-06	31-Dec-07	31-Dec-08	31-Dec-09	30-Jun-10 Management Accounts
		Audited \$	Audited \$	Audited \$	Audited \$	\$
Trade Payables	1	100,280	199,919	255,102	407,690	315,237
Sundry payables and accrued expenses		166,846	76,859	210,580	88,848	22,456
Related party loans		96,246	96,246	96,244	179,643	356,043
		<b>363,372</b>	<b>373,024</b>	<b>561,926</b>	<b>676,181</b>	<b>693,736</b>

**Note 1: Trade Payables**

Includes as at 30-Jun-10 an amount of \$202,847 owed to Related Parties on account of Royalties and similar payments.

**Note 5 - Tax assets and liabilities**

	31-Dec-06	31-Dec-07	31-Dec-08	31-Dec-09	30-Jun-10 Management Accounts
	Audited \$	Audited \$	Audited \$	Audited \$	\$
Income tax	0	92,199	45,939	0	0
GST Collected	0	0	0	0	58,304
GST Paid	0	0	0	0	(64,120)
PAYG Payroll Accruals Payable	0	0	0	0	37,530
Superannuation Payable	0	0	0	0	2,720
ATO Integrated Account	0	0	0	0	(28,408)
Prov'n for Payroll Tax	0	0	0	0	21,614
Prov'n for Income Tax	0	0	0	0	(1,484)
Willis PI Premium - loan pymt	0	0	0	0	2,611
	<b>0</b>	<b>92,199</b>	<b>45,939</b>	<b>0</b>	<b>28,767</b>

### 8.3 Statements of Cash Flow

The most detailed Statements of Cash Flow extracted from the audited accounts for the calendar years 2006 to 2009 appear as Table 8. The Administrators have not prepared a Statement of Cash Flow for 2010.



**Table 8: Statements of Cash Flow**

	Notes	2006 Audited \$	2007 Audited \$	2008 Audited \$	2009 Audited \$
<b>Cash from operating activities:</b>					
Receipts from customers		806,822	1,451,343	1,111,507	750,314
Payments to suppliers and employees		(769,760)	(1,274,593)	(1,055,992)	(880,519)
Interest paid		(662)	(1,932)	(5,195)	(4,887)
Income taxes paid		(10,900)	(4,694)	(38,655)	(45,939)
Interest received		6,294	2,273	7,364	7,829
<b>Net cash provided by/ (used in) operating activities</b>	<b>1</b>	<b>31,794</b>	<b>80,198</b>	<b>19,029</b>	<b>(173,202)</b>
<b>Cash flows from investing activities:</b>					
Payments for property, plant and equipment		(6,803)	(8,983)	(5,744)	(6,887)
<b>Net cash provided by / (used in) investing activities</b>		<b>(6,803)</b>	<b>(8,983)</b>	<b>(5,744)</b>	<b>(6,887)</b>
<b>Cash flows from financing activities:</b>					
<b>Intercompany</b>					
Repayment of borrowings		0	(14,173)	0	0
<b>Net cash provided by / (used in) financing activities</b>		<b>0</b>	<b>(23,156)</b>	<b>0</b>	<b>0</b>
<b>Net increase / (decrease) in cash held</b>		<b>24,991</b>	<b>57,042</b>	<b>13,285</b>	<b>(180,089)</b>
Cash and cash equivalents at beginning of financial year		137,505	162,496	219,538	232,823
<b>Cash and cash equivalents at end of financial year</b>	<b>2</b>	<b>162,496</b>	<b>219,538</b>	<b>232,823</b>	<b>52,734</b>

**Note 1 - Reconciliation of Cash Flow from Operations with Profit from Ordinary Activities after Income Tax**

	2006 Audited \$	2007 Audited \$	2008 Audited \$	2009 Audited \$
Net income for the period	689	218,926	(1,866)	(626,330)
<b>Cash flows excluded from profit from ordinary activities attributable to operating activities</b>				
Non-cash flows in profit from ordinary activities				
Depreciation	6,114	4,329	6,227	8,969
<b>Changes in assets and liabilities</b>				
(Increase) in trade and term receivables	(140,629)	(242,159)	(99,705)	347,626
(Increase) in prepayments	(3,963)	(2,749)	(28,270)	28,217
(Increase)/decrease in intangible assets	298	0	0	0
Increase in trade payables and accruals	180,185	9,652	188,903	114,255
Increase in income tax payable	(10,900)	92,199	(46,260)	(45,939)
<b>Cashflow from operations</b>	<b>31,794</b>	<b>80,198</b>	<b>19,029</b>	<b>(173,202)</b>

**Note 2 - Cash assets**

	2006 Audited \$	2007 Audited \$	2008 Audited \$	2009 Audited \$
Cash on Hand	100	100	100	100
Bank Balances	67,806	124,848	130,835	18,004
Short-term deposits	94,590	94,590	101,888	34,630
	<b>162,496</b>	<b>219,538</b>	<b>232,823</b>	<b>52,734</b>

## 9. Estimate of Financial Position on 7 July 2010

The Administrators have prepared an estimate of the Company's Financial Position on 7 July 2010 based on the RATA and the results of investigations so far undertaken. The estimate appears as Table 9. Assets and liabilities are valued on 3 bases in the table:

- as per the RATA;
- ERV (estimated realisable value) High Range; and
- ERV Low Range.

The ERV High and Low Range valuations take in account matters in addition to the RATA which have been disclosed to the Administrators. The nature of the Company's assets and its liabilities (some of which are subject to legal proceedings) restricts the ability of the Administrators to provide more definitive guidance as to the realisable value of the assets and the admissible value of claims against the Company beyond noting that the Administrators consider that those values are likely to fall within the High and Low ranges set out in Table 9.

**Table 9: Estimated Financial Position as at 7 July 2010**

	Notes	RATA 07-Jul-10 \$	ERV High 07-Jul-10 \$	ERV Low 07-Jul-10 \$
<b>Current Assets</b>				
Cash And Cash Equivalents		1	2,094	2,094
Trade And Other Receivables	1	194,376	220,376	NIL
		<b>194,377</b>	<b>222,470</b>	<b>2,094</b>
<b>Non-Current Assets</b>				
Property, Plant And Equipment		300	NIL	NIL
		<b>300</b>	<b>NIL</b>	<b>NIL</b>
<b>Total Assets</b>		<b>194,677</b>	<b>222,470</b>	<b>2,094</b>
<b>Liabilities</b>				
<b>Employees</b>				
Wages	2	NIL	NIL	36,840
Superannuation	2	NIL	NIL	18,405
Bonus	2	NIL	NIL	96,834
		<b>NIL</b>	<b>NIL</b>	<b>152,079</b>
<b>Ordinary Creditors</b>				
Trade Creditors	3	113,738	113,025	119,778
ERA Related Party Creditors	4	558,891	526,446	589,689
Armstrong Related Party Creditors	5	NIL	29,450	206,865
Statutory Creditors: ATO/SRO		32,322	43,452	43,452
		<b>704,951</b>	<b>712,373</b>	<b>959,784</b>
<b>Contingent Creditors</b>				
Cost orders		NIL	NIL	139,543
Less: Security		NIL	20,000	20,000
		<b>NIL</b>	<b>(20,000)</b>	<b>119,543</b>
<b>Total Liabilities</b>		<b>704,951</b>	<b>692,373</b>	<b>1,231,405</b>
<b>Estimated Surplus/(Shortfall)</b>		<b>(510,274)</b>	<b>(469,903)</b>	<b>(1,229,312)</b>

### Note 1: Trade and Other Receivables

Notes	RATA	ERV High	ERV Low
	07-Jul-10 \$	07-Jul-10 \$	07-Jul-10 \$
ERA Insurance Inc (USA)	42,568	42,568	NIL
Kevin Franks	990	990	NIL
Freelance	100,000	100,000	NIL
Avron Newstadt	718	718	NIL
Willis Australia	2,100	2,100	NIL
TasRacing	48,000	54,000	NIL
Insurance Tenderers	Estimate Unknown	20,000	NIL
	<b>194,376</b>	<b>220,376</b>	<b>NIL</b>

Please refer to paragraph 13.2 for an account of the steps that the Administrators have, so far, taken to recover those Receivables.

### Note 2: Employees

	RATA	ERV Low Related Party	ERV Low Unrelated Party
	07-Jul-10 \$	07-Jul-10 \$	07-Jul-10 \$
Wages	NIL	6,333	30,507
Superannuation	NIL	6,944	11,461
Bonus	NIL	NIL	96,834
	<b>NIL</b>	<b>13,277</b>	<b>138,802</b>

### Note 3: Trade Creditors

	RATA	ERV High	ERV Low
	07-Jul-10 \$	07-Jul-10 \$	07-Jul-10 \$
Eloim Pty Ltd	13,800	13,800	13,800
Ferrier Hodgson	13,882	13,882	13,882
Horton Rhodes	5,552	5,552	5,552
Insurance Tender Services P/L	713	NIL	713
MSM Compliance Services	715	715	715
Sans Regis Superannuation Fund	NIL	NIL	6,040
The Pennywise Nominees Pty Ltd	2,965	2,965	2,965
Truman Hoyle	72,372	72,372	72,372
Willis Australia Limited	2,611	2,611	2,611
Rosebery Bookkeeping Pty Limited (In Liquidation)	1,128	1,128	1,128
	<b>113,738</b>	<b>113,025</b>	<b>119,778</b>

Prior to the First Meeting of the Company, 11 ERS Clients lodged proofs of debt for "fees owed to ERAIS". Subsequently, 2 of those ERA Clients withdrew their proofs of debt and the Administrators consider that further proofs of debt may be withdrawn before the Second Meeting of Creditors. The claims of the ERA Clients have not been considered in this analysis of the Trade Creditors of the Company.

#### **Note 4: ERA Related Party Creditors**

Please refer to paragraph 10.3 for details of the ERA Related Party Creditors.

#### **Note 5: Armstrong Related Party Creditors**

Please refer to paragraph 10.4 for details of the Armstrong Related Party Creditors.

## **10. Dealings with Related Parties**

### **10.1 Introduction**

The Company has had dealings with parties that at the time of the dealings were related parties of the Company. The IPA Code requires those dealings to be disclosed to Creditors in this Report.

The Administrators have not completed their investigation with respect to those dealings due to time constraints.

### **10.2 Letter of Comfort**

On 6 May 2010, and as part of the requirements of the Company's Auditor for preparing the audited accounts of the Company for the 2009 calendar year, ERAIL (the Company's ultimate holding company) issued a letter to the Company's Auditor.

The complete letter appears as Schedule 4. The letter states in part:

"[ERAIL] ... will provide the necessary financial support to ERAA and its subsidiaries [including the Company] to ensuring all third party creditors are paid as and when they fall due for payment. ... This above financial support will remain in place for at least twelve months from the date of this letter."

In reliance on that letter, the Company's Auditor certified that the Company was able to trade as a going concern.

On 6 July 2010, ERAIL withdrew its financial support notwithstanding its assurance to keep the support in place for at least 12 months.

The Administrators have written to ERAIL demanding payment of \$448,075.09 on the basis that the letter constitutes a binding obligation to pay to the Company the amount which the Company owed to third party creditors as at 6 July 2010. In quantifying the third party creditors, the Administrators have presently excluded the debts owing to the ERA and Armstrong Related Creditors to which we refer at section 9 on the basis that they may not be third party creditors.

ERAIL denies that the letter issued to the Company's Auditor gives rise to any legal obligation to pay to the Company the amount which the Company owed to third party creditors as at 6 July 2010.

### **10.3 ERA Related Party Creditors**

The records of the Company, the RATA submitted by the Directors and proofs of debt submitted disclose the existence of the ERA Related Party Creditors. Details of those creditors appear in Table 10. The Administrators note that there appears to a discrepancy between the records of the Company (\$356,043) and the RATA

(\$558,890) and the proofs of debt submitted before the First Meeting of Creditors (\$574,802) as to the amount owing to ERA Related Party Creditors. The Administrators will seek to resolve that discrepancy before the Second Meeting of Creditors.

**Table 10: ERA Related Party Creditors**

Creditor	Relationship	Note	Liability	MYOB	RATA	POD	ERV	
				\$	\$	\$	High	Low
ERAGICS	Related Company		Management fee: 90% of EBITDA	17,557	17,557	17,557	NIL	17,557
ERAG	Related Company		Royalty	144,019	144,019	158,769	144,019	158,769
ERAG	Related Company		Shareholder Loan	59,782	59,782	59,782	59,782	59,782
ERAG	Related Company	1	Shareholder Loan	63,603	63,603	48,716	48,716	63,603
ERAIL	Related Company		Loans	33,963	33,963	33,963	33,963	33,963
ERAGM	Related Company		Loans: Jun-09; Mar-10-Jun-10	196,229	196,229	212,278	196,229	212,278
Kreston Dormers	Controlled by Director		Accounting fees	43,737	43,737	43,737	43,737	43,737
				<b>558,890</b>	<b>558,891</b>	<b>574,802</b>	<b>526,446</b>	<b>589,689</b>

**Note 1: ERAG Shareholder Loan**

The MYOB file records a further balance of \$6,464 as a 'Shareholder Loan'. The Administrators have disregarded this balance as there is no identifiable transaction history.

## 10.4 Armstrong Related Party Creditors

The Armstrong Related Party Creditors have lodged proofs of debt with the Former Administrator as detailed in Table 11. The Administrators consider those Creditors may have been related parties of the Company at the time the events giving rise to the proofs of debt arose.

**Table 11: Armstrong Related Party Creditors**

Creditor	Relationship	Liability	RATA	POD	ERV	
			\$	\$	High	Low
Armstrong Consulting	Controlled by Former Director	Consulting fee in relation to JV	NIL	27,096	27,096	27,096
ASMM	Controlled by Former Director	Share of 2007 retained earnings including interest and legal costs	NIL	177,415	NIL	177,415
Armstrong, KA	Former Director	Reimbursement of equipment purchased	NIL	2,354	NIL	2,354
Armstrong, MA	Related to Former Director	Salary and Superannuation	NIL	4,996	NIL	4,996
			<b>NIL</b>	<b>211,861</b>	<b>27,096</b>	<b>211,861</b>

## 10.5 Management Fees

ASMM received an annual management fee for services rendered in the period to the termination of the joint venture arrangement with ERAG. The Administrators do not consider that the payment of the management fee directly caused the Administration of the Company.

## 10.6 Dividends paid to Shareholders

The Company's audited financial statements do not disclose the payment of any dividends to shareholders of the Company. AASM alleges in the Armstrong Proceedings that for the calendar year ended 31 December 2007, the Company failed to declare a dividend of \$235,070 to which AASM was entitled \$117,300.

## 10.7 Loans to Directors

The Company's audited financial statements do not disclose the existence of any loans to or from the Directors of the Company.

## **11. Reasons for the Failure of the Company**

### **11.1 Explanation of the Directors**

The Administrators sought an explanation from the Directors for the Company's financial difficulties and subsequent failure. The Directors consider that the failure of the Company is attributable to the disruptions to the Company's business (and associated expense) caused by:

- The falling out between the Directors and Peter Sellwood/Ken Armstrong; and
- The defence of the Sellwood and Armstrong Proceedings.

### **11.2 Explanation of Ken Armstrong/Peter Sellwood**

The Administrators also sought a similar explanation from Ken Armstrong and Peter Sellwood. They consider that the following matters contributed to the failure of the Company:

- The decline of revenues following the Company losing the right to advise ERA clients in New Zealand in about November 2009; and
- The decline of revenues following the "outsourcing" of advice to ERA clients in Australia to ITS in about March 2010.

### **11.3 Explanation of the Administrators**

The Administrators consider that a number of factors may have caused or contributed towards the failure of the Company. Those factors include:

- The departure of Ken Armstrong from the day to day management of the Company in late 2007/early 2008;
- The inability of the Company to source work from the ERA client base following the departure of Ken Armstrong;
- The lack of work which could be generated from the ERA client base;
- The failure of the Company to address the decline of revenues following the departure of Mr Armstrong;
- The inability of the Directors and Mr Armstrong to work collaboratively to restore the Company to profitability after they were aware or should have been aware of the on-going decline in revenues during 2008; and
- The Company losing the right to advise ERA clients based in New Zealand and the outsourcing of advice in Australia to ITS.

## **12. Administrators' Objectives and Actions**

### **12.1 Objective**

The primary objective of an Administration is:

- To maximise the chances of the Company, or as much as possible of its business, continuing in existence;

or if that is not possible:

- To obtain a better return for the Company's creditors than would result from an immediate winding up of the Company.

## **12.2 Practical Restrictions Imposed of Administrators**

The Administrators were limited in the options available to them when appointed. The Company did not trade in any meaningful way and the Company did not have any business to sell as a going concern. The Company did not have any employees and did not own any plant and equipment beyond a lap top computer.

The Company's business was essentially confined to the collection of debtors and the management of the Services Contract with ITS.

## **12.3 Investigations and Asset Preservation**

As the Administrators were unable to take any steps to restructure or re-organise the Company's business, their focus turned towards investigating the Company's business, affairs and financial circumstances to, amongst other things:

- identify and preserve the assets and legal rights of the Company: See Section 13 for further details.
- identify possible contraventions of the Act: See Section 14 for further details.
- identify potential legal claims that may be available to liquidators if the Company is wound up: See Sections 15 and following for further details.

Please also refer to the IPA information sheet entitled Offences, Recoverable transactions and Insolvent Trading which appears as Schedule 5 for full details of potential offences under the Act and potential recoveries available to liquidators.

The relatively short duration since our appointment means that our findings are only preliminary. Further investigations may take place if the Company is wound up.

## **12.4 Investigations Undertaken**

In investigating the Company's business, affairs and financial circumstances, the Administrators have:

- Examined the accounting records maintained by the Company;
- Liaised with the Company and its external Accountants;
- Sought and received information and documents from the Company, its Directors, Auditor and external Accountants, Ken Armstrong, Peter Sellwood and other parties; and
- Conducted various searches of publicly available records.

## 12.5 Further Investigatory Options

The Administrators will be unfunded if the Company is wound up and they are appointed as liquidators of the Company. In the absence of funding, the Administrators' ability to undertake further investigations and/or commence recovery actions will be significantly compromised.

**Any Creditor willing to provide funding should let us know the proposed amount and terms of that funding as soon as possible. Should funding be made available, it may be possible to undertake further investigations, including potentially the examination of the Directors and other persons associated with the Company in the Supreme Court of NSW.**

If no funding is made available and the Company is wound up, the Administrators (if appointed as liquidators) intend to submit an application to ASIC under the AA Fund. ASIC operates the AA Fund to finance investigations and reports by a liquidator into the failure of a company with few or no assets. ASIC reviews the report and decides whether or not to commence or fund enforcement action against parties associated with the Company.

## 13. Assets and Legal Rights of the Company

### 13.1 Plant and Equipment

The Company advised that it has disposed of the assets disclosed in its balance sheet other than a notebook computer of negligible value.

### 13.2 Recovery of Receivables

The Administrators have received \$8,442.29 on account of debts owed to the Company on 7 July 2010.

The Administrators have also sent letters of demand to the Debtors of the Company whose details appear in the Company's books and in the Directors' RATA. The Creditors have not, as yet, received any payments in response to those letters of demand.

The attention of Creditors is drawn to the following issues concerning the recovery of those debts:

#### **Freelance Global: \$100,000**

In about June 2010, the Company and Freelance Global executed a deed by which:

- Freelance Global agreed to pay \$160,000 in instalments to the Company. Freelance Global has so far paid \$60,000. The balance is payable in 10 monthly instalments of \$10,000 each commencing 15 July 2010. Freelance Global has not made any of those monthly instalments.
- If the 2010 Fee (as quantified by reference to the deed) is less than \$101,490.50, the Company must re-imburse the difference to Freelance Global. The Administrators understand that the 2010 Fee cannot be quantified until December 2010.



Freelance Global has not made any instalment payments since 7 July 2010 because of concerns about the Company's ability to perform its contractual obligations. Discussions are continuing between the Administrators and Freelance Global to reach agreement on the basis on which Freelance Global will resume paying the instalment payments. If no agreement is reached, the Administrators will consider taking legal action to enforce payment of the debt.

**TasRacing: \$26,937.50**

On about June 2009, TasRacing retained the Company to implement insurance cost reduction strategies. The services were provided to TasRacing under the supervision of Ken Armstrong.

The fee payable by TasRacing is \$26,937.50 with the possibility of a similar fee being due later this year or in 2011.

Mr Armstrong claims that TasRacing retained his consulting company, Armstrong Consulting to perform the work and it is Armstrong Consulting rather than the Company who is entitled to the fees payable by TasRacing.

TasRacing has advised that it will not make any payment in the absence of agreement between the Company and Armstrong Consulting or order of the Court.

The Administrators have engaged in discussions with Ken Armstrong concerning the terms on which TasRacing payments should be made.

**FCA: \$54,000**

Armstrong Consulting has lodged a proof of debt claiming its 50% share (\$27,000) of a payment owing to the Company by FCA (\$54,000). At the time of the First Meeting of Creditors, it was unclear whether FCA had made the payment to the Company.

FCA has advised orally that it has made the payment to the Company in instalments there is no debt owing by FCA on account of the transactions giving rise to the proof of debt lodged by Armstrong Consulting. The Administrators are awaiting written confirmation from FCA.

The Company has advised that that its relationship with FCA generates an on-going monthly fee which, when paid, will be available to unsecured creditors. The Administrators will not disclose the quantum of this fee for reasons of commercial sensitivity.

**ITS: Unknown**

On 29 March 2010, the Company and ITS executed a Services Contract. There is a measure of uncertainty about the rights and obligations imposed under the Services Contract and the Administrators are examining the legal effect of the contract.

The Administrators understand that the intention of the parties was that:

- ITS would perform the work previously undertaken by the Company in Australia;
- ITS is required to make a payment to the Company each month calculated as follows:

- (i) for work performed after 29 March 2010: 28% of gross receipts from ERA clients comprising a royalty of 15%, a marketing levy of 3% and an override of 10%;
  - (ii) for payments made to ITS from ERA clients on account of work previously undertaken by the Company, in addition to the royalty, marketing levy and override, 50% of the balance of the payment.
- ITS was to retain the balance of the payments made by the ERA clients.

It is unclear what, if any payments, should have been made by ITS to the Company under the Services Contract and the Administrators are undertaking further investigations. The Administrators note:

- Between 29 March 2010 and 30 June 2010, ITS appears to have received payments from ERA clients totalling \$82,474;
- ITS has not, as yet, reported on the payments received from ERA clients during July 2010;
- The Company has advised that it has 9 existing contracts with ERA Clients. The Company has not quantified the fees which will be generated from those ERA Clients as the insurance savings for the ERA Clients have not been determined.

### **13.3 AFS Licence**

The Company is the holder of AFS Licence 288862. The licence authorises the Company to provide financial advice regarding general insurance products and to arrange general insurance products for clients.

Anthony Dormer has advised that he became the key person under the AFS Licence on the resignation of Ken Armstrong.

The Company has advised that there is no bond or similar security issued (including money held on deposit) to secure its obligations under the licence. An amount of \$35,981 previously held in a NAB term deposit account was applied towards operating expenses when it expired on about 19 February 2010.

The conditions of the AFS Licence required the Company to, amongst other things, remain solvent and be able to:

- pay all its debts as and when they become due and payable;
- have total assets that exceed total liabilities, or adjusted assets that exceed adjusted liabilities, as shown in the licensee's most recent balance sheet lodged with ASIC; and
- have no reason to suspect that both the licensee's total assets would not exceed its total liabilities and its adjusted assets would not exceed its adjusted liabilities on a current balance sheet.

The Company may not have satisfied those conditions for at least 10 months prior to 7 July 2010 as it may have been insolvent during that period. Please refer to the

examination of the Company's solvency at Section 16 of this Report for further details.

#### **13.4 Sellwood Proceedings**

As noted at paragraph 6.8, the Company has commenced legal action against Peter Sellwood and Josh Tobin. The Administrators have not, as yet, quantified the range of damages to which the Company may be entitled if successful in the action.

### **14. Contraventions of the Act**

#### **14.1 Compliance with Section 286 of the Act**

Section 286 of the Act requires a company to keep written financial records that correctly explain its transactions and financial records and performance and would enable true and fair financial statements to be prepared and audited.

The Administrators consider that the Company has, prima facie, complied with Section 286 of the Act. The Company has audited financial statements for the years to 31 December 2009. Further, the external Accountants maintain the financial records of the Company and those records have been prepared to 7 July 2009.

#### **14.2 Other Contraventions by the Company**

The Administrators are not aware of any other potential contraventions of the Act by the Company.

#### **14.3 Contraventions by a Current or Former Officer**

The Administrators have identified 2 matters which warrant further investigation and which may be consistent with a current or former officer of the Company contravening the Act. It is premature, however, to reach any concluded views on those matters.

##### **ITS: Good faith in the best interests of the Company**

The Services Contract made between the Company and ITS has some unusual aspects which may lead to the conclusion that the Directors, when entering into the Services Contract, did not act in good faith and in the best interests of the Company. The Services Contract exhibits a number of indicia of a device used to shield income from Creditors. Specifically:

- the Company does not appear to have derived a material financial advantage from the Services Contract. ITS did not make an upfront payment to secure its right to provide insurance advice to ERA clients. ITS also appears entitled to retain a proportion of payments made by ERA clients for work performed by the Company before the Services Contract commenced. Further, it appears that most (if not all) of the payments received by the Company must be on-paid to ERAG as royalty/marketing expenses; and
- a former senior employee of the Company now works for ITS; and
- a search of the ASIC AFS discloses that ITS may not hold an AFS licence.

On the other hand, the Administrators have not identified any connection (or other arrangement) between the shareholders of ITS on the one part and the Company and the wider ERA Group on the other which would lead to a conclusion that the Company/ERA Group has a financial interest in ITS.

#### **Peter Sellwood: Use of Information to gain Advantage**

The claims made against Peter Sellwood in the Sellwood Proceedings may, if proven, establish a contravention of the Act by Mr Sellwood if his conduct was reckless or intentionally dishonest. Mr Sellwood has denied the allegations in his defence to cross claim.

## **15. Potential Claims by a Liquidator**

### **15.1 Introduction**

Part 5.7B of the Act gives liquidators (but not administrators) the right to commence certain legal proceedings to recover money, property or other benefits for the benefit of the unsecured creditors of a company.

In the context of the Company, those legal proceedings cannot be commenced if the Creditors of the Company resolve that the Company execute a DOCA. As such, when considering how to vote at the Second Meeting of Creditors, Creditors must give consideration to the prospect of a liquidator being able to successfully recover money, property or other benefits for the benefit of Creditors.

As an initial comment, Creditors should note that recovery actions:

- have the potential to add to the funds available to Creditors;
- are usually expensive, lengthy and have unpredictable outcomes;
- should not be commenced unless defendants have the financial resources to satisfy any judgment; and
- must be funded out of the existing assets or where (as in the case of the Company) such assets do not exist, by creditors or by external litigation funders (who are likely to require a significant share of the proceeds of any judgment as a condition of funding the litigation).

### **15.2 Proving Insolvency**

Creditors should also note that certain recovery actions under Part 5.7B of the Act, namely those relating to Unfair Preferences, Uncommercial Transactions and Insolvent Trading require liquidators to demonstrate that the Company was insolvent at the time of the transaction (or in the case of Insolvent Trading, when the debt was incurred).

In all but the clearest of cases, proving insolvency is a relatively complex exercise, will be subject to conjecture and ordinarily involves some measure of time and expense.

## 16. Solvency of the Company

### 16.1 Definition of Insolvency

Section 95A of the Act provides that a company is insolvent if, and only if, the company is unable to pay all its debts, as and when they become due and payable. A significant body of case law has developed with respect to this definition.

The exercise of proving solvency requires a consideration of a company's financial position taken as a whole but with specific reference to the company's cash flow.

### 16.2 Indicators of Insolvency

The primary indicator of insolvency is a shortfall between:

- the funds available to the Company at a particular point in time; and
- the total commitments the Company which are due and payable at that time.

The funds available to the Company include any available overdraft account and financial support from the Directors and Related Parties. In the context of the Company, this will involve an examination of the enforceable rights of the Company against ERAIL.

Further indicators of insolvency include:

- A low current ratio (being current assets/current liabilities). As rule of thumb, a trading company will be insolvent if its current ratio is less than one and will be solvent if its current ratio is greater than two. Where a trading company has a current ratio of between 1 and 2, then its solvency status will depend on a number of factors specific to the Company and the industry in which it operates.
- The Company exhibiting some or all of the "usual indicia of insolvency". Those indicia have been accepted by Courts in Australia as being the typical characteristics of an insolvent company. Those indicia include:
  - unpaid group tax, payroll tax and worker compensation premiums or superannuation contributions;
  - outstanding taxation returns;
  - inability to produce timely audited accounts;
  - dishonoured cheques;
  - suppliers insisting on COD terms;
  - the issue of post dated or round sums cheques;
  - special arrangements with creditors;
  - demands from bankers to reduce overdraft and other evidence of deteriorating relations with bankers; and

- receipt of letters of demand, statutory demands and court processes for debt collection.

### 16.3 Provisional Opinion on Insolvency

The Administrators consider that the Company may have been insolvent no later than August 2009 and remained insolvent from that time to 7 July 2010. This opinion assumes (contrary to the letter of comfort) that the Company did not have the financial support of ERAIL during 2009 and 2010.

The resolution of that issue may turn, in part, on the position which ERAIL takes with respect to the letter of comfort and what explanations the Company can provide as why, if financial support was available, it failed to discharge its taxation liabilities as and when they became due and payable.

Creditors should note this is only a provisional opinion. Liquidators will undertake a more detailed investigation to determine the period during which the Company was insolvent if the Company is wound up.

### 16.4 Matters Material to Provisional Opinion on Insolvency

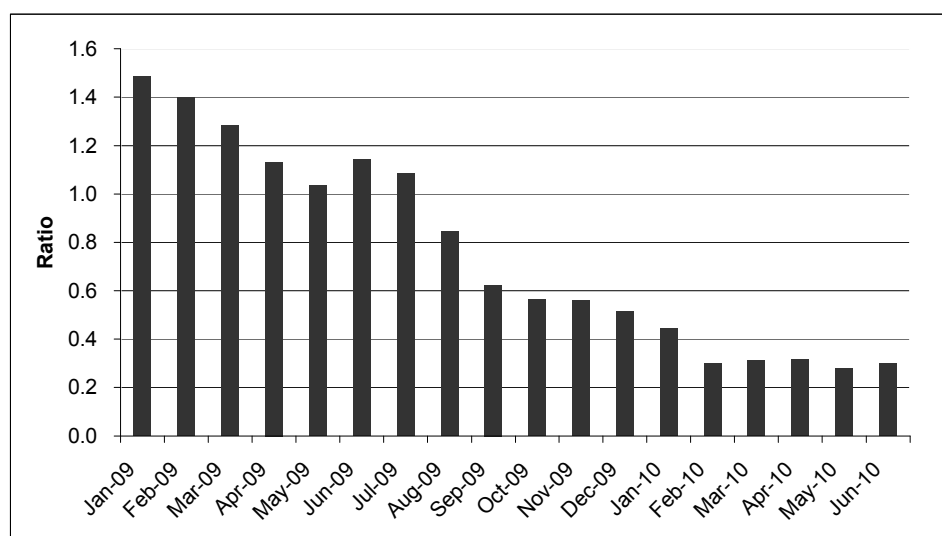
The Administrators took into account the following matters when reaching their provisional opinion on Insolvency.

#### Current Ratio

Chart 1 shows the current ratio (being current assets/current liabilities) of the Company calculated from the Company's management accounts for the period from January 2009.

The Company's current ratio was less than 1 in the entire period from August 2009. This is consistent with the Company being insolvent.

**Chart 1: Current Ratio**



## **Indicia of Insolvency**

The Company's exhibited a number of indicia of insolvency in the period following August 2009. The most significant were:

- **Unpaid taxes**

On 22 May 2010, the Company reached agreement with the ATO to pay an outstanding tax liability of 26,337.84 in 13 monthly instalments.

On 25 June 2010, the Company reached agreement OSR Victoria to pay an outstanding pay roll tax liability of \$21,413.64 in 3 monthly instalments.

The periods during which those outstanding tax liabilities arose are presently unknown.

- **Outstanding taxation returns**

The Company has not lodged its income tax return for the financial year ended 30 June 2009.

## **16.5 Presumption of Insolvency**

Other than claims against a non-related party for recovery of an unfair preference, the Act creates, subject to certain minor exceptions, a rebuttable presumption of insolvency for the period during which the Company failed to comply with section 286 of the Act. See section 14.1 above.

The Company is presumed to be insolvent during the period unless it is proved to the contrary. As indicated in section 14.1, the Administrators do not consider that the Company failed to comply with section 286 at any time prior to 7 July 2010.

## **17. Liquidator Recoveries Where Insolvency Must be Proved**

### **17.1 Unfair Preferences (Section 588FA)**

Transactions (including a payment of money) between the Company and an unsecured creditor in the period 7 January 2010 to 7 July 2010 (being the 6 month period prior to the appointment of the Former Administrators) may constitute an unfair preference if the Company was insolvent at the time of the transaction. The party benefiting from the transaction will have a defence if it did not suspect and should not have suspected the Company was insolvent. The quantum of the claim may also be reduced if the unsecured creditor operated a running account with the Company.

#### **Payments by the Company**

In the 6 month period prior to 7 July 2010, the Company made payments out of its bank account totalling \$250,399.

Of those payments, the Administrators have, so far, identified payments warranting further examination to a collective value of \$122,701. Although further investigations are required, the Administrators consider that there are some prospects that the



recipients of those payments were unsecured creditors of the Company who may have suspected that the Company was insolvent at the time of the payments.

A summary of those payments is set out in Table 12 below.

**Table 12: Potential Unfair Preferences**

	<b>Amount</b>
	<b>\$</b>
Australian Taxation Office	24,080
ERA Group	76,758
Kreston Dormers	21,863
	<b><u>122,701</u></b>

Liquidators will further investigate the circumstances surrounding those payments if the Company is wound up including whether:

- the ERA Group and/or Kreston Dormers operated a running account with the Company; and
- the Company was, by reason of financial support from ERAIL, solvent at the time of the payments.

#### **Payments by the ERA Group**

In the 6 month period prior to 7 July 2010, the Company also appears to have caused the ERA Group to make payments totalling \$258,101 as evidenced by journal entries in the Company's accounts. It is possible that those payments may also constitute unfair preferences if made at the request of the Company to discharge its liability to Unsecured Creditors.

If the Company is wound up, liquidators will also investigate those transactions before forming a concluded view as to whether they can constitute unfair preferences. Transactions made by third parties at the request of an insolvent company can be unfair preferences. However, the evidentiary burden tends to be more difficult than when the insolvent company makes a direct payment to an unsecured creditor.

### **17.2 Uncommercial Transactions (Section 588FB)**

A transaction is an uncommercial transaction if a reasonable person in the Company's circumstances would not have entered into the transaction and the transaction occurred in the period after 7 July 2008 (or where the transaction is with a related party, in the period after 7 July 2006) at a time when the Company was insolvent (or presumed to be insolvent).

#### **ITS Service Contract**

It is possible that liquidators, if funded, may further investigate the circumstances leading to and the motives of the Company in executing the Services Contract as in the absence of a credible explanation the payments which ITS receives (and which the Company has foregone) from ERA clients under the Services Contract does not appear commensurate with benefits that the Company enjoys under the contract.



Creditors should, however, note that the quantum of recoveries (if any) by the Company should liquidators take action are likely to be relatively modest after the costs of any investigation and Court proceedings are taken into account. This is because ITS does not appear to have generated significant income (less than \$85,000) since the Services Contract commenced.

### **17.3 Loans (Section 588FD)**

The Administrators have not identified any loans which have the potential to be characterised as unfair loans.

### **17.4 Insolvent Trading by Directors (Section 588G)**

#### **Introduction**

A director of a company has a positive duty to prevent a company incurring debts whilst insolvent. Should a company incur such debts, a liquidator is entitled to commence proceedings against a current or former director to recover damages equivalent to the amount of the debts incurred during their directorship which remain unpaid by the company.

A director can raise one of the following defences to an insolvent trading claim:

- the director had reasonable grounds to expect that the company was solvent and would continue to be solvent when the debt was incurred;
- the director relied on a competent and reliable person to provide information regarding the company's solvency and, on the basis of the information so provided the director expected the company was solvent and would continue to be solvent when the debt was incurred;
- due to illness (or other good reason) the director was not involved in the management of the company; or
- the director took all reasonable steps to prevent the debt being incurred.

#### **Recoverable damages**

A director liable for insolvent trading is required to pay to the Company damages equivalent to the amount of the unpaid debts incurred during the time that person was a director and the company was insolvent.

Table 13 below discloses the Administrators' best estimate of when the unpaid debts disclosed in the Company's accounts were recorded as being due for payment.

**Table 13: Period in which unpaid debts were due for payment**

Period	Note	Amount \$
July to December 2007		34,710
January to June 2008		0
July to December 2008		15,394
January to June 2009		40,919
July to August 2009		14,488
September to December 2009		60,461
January to June 2010		109,500
July to December 2010	1	24,000
January to June 2011	1	16,000
		<b><u>315,472</u></b>

**Note 1: 2010/2011**

Franchisee's share of the future proceeds of settlement from Freelance Global.

Those periods, whilst not determinative, provide a guide as when the Company's unpaid debts were incurred for insolvent trading purposes. As a guide, the Company may have incurred debts of at least \$170,000 after August 2009 (being the date on which the Administrators consider the Company may have become insolvent in the absence of financial support from ERAIL). (The Administrators also recognise that further unpaid debts which are recorded on the Company's balance sheet may have also been incurred during that or earlier periods.)

If the Company is wound up, liquidators may undertake further investigations to determine when all the Company's debts were in fact "incurred" and whether the Company was insolvent at the time.

**Defences**

It would only be upon a liquidator formally commencing an insolvent trading claim that the defences, if any, which the Directors may raise could be properly considered.

At this stage, the Administrators consider that the Directors may allege that they had reasonable grounds to expect the Company was solvent on the basis that ERAIL had agreed to financially support the Company. This defence may be problematic for, at least, Fred Marfleet as he was also a director of ERAIL at all material times. Mr Marfleet is, however, domiciled in the United Kingdom and this is likely to complicate any claim that is made against him.

**17.5 Insolvent Trading by Subsidiary (Section 588V)**

A "holding company" of an insolvent subsidiary may also be liable in damages in circumstances similar to those where a director may be liable. A "holding company" has defences similar to those available to a director.

ERAA will be classified as a "holding company" of the Company at all times since the incorporation of the Company as it has always held more than one-half of the issued share capital of the Company.

ERAIL may also be classified as a holding company of the Company (especially after February 2009 when it acquired 49% of the issued share capital from ASMM) as it may have controlled (through a combination of its direct and indirect shareholdings)

the composition of the Company's board or at least 50% of the voting at a general meeting of the Company.

#### **17.6 Related Party Transactions (Section 588FE(4))**

Save for related party transactions specifically commented on elsewhere, the Administrators have not identified any other related party transactions which are capable of challenge.

#### **17.7 Obstruction of Creditors' Rights (Section 588FE (4))**

Save for matters specifically commented on elsewhere (specifically the ITS Services Contract), the Administrators have not identified any other dealings capable of constituting an obstruction of Creditors' rights.

### **18. Liquidator Recoveries Where Insolvency Does Not Need to be Proved**

#### **18.1 Unreasonable Director Related Transactions (Section 588FDA)**

The Administrators have not identified any unreasonable director related transactions.

### **19. Financial Capacity to Pay Judgment Debt**

#### **19.1 Asset Position of Directors**

Ordinarily, it is imprudent to bring claims against a party without funds to satisfy a judgment debt and associated legal costs. As required by the Code, the results of the Administrators' interim investigations as to the financial position of the Directors are set out below.

Those investigations have been confined to Real Property Searches and written questions asked of the Directors.

- **Anthony Dormer**

Mr Dormer had not disclosed his financial position to us. A LPI search discloses that Mr Dormer is the registered proprietor of a property situated in or around Berry. The property is encumbered with a mortgage in favour of National Australia Bank Limited. The value of the property and amount of the mortgage is unknown.

- **Ron Clucas**

Mr Clucas has not disclosed his financial position to us. A LPI search discloses that Mr Clucas does not own any real estate in NSW.

#### **19.2 D&O Insurance**

The Administrators are not aware of the any Insurance Policy which may respond to any claims made against the Directors.

## 20. DOCA Proposal

As previously noted at paragraph 3.2, the Administrators expect to receive a DOCA proposal from ERAIL.

The Administrators will provide a further update regarding such a DOCA proposal no later than the Second Meeting of Creditors. Please note that any potential DOCA proposal recommended by the Administrators must provide Creditors with a greater, timelier and more certain return than they would receive if the Company is wound up.

## 21. Forecast return to Creditors

In the absence of a DOCA proposal, the Administrators can only forecast a return to Creditors under a liquidation scenario.

The Administrators have forecast returns to Creditors under the following 3 scenarios as summarised in Table 14. The underlying assumptions for those scenarios appear as Schedule 6:

- **High:** This assumes that pre-appointment receivables are collected and there is a significant recovery under the ERAIL letter of comfort. Under this scenario, there is unlikely to be any antecedent transaction claims as the Company will, on balance have been solvent at all material times. The Administrators consider that the costs of enforcing the ERAIL letter of comfort may be significant.
- **Medium:** This assumes that some pre-appointment receivables are collected, there is no recovery under the ERAIL letter of comfort but a modest amount recovered from the antecedent transaction claims. It also assumes that the quantum of claims lies towards the lower end of ERV;
- **Low:** This assumes no further pre-appointment receivables are collected and there are no recoveries from the antecedent transaction claims. It also assumes that the quantum of claims lies towards the higher end of ERV.

**Table 14: Summary of Forecast Returns**

	Liquidation		
	High	Medium	Low
	\$	\$	\$
Funds Available for Employees	261,912	NIL	NIL
Employee Claims	152,079	152,079	152,079
<b>Estimated Return to Employees</b>	<b>100 cents</b>	<b>NIL</b>	<b>NIL</b>
Funds Available for Ordinary Non-Priority Creditors	109,833	NIL	NIL
Total Unsecured Creditors Claims	742,373	742,373	1,079,327
Bad debt increasing adjustment	8,755	10,275	10,889
<b>Estimated Return to Ordinary Non-Priority Creditors</b>	<b>15 cents</b>	<b>NIL</b>	<b>NIL</b>

Creditors should note when considering the scenarios that there is always a measure of imprecision associated with the forecasting of returns so early in an Administration. **The Administrators consider that the High and Medium Scenarios, whilst theoretically**

**possible, are unlikely and that the Low Scenario is more likely to reflect the actual return that Creditors will receive if the Company is wound up.**

## **22. Administrators' Opinion on the Resolutions Available to Creditors**

The Act requires the Administrators to present their opinion with reasons on whether it is in the Creditors' interests to pass one of the 3 resolutions available to Creditors at the Second Meeting of Creditors as detailed at section 3, namely:

- the Company execute a DOCA;
- the Administration to end; or
- the Company be wound up.

The Administrators' current opinion and reasons are as follows:

### **22.1 The Company execute a DOCA**

There is presently no DOCA proposal so this option is presently not available to Creditors. This situation will change if a DOCA proposal is (as expected) formulated before the Second Meeting of Creditors.

### **22.2 The Administration to end**

This option is impractical as the Company is insolvent. Further, under this option, liquidator recovery actions cannot be commenced.

### **22.3 The Company be Wound Up**

As no DOCA has yet been proposed and the Company appears insolvent (following ERAIL's withdrawal of its financial support), the winding up of the Company presently represents the only potential opportunity for a dividend to be paid to unsecured creditors. The Administrators note, however, that in the absence of a substantial recovery from ERAIL the prospect of a dividend to any class of creditors is remote. The prospects of a successful recovery from ERAIL cannot be determined until the full matrix of facts surrounding the letter of confort including details of other earlier assurances from the ERAIL is known.

### **22.4 Administrators' Recommendation**

Given the matters discussed in this Report and the absence of any DOCA proposal, the Administrators:

- Are unable to recommend that the Company execute a DOCA;
- Do not recommend that the Administration Ends;
- In the absence of any forthcoming DOCA Proposal, recommend that the Company be wound up.

For the reasons discussed at paragraph 3.2, the Creditors are entitled to adjourn their decision on the future of the Company for up to 45 business days after 11 August 2010. In reaching their decision on what resolutions to pass on that date,

Creditors must give consideration to whether an adjournment will lead to a DOCA Proposal being formulated which will provide Creditors with a greater, timelier and more certain return than they would receive if the Company is wound up.

## **23. Receipts and Payments**

A summary of receipts and payments received and paid by the Administrators since 19 July 2010 appears as Schedule 7.

## **24. Remuneration of Administrators**

### **24.1 Work undertaken**

The Administrators have completed the following work since their appointment at the First Meeting of Creditors:

- Attended the Company's offices and inspected (and where appropriate removed) the books of the Company;
- Made demands for payment to the Debtors of the Company;
- Reviewed all litigation matters involving the Company;
- Examined the trading history of the Company;
- Examined and investigated the financial position of the Company and the Directors;
- Liaised with the Directors, the external Accountant, Ken Armstrong and Peter Sellwood concerning the affairs of the Company;
- Convened the Second Meeting of Creditors;
- Investigated the reasons for the failure of the Company;
- Investigated and identified prospective claims that a liquidator may be able to bring for the benefit of unsecured creditors; and
- Prepared this Report.

### **24.2 Remuneration sought**

The Administrators will request Creditors to pass resolutions to approve the drawing of their past and future remuneration out of the assets of the Company at the Second Meeting of Creditors.

The Remuneration Report (which accompanies this Report) provides details of:

- the nature and cost of the work (\$29,332 plus GST) undertaken by the Administrators in the period to 30 July 2010;
- the nature and estimated cost of the work (\$15,000 plus GST) which may be undertaken by the Administrators in the period 30 July 2010 to 10 August 2010;

- the work and estimated cost of the work (\$30,000 plus GST) which may be undertaken by the Administrators in the period from 11 August 2010 on the assumption that Creditors resolve that the Company executed a DOCA at the Second Meeting of Creditors.
- the work and estimated cost of the work (\$174,000 plus GST) which may be undertaken by the Liquidators in the period from 11 August 2010 on the assumption that Creditors resolve that the Company be wound up at the Second Meeting of Creditors.
- the wording of resolutions which the Administrators will request the Creditors to pass with respect to remuneration; and
- the basis on which the Administrators are entitled to draw their remuneration from the assets of the Company.

The Administrators' remuneration is calculated by referenced to the hourly rates of Taylor Woodings Chartered Accountants which were distributed with the Initial Circular to Creditors and which are also included in the Remuneration Report.

## 25. Questions, Feedback and Information

Please contact Kazi Hoque of our office on (02) 8247 8000 or [kazi.hoque@twcs.com.au](mailto:kazi.hoque@twcs.com.au) if you have:

- any questions or feedback with respect of this Report; and/or
- any information which may be of assistance to our ongoing investigations into the affairs of the Company.

Otherwise, I look forward to meeting you at the Second Meeting of Creditors.

Yours faithfully  
**ERA Insurance Services Pty Ltd**  
**(Administrators Appointed)**



Quentin J Olde  
Joint and Several Administrator

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## Schedule 1: Glossary

Abbreviation	Definition
AA Fund	Assetless Administration Fund
Accountant	Kreston Dormers
Act	Corporations Act 2001 (Cth)
Administrators	Quentin James Olde and Peter Bernard Allen
ASIC	Australian Securities and Investments Commission
ASMM	Armstrong Strategic Management and Marketing Pty Ltd ACN 005 709 928
ATO	Australian Taxation Office
Auditor	Geoff Adcock of Storey Blackwood
CEO	Chief Executive Officer
Code	The IPA Code of Professional Practice
Company	ERA Insurance Services Pty Limited (Administrators Appointed) ACN 109 873 010
Creditors	Creditors of the Company who have a claim admissible to proof in the DOCA or Liquidation of the Company
Directors	Anthony Dormer and Ronald Clucas, the current directors of the Company
DIRRI	Declaration of relevant relationships, past work and indemnities prepared in accordance with section 436DA of the Act
DOCA	Deed of Company Arrangement
ERAA	Expense Reduction Analysts Australasia Pty Limited ACN 095 591 665
ERAG	Expense Reduction Analysts Group Pty Limited ACN 008 852 926
ERAIL	Expense Reduction Analysts International Limited, a company incorporated in the United Kingdom
ERV	Estimated Realisable Value



Abbreviation	Definition
First Meeting of Creditors	The First Meeting of Creditors convened in accordance with section 436E of the Act
Former Administrators	Roderick MacKay Sutherland and Sule Arnautovic
Group	The ERA Group of Companies the structure of which appears as Schedule 3
GST	Goods and Services Tax
IPA	Insolvency Practitioners Association of Australia
ITS	Insurance Tender Specialists Pty Limited ACN 141 122 009
LPI	Land Property Information, a division of the Department of Lands
RATA	Report as to Affairs prepared by the Directors in accordance with section 438B of the Act
Second Meeting of Creditors	The Second Meeting of Creditors convened in accordance with Section 439A of the Act

## Schedule 2: DIRRI

### ERA INSURANCE SERVICES PTY LTD (ADMINISTRATORS APPOINTED) ACN 109 873 010

#### Declaration of Independence, Relevant Relationships, and Indemnities

##### Independence

We Quentin James Olde and Peter Bernard Allen of Taylor Woodings have undertaken a proper assessment of any risks to our independence before giving our consent to acting as the Administrators of ERA Insurance Services Pty Ltd (Administrators Appointed) ACN 109 873 010 ("the Company"). This assessment identified no real or potential risks to our independence. We are not aware of any reasons that would prevent us from accepting this appointment.

##### Relevant Relationships

Neither we, nor any other partner of Taylor Woodings nor Taylor Woodings Corporate Services Pty Ltd ("TWCS") nor any associate of TWCS have had within the preceding 24 months, any relationships with the Company, an Associate of the Company, a former insolvency practitioner appointed to the Company, or any person or entity that is entitled to enforce a charge on the whole, or substantially the whole of the Company's property other as follows:

Name	Nature of relationship	Reason why Relationship is not an Impediment or Conflict
Roderick Mackay Sutherland and Sule Arnautovic ("Administrators")	In early 2008, the Administrators engaged Quentin James Olde to act as an independent expert in Court proceedings to provide an independent expert opinion on the solvency of Australian Coal Technology Pty Limited (In Liquidation) being a company to which Messrs Sutherland and Arnautovic were appointed as Liquidators. Mr Olde completed the engagement on 3 March 2009 when he gave evidence before Barrett J of the Supreme Court which His Honour subsequently accepted in a judgment handed down on 3 April 2009.	The engagement was on commercial terms and the subject matter of the engagement is unrelated to this Administration. The engagement does not affect our ability to act impartially during the course of the Administration.
Roderick Mackay Sutherland and Sule Arnautovic in their capacity as Liquidators of Panadell Architectural Cladding Systems Pty Ltd (In Liquidation) ("Systems")	On 12 May 2010, Systems appointed Quentin James Olde and Matt John Adams (a fellow partner of Taylor Woodings) as Receivers and Managers of Panadell Industries Pty Limited ("Industries") pursuant to the terms of a Fixed and Floating Charge created by Industries in favour of Systems.	The engagement was on commercial terms and the subject matter of the engagement is unrelated to this Administration. The engagement does not affect our ability to act impartially during the course of the Administration.

Name	Nature of relationship	Reason why Relationship is not an Impediment or Conflict
	Messrs Sutherland and Arnautovic were the Liquidators of Systems at the time of our appointment.  The Receivership is on-going.	

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

**Prior Engagements or Past Work**

Neither we, nor any other partner of Taylor Woodings nor TWCS nor any associate of TWCS have undertaken any prior engagements or carried out any work within the preceding 24 months (including the provision of pre-appointment advice) for the Company or an Associate of the Company.

**Indemnities**

We have not been indemnified in relation to this Administration, other than any indemnities to which we may be entitled under statute.



.....  
Quentin James Olde

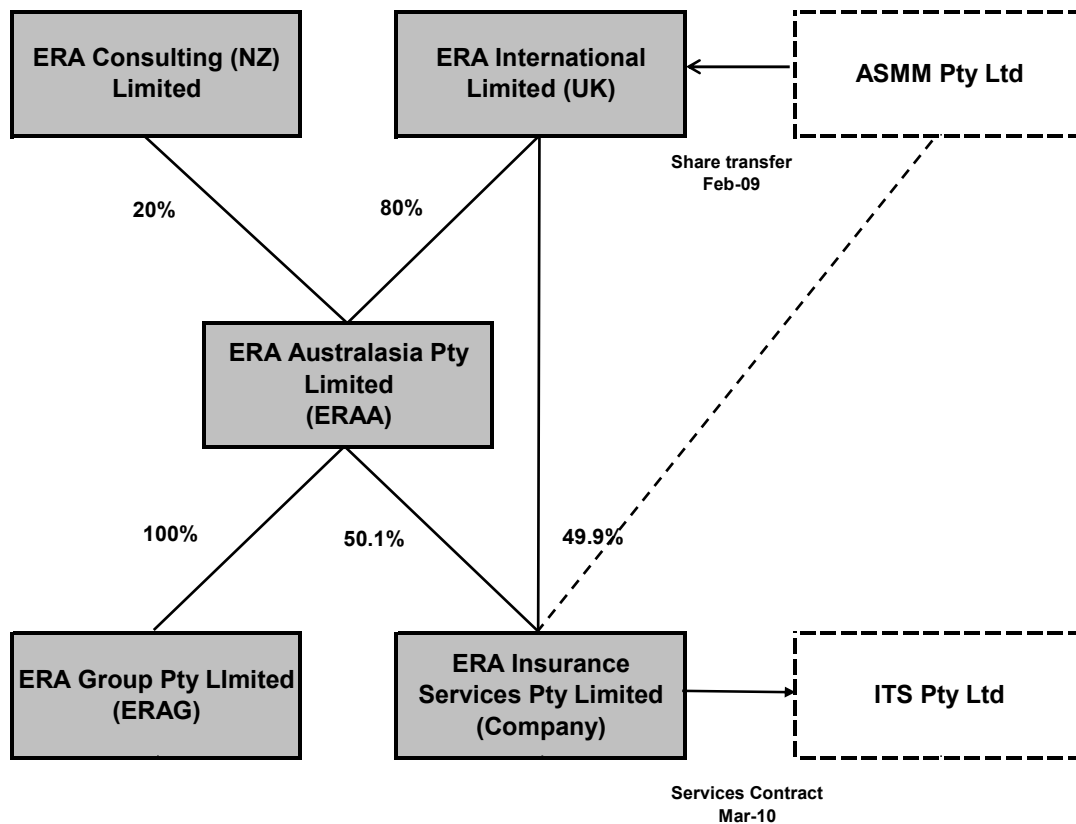


.....  
Peter Bernard Allen

Date: 19 July 2010

**NOTE:** If circumstances change, or new information is identified, it is a requirement under the IPA Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication as well as table a copy of any replacement declaration at the next meeting of the Company's creditors.

### Schedule 3: Structure of Group and Relationship to Other Entities



## Schedule 4: Letter of Comfort



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6 May 2010

Mr. Geoff Adcock  
Storey Blackwood  
Chartered Accountants  
Level 4, 222 Clarence Street  
SYDNEY NSW 2000

RE: Audit of Expense reduction Analysts Australasia Pty Ltd and  
its subsidiaries Expense reduction Analysts Group Pty Limited and  
ERA Insurance Services Pty Limited

Dear Geoff,

We refer to the ongoing audit of Expense Reduction Analysts Australasia Pty Ltd ("ERAA") for the period ended 31 December 2007 and its subsidiaries Expenses Reduction Analysts Group Pty Limited ("ERAG") and ERA Insurance Services Pty Limited ("ERAIS")

We note that as at 31 December 2009, there exists a deficiency of net assets in ERAG's and ERAIS's books. In relation to the same, we confirm that Expense Reduction Analysts International Limited, the ultimate parent entity of ERAA will provide the necessary financial support to ERAA and its subsidiaries to ensuring all third party creditors are paid as and when they fall due for payment. To the extent of providing this financial support, the above inter-company balances are subordinated to ERAA and its subsidiaries third-party creditors. We further confirm that Expense Reduction Analysts International Limited has the financial capacity to provide the financial support included in this letter.

This above financial support will remain in place for at least twelve months from the date of this letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Fred Marfleet'.

Fred Marfleet  
Director  
Expense Reduction Analysts International Limited

## Schedule 5: IPA Creditor Information Sheet

### Creditor Information Sheet

#### Offences, Recoverable transactions and Insolvent Trading



##### Offences

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

180	Failure by officer to exercise a reasonable degree of care and diligence in the exercise of his powers and the discharge of his duties.
181	Failure to act in good faith.
182	Making improper use of position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of his position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for proper purpose. Use of position or information dishonestly to gain advantage or cause detriment.
206A	Contravening an order against taking part in management of a corporation.
206A, B	Taking part in management of corporation while being an insolvent under an administration.
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 auditor.
314-7	Failure to comply with requirements for financial statement preparation.
437C	Performing or exercising a function or power as officer while a company is under administration.
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 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.

##### Voidable Transactions

###### Preferences

A preference is a transaction such as a payment between the company and one or more of its creditors, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant time period is six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent as a result of the transaction.

Where a creditor receives a preferred payment, 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 either 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 time period is four years and if the intention of the transaction is to defeat creditors, the time period is ten years.



The company must have been insolvent at the time of the transaction, or become insolvent as a result 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 have to have been entered into any time on or before the day when 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 transactions made to, on behalf of, or for the benefit of, a director or close associate of a director. To fall within the scope of the section, 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 are voidable by a liquidator:

- Floating charge created with six months of the liquidation unless it secures a subsequent advance;
- Unregistered charges; and
- Charges in favour of related parties who attempt to enforce the charge within 6 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 actually 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.



## Schedule 6: Forecast Return to Creditors

	Notes	High \$	Liquidation Medium \$	Low \$
<b>Assets</b>				
Cash and Cash Equivalents		15,536	15,536	15,536
Trade and other receivables		220,376	85,000	NIL
Contingent Creditors: Repayment of Costs Security		10,000	NIL	NIL
Payment from ERAIL (Letter of Comfort) (after costs)		240,000	NIL	NIL
Deed Contribution		NIL	NIL	NIL
Deed Contribution: Top Up				
Recoveries from Antecedant Transactions (after Costs)		NIL	30,000	NIL
Recoveries from Insolvent Trading (after Costs)		NIL	25,000	NIL
<b>Available to Liquidator</b>		<b>485,912</b>	<b>155,536</b>	<b>15,536</b>
<b>Less: Expenses and Fees of External Administrator</b>				
Trading Liabilities	1	NIL	NIL	NIL
Administrators' Other Expenses		5,000	5,000	5,000
Administrators' Fees		45,000	45,000	45,000
Deed Administrators' Expenses and Fees		NIL	NIL	NIL
Liquidators' Expenses and Fees		174,000	140,000	85,000
		<b>224,000</b>	<b>190,000</b>	<b>135,000</b>
<b>Funds Available for Employees</b>		<b>261,912</b>	<b>NIL</b>	<b>NIL</b>
Employee Claims		152,079	152,079	152,079
<b>Estimated Return to Employees</b>		<b>100 cents</b>	<b>NIL</b>	<b>NIL</b>
<b>Funds Available for Ordinary Non-Priority Creditors</b>		<b>109,833</b>	<b>NIL</b>	<b>NIL</b>
Unsecured Trade Creditors		113,025	113,025	119,778
ERA Related Party Creditors		526,446	526,446	589,689
Armstrong Related Party Creditors		29,450	29,450	206,865
Statutory Creditors: ATO/SRO		43,452	43,452	43,452
Preferred Creditors (repayment of unfair preferences)		30,000	30,000	NIL
Contingent Creditors		NIL	NIL	119,543
Total Unsecured Creditors Claims		742,373	742,373	1,079,327
Bad debt increasing adjustment		8,755	10,275	10,889
<b>Estimated Return to Ordinary Non-Priority Creditors</b>		<b>15 cents</b>	<b>NIL</b>	<b>NIL</b>

The estimated returns set out above should be regarded only as estimates. The actual return to creditors depends on the actual amounts recovered from debtors, the amounts recovered in litigation, the amount of administrative costs and the actual quantum of creditors' claims and the costs associated with any appeal against the determination of the proofs of debt.

### Note 1

Before GST



## Schedule 7: Receipts and Payments since 19 July 2010

	Amount \$
<b>Receipts</b>	
Cash at bank at appointment	2,093.73
Administration Funding	5,000.00
Debtors	8,442.29
<b>Payments</b>	
Nil	0.00
<b>Net Receipts/(Payments)</b>	<b>15,536.02</b>
<b>Cash at Bank as at 2 August 2010</b>	<b>15,536.02</b>