



15 April 2021

ASX Release

Administrator's Report and Creditors' Meeting

Impelus Limited (Administrator Appointed) (ASX: IMS) (Impelus, or Company) confirms that, as previously advised to ASX, David Levi of Levi Consulting Pty Limited was appointed Administrator of the Company on 8 March 2021.

A report has been released to creditors of the Company in terms of section 75-225(3)(a) of the Insolvency Practice Rules (Corporations) 2016 for the purpose of creditors of the Company being informed on their choices for a forthcoming creditors' meeting in connection with their claims. A copy of the report is attached.

Creditors will decide at a creditors' meeting to be held on 20 April 2021 whether the Company enters into liquidation or a deed of company arrangement.

Mr Levi, in his capacity as Administrator, has recommended in his report a deed of company arrangement proposal rather than liquidation. It is premature to know the outcome of the meeting.

The creditors' meeting will be held on 20 April 2021 at 10 a.m., with attendance via teleconference only. Teleconference details are available by email request, to be directed to Mr Levi at the address provided below.

This announcement was approved for release by the Company's Administrator, David Levi.

For further enquiries, please contact:

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**REPORT BY ADMINISTRATOR
PURSUANT TO SECTION 75-225(3)(a) OF THE INSOLVENCY PRACTICE RULES
(CORPORATIONS) 2016**

**IMPELUS LIMITED
(ADMINISTRATOR APPOINTED) ("THE COMPANY")
ACN 089 805 416**

13 April 2021

Overview

There is a Deed Proposal included in this report. I recommend the Deed Proposal to creditors

1 INTRODUCTION

David Levi of Levi Consulting Pty Ltd was appointed Administrator of the Company on 8 March 2021 pursuant to section 436A of the Corporations Act 2001 ("**the Act**").

This Report is prepared pursuant to section 75-225(3)(a) of the Insolvency Practice Rules (Corporations) 2016 ("**the Rules**").

The future of Impelus Limited will be decided by creditors at a meeting to be held on Tuesday 20 April 2021 ("**Decision Meeting**").

Layout of report

This report is set out under the following principal headings:

- 1.0 Introduction
- 2.0 Background information
- 3.0 Current financial position
- 4.0 Offences, Voidable Transactions and Insolvent Trading
- 5.0 Administrator's Opinion
- 6.0 Creditors' Trust
- 7.0 Estimated return to creditors
- 8.0 Summary of Receipts and Payments
- 9.0 Remuneration

The following are annexures to this Report, referred to throughout the Report.

- Annexure 1 - ASIC search
- Annexure 2 - Chronology
- Annexure 3 - Related Entities
- Annexure 4 - Summary of Report on Companies Affairs and Property
- Annexure 5 - Estimated assets and liabilities as at 8 March 2021
- Annexure 6 - Estimated creditors' claims as at 8 March 2021
- Annexure 7 - Financial statements and historical financial performance
- Annexure 8 - Summary of Deed Proposal (also known as Benelong Proposal)
- Annexure 9 - Estimated funds to creditors in DOCA and Liquidation scenarios
- Annexure 10 - Declaration of Independence, Relevant Relationships and Indemnities (s436DA of the Act)
- Annexure 11 - Summary of Administrator's receipts and payments
- Annexure 12 - Remuneration Report (s60-5 of the Insolvency Practice Schedule (Corporations))



- Annexure 13 - ARITA Information Sheet: Offences, Recoverable Transactions and Insolvent Trading
Annexure 14- ARITA Information Sheet: Approving remuneration of an external administrator

Definitions used in this report

"the Company"	Impelus Limited ACN 089 805 416
"the Act"	Corporations Act 2001 (Cth)
"the Rules"	Insolvency Practice Rules (Corporations) 2016
"ROCAP"	Report on Company Activities and Property

1.1 Executive Summary

The object of the appointment of an administrator under Part 5.3A of the Act is set out in section 435A of the Act:

"The object of this Part, and Schedule 2 to the extent that it relates to this Part, is to provide for the business, property and affairs of an insolvent (or likely to become insolvent) company to be administered in a way that:

- a) *maximises the chances of the company, or as much as possible of its business, continuing in existence; or*
- b) *if it is not possible for the company or its business to continue in existence – results in a better return to creditors than would result from an immediate winding up of the company.*

Section 439C of the Act covers the three options available to creditors:

"At a meeting convened under section 439A, the creditors may resolve:

- a) *that the company execute a deed of company arrangement specified in the resolution (even if it differs from the proposed deed (if any) details of which accompanies the notice of meeting); or*
- b) *that the administration should end; or*
- c) *that the company be wound up."*

There is one Deed Proposal at the date of this report.

There is no expectation that another Deed Proposal will be received.

If there is another Deed Proposal, I will circulate to creditors, and likely recommend at the Decision Meeting that the meeting be adjourned to consider any other Deed Proposal received (if any), or alternatively, deal with it at the Decision Meeting.

I advertised for Expressions of Interest for reconstruction of the company, including shareholdings, in the Australian Financial Review and on LinkedIn and circulated an Information Memorandum. I obtained more than thirteen responses.

All responses received were conditional or alternatively, after receipt of the Information Memorandum, parties indicated that they were not interested to submit an offer.

The offer from Benelong Capital Partners Pty Ltd ("**Benelong Proposal**") was the highest in dollar value, and, in my opinion, in the best interests of the Company.

The Benelong Proposal will result in receipt of \$206,750 subject to conditions precedent in their proposal. The conditions precedent include a DOCA and a Creditors' Trust.



A copy of the Benelong Proposal is summarised in Annexure 8.

Impelus Limited has cash at bank of \$24,722 (as at 6 April 2021) and has no other assets of commercial value (other than potential recoveries, if any, under Part 5.7B of the Act). Some of the funds will be applied to Administrator's disbursements. The remainder will increase the DOCA Fund, if any, and increase funds available to preferential creditors including employees.

Impelus Limited and its Controlled Entities have all ceased to operate. All entities ceased to operate at 8 March 2021 other than Marketing Punch Limited (incorporated in UK) (MPL).

On 31 March 2021, Impelus Limited transferred its shareholding in Marketing Punch Limited (a company incorporated in United Kingdom (UK)) to Brendan Birthistle and Paul Kemshell (Purchasers). Brendan Birthistle is a Director of Impelus Limited. Paul Kemshell is Country Manager for Marketing Punch Limited. Immediately prior to the transaction on 31 March 2021 the following was the position:

- Commonwealth Bank held security over the assets and undertakings of Impelus Limited (ASX:IMS) including the shares owned by Impelus Limited in its wholly owned subsidiary (in the UK) named Marketing Punch Limited.
- Commonwealth Bank held security over the assets and undertakings of Marketing Punch Limited.

Commonwealth Bank received AUD\$200,000 in exchange for the release of its security over Marketing Punch Limited from Brendan Birthistle

Commonwealth Bank provided partial release of its security over Impelus Limited in respect of the shareholding of Impelus Limited in Marketing Punch Limited and those shares were transferred to Brendan Birthistle and Paul Kemshell.

The transactions, which exchanged and also settled on 31 March 2021 resulted in a reduction of joint and several liabilities to Impelus Limited and Marketing Punch Limited and the consideration resulted in a transaction at not less than market value, and also, the best price reasonably obtainable having regard to the circumstances existing at and about the time of the transaction on 31 March 2021.

The transaction provided the best outcome to Impelus Limited and Marketing Punch Limited. Impelus Limited was advised by KTME Corporate and Piper Alderman. Commonwealth Bank was advised by Grant Thornton and Minter Ellison. Brendan Birthistle and Paul Kemshell were advised by Polczynski Robinson, Lawyers.

In summary, in a liquidation, no funds will be available for preferred, secured or unsecured creditors unless there are liquidator recoveries under Part 5.7B of the *Corporations Act 2001*. The prospects of liquidator recoveries are uncertain or low.

In summary, assuming a Deed Proposal based on the Benelong Proposal, I have modelled the estimated return to creditors, and summarise the Benelong Proposal at Annexure 8 and Annexure 9.

I include as Annexure 9 – Liquidation verses DOCA based on the Benelong Proposal.

The Benelong Proposal is also likely to put value into the shares in the Company, subject to various conditions precedent. No estimate is provided, nor details, nor undertakings, nor representations.



2 BACKGROUND INFORMATION

2.1 Statutory Information

ASIC

The records of the Australian Securities and Investments Commission extracted by me as at the date of my appointment recorded information about the directors, officers and shareholders of the Company. A copy of the historical and current ASIC search of the Company is available on request.

Current company directors are Brendan Birthistle (Chairman) and David Haines. Robert Skinner resigned as a director on 22 March 2021.

Name	Date Appointed	Date Ceased
David Andrew Haines	23/05/2001	
Brendan Thomas Birthistle	4/12/2018	
Robert Edward Skinner	7/08/2020	22/03/2021
Maureen Smith	28/01/2020	7/08/2020
Craig Robert Poole	28/10/2019	28/01/2020
Neil Gordon Wiles	18/07/2017	15/11/2019
Maureen Ann Smith	16/11/2018	30/11/2018
Ian Elliot	29/11/2017	9/11/2018
Alexander Andrew Kelton	1/07/2010	29/06/2018
Christopher Thorpe	23/05/2001	17/11/2017
Gavin Roger Whyte	6/12/2005	4/04/2017
Ulrich Huelle	23/03/2000	6/12/2005
Craig Anthony Ellis	23/05/2001	30/11/2004
Jenny Anne Bull	23/05/2001	28/09/2004
Sharon Louise Austen Dunne	1/10/1999	4/07/2002
Corey Hendrick Vincent	1/10/1999	23/05/2001
Martin Roger Greenberg	15/12/2000	23/05/2001
Gordon Bradley Elkington	1/10/1999	15/12/2000
John Weston Seaforth Mackenzie	1/10/1999	15/12/2000

PPSR

Commonwealth Bank of Australia is the only known secured creditor of Impelus Limited.

2.2 History of the Company

The Company is listed on the ASX (ASX:IMS), and is currently suspended from trading.

The Company's Australian subsidiaries performed lead generation activities for its clients. The Company ceased trading operations on 8 March 2021.

At 30 June 2020 the company had investments in 17 wholly owned subsidiaries.

Many of those subsidiaries were deregistered after 30 June 2021 or are in the course of deregistration. The status of wholly owned subsidiaries is summarised in Annexure 3. The three Australian incorporated entities ceased to trade at 8 March 2021. The Australian business was not saleable.



I was appointed Administrator of each of the three companies below on 8 March 2021:

- i. Impelus Limited
- ii. Global One Mobile Entertainment Pty Limited
- iii. Impelus APAC Pty Limited

A summary of the subsidiaries is as follows:

- **Global One Mobile Entertainment Pty Ltd.** Global will enter into liquidation at the next creditors' meeting for that company on 20 April 2021. There will be no distribution to any class of creditor.
- **Impelus APAC Pty Ltd.** Impelus APAC will enter into liquidation at the next creditors' meeting for that company on 20 April 2021. CBA does not have security over Impelus APAC. Nor is CBA an unsecured creditor of Impelus APAC. There will be a distribution to preferential creditors and unsecured creditors.
- **Other subsidiaries.** My investigations and enquiries of Brendan Birthistle and Felix Chen (CFO) indicate that none of the subsidiaries of Impelus Limited have any assets of commercial value. MPL has ceased to be a subsidiary effective 31 March 2021.

2.3 Reasons for the Company's Difficulties

The Company was a holding company relying on its wholly-owned subsidiaries for revenue generation.

During 2017 to 2019 the turnover for Impelus Limited and its Controlled Entities substantially declined arising from uncontrollable market withdrawal by Telstra and Optus in the Direct Carrier Billing (DCB) market, and also arising from market withdrawal of clients in the business-to-consumer insurance market. Efforts to restore the business of the Company to pre-DCB financial performance levels were not achieved in Australia. The impact of COVID-19 caused further challenge to restore financial performance.

2.4 Outstanding Winding up Applications

There were no winding up applications against the Company at 8 March 2021 or other times.

2.5 Related Entities

Information is included in the Annexures to this report.

2.6 Administrator's Prior Involvement

At the first meeting of creditors, no Committee of Creditors was formed and no alternate nomination was brought forward for a replacement Administrator. I have remained as Administrator of the Company.

At the first meeting of creditors, a Declaration of Independence, Relevant Relationships and Indemnities ("DIRRI") was tabled, which was circulated to creditors with my circular to creditors dated 10 March 2021. There has been no change to the DIRRI.

2.7 Books and records

There has been compliance with section 286 of the Act for the Company to keep proper books and records.

2.8 Financial Statements and Historical Financial Performance

I provide a Chronology of events at Annexure 2. Included in the Annexures to this report is an analysis year-on-year of historical financial performance.

I provide an overview of the performance of Impelus and its Controlled Entities.

<u>Impelus Limited and Controlled Entities</u>	<u>Revenue</u>
FY 2018	25,510,096
FY 2019	12,074,388
FY 2020	9,410,601
<u>Impelus Limited and Controlled Entities</u>	<u>Profit/Loss</u>
FY 2018	(28,725,126)
FY 2019	(12,271,657)
FY 2020	(6,520,079)
<u>Impelus Limited and Controlled Entities</u>	<u>Net Assets</u>
FY 2018	14,505,117
FY 2019	4,005,252
FY 2020	(2,059,480)

I provide an overview of the performance of Impelus Limited.

<u>Impelus Limited (Holding Company not consolidated group)</u>	<u>Revenue</u>
FY 2018	-
FY 2019	-
FY 2020	-
<u>Impelus Limited (Holding Company not consolidated group)</u>	<u>Profit/Loss</u>
FY 2018	(28,257,459)
FY 2019	(5,296,171)
FY 2020	(2,406,473)
<u>Impelus Limited (Holding Company not consolidated group)</u>	<u>Net Assets</u>
FY 2018	3,354,494
FY 2019	(227,511)
FY 2020	3,460,347



I provide an overview of the capital raisings of Impelus Limited

Capital Raisings by Impelus Limited	Amount raised (\$AUD)	Date
Successful placement of 18,500,000 shares raising \$1.2 million for company expansion, general working capital resources and to cover placement costs	1,200,000	6/12/2006
Raised \$1.1 million a private placement to Auster Capital Partners	1,100,000	3/02/2012
Raised \$1 million in a private placement to be utilised for the capital acquisition of mobile marketing platforms	1,000,000	8/02/2013
Successfully completes \$11.75 million capital raising by way of placement to Australian and Institutional investors.	11,750,000	26/03/2014
Successfully completes a \$12 million capital raising through the placement of shares. Funds to be used for accelerating growth opportunities with telco's for Direct Carrier Billing; leveraging the scalability of its operations; acquisition of related earnout payments; additional customer acquisition; working capital and costs of the offer	12,000,000	6/06/2016
Announces it has received commitments from existing and new shareholders for the placement of 100,000,000 new fully paid ordinary shares at \$.02 per share to raise a total of \$2 million. Also undertaking a Share Purchase Plan to raise a further \$1 million	2,000,000	6/09/2018
Entered into a Convertible Note Agreement to raise \$1.5 million with Brendan Birthistle. The funds were needed to raise further equity capital for the purposes of retiring bank debt and continuing the company's operations.	1,500,000	19/11/2018

I provide a summary of advances by MPL (UK) to Global One Mobile Entertainment Pty Limited. These assisted to fund the Australian operations.

Loan agreement	Date	Debit	Credit
Marketing Punch Ltd to Global One	29/09/2016		84,859.08
Marketing Punch Ltd to Global One	6/10/2016		167,051.98
Marketing Punch Ltd to Global One	6/10/2016		167,051.98
Marketing Punch Ltd to Global One	23/06/2017		672,808.01
Marketing Punch Ltd to Global One	10/10/2017		127,117.57
Marketing Punch Ltd to Global One	12/10/2017		126,108.07
Marketing Punch Ltd to Global One	13/10/2017		84,718.48
Marketing Punch Ltd to Global One	4/01/2018		120,570.54
Marketing Punch Ltd to Global One	5/01/2018		51,799.70
Marketing Punch Ltd to Global One	5/10/2018		92,327.92
Marketing Punch Ltd to Global One	31/01/2019		90,301.44
Marketing Punch Ltd to Global One	5/05/2020		21,267.92
Marketing Punch Ltd to Global One	1/06/2020		68,109.35
Marketing Punch Ltd to Global One	3/07/2020		89,754.36



Marketing Punch Ltd to Global One	24/09/2020		90,711.01
Marketing Punch Ltd to Global One	23/10/2020		128,460.64
Marketing Punch Ltd to Global One	23/11/2020		91,172.83
Marketing Punch Ltd to Global One	27/11/2020		54,236.50
Global One to Marketing Punch Ltd	11/12/2020	88,753.20	
Marketing Punch Ltd to Global One	21/01/2021		88,296.63

I provide a summary of loans to Impelus Limited by Brendan Birthistle (Chairman). The "Repayment Date" column indicates the date initially agreed for repayment. None of the loans was in fact repaid, in whole or in part.

Loan agreement	Loan Amount	Received Date	Repayment Date
Brendan Thomas Birthistle	250,000	31/01/2019	30/06/2020
Brendan Thomas Birthistle	250,000	12/02/2019	30/06/2020
Brendan Thomas Birthistle	400,000	23/07/2019	15/12/2022
Brendan Thomas Birthistle	20,000	9/09/2019	15/12/2022
Brendan Thomas Birthistle	20,000	10/09/2019	15/12/2022
Brendan Thomas Birthistle	20,000	11/09/2019	15/12/2022
Brendan Thomas Birthistle	20,000	12/09/2019	15/12/2022
Brendan Thomas Birthistle	20,000	13/09/2019	15/12/2022
Brendan Thomas Birthistle	200,000	18/09/2019	15/12/2022
Brendan Thomas Birthistle	150,000	12/12/2019	15/12/2022
Brendan Thomas Birthistle	150,000	22/01/2020	15/12/2022
Brendan Thomas Birthistle	150,000	4/03/2020	15/12/2022

It is my assessment that the Company initiated adequate short term funding arrangements, reduction in overheads, and by agreement with counter-parties, rescheduling of dates that liabilities were due and payable, through until 31 December 2020. In January 2021 liabilities were incurred, that were due and payable, without arrangements. If there were insolvent trading proceedings, I estimate that the upper range of a claim for insolvent trading would be no more than the value of unpaid debts incurred after 31 December 2020. The potential damages claim would be less than the total of Creditors' Claims at 8 March 2021 estimated at Annexure 5 of \$387, 591. The damages would be limited to liabilities incurred after 31 December 2020 and unpaid at 8 March 2021, so less than \$387,591.

3 CURRENT FINANCIAL POSITION

3.1 Director's Report on Company Activities and Property and Administrator's Comments

A Report on Company Activities and Property ("ROCAP") has been submitted to me. A summary of the ROCAP is included in the Annexures to this report.

One of the notable features of this administration is that two of the company's largest creditors are the Commonwealth Bank of Australia, which provided secured funding to the company, and the company's director Brendan Birthistle, who provided unsecured funding to the company. They are owed in the order of \$4,362,455 and \$2,025,975 respectively. In summary known creditors are:

Preferential creditors:	\$
ATO (Superannuation Guarantee Charge)	6,786



Neil Wiles (employee and former director)	874,647
Secured creditor – Commonwealth Bank	4,362,455
Unsecured creditors – unrelated (refer Annexure 6 for further details)	387,591
Unsecured creditors – related (Brendan Birthistle)	2,025,975

Neil Wiles former director and employee has lodged a claim for employee entitlements with Impelus Limited. He was a director of Impelus Limited however he was paid by a wholly owned subsidiary named Global One Mobile Entertainment Pty Limited over which I have been appointed Administrator. PAYG Summaries and payslips were also issued to Mr Wiles by the wholly owned subsidiary. Mr Wiles' lawyer has advised that he was an employee of Impelus Limited. I am treating Mr Wiles as an employee of Impelus Limited, for the time being, as advised by his lawyer. This may change if further information comes to light

4 OFFENCES, VOIDABLE TRANSACTIONS AND INSOLVENT TRADING

Section 70-225(3)(b)(vi) requires the Administrator to prepare a statement setting out whether there are any transactions that appear to the administrator to be voidable transactions in respect of which money, property or other benefits may be recoverable by a liquidator under Part 5.7B of the Act.

Part 5.7B of the Act deals with recovering property or compensation for the benefit of creditors of insolvent companies. Part 5.7B is only available to a Liquidator, and further, a Liquidator is afforded greater powers of investigation than an Administrator or Deed Administrator. If creditors resolve that the company be wound up, then the powers contained in Part 5.7B operate, and a liquidator would conduct further investigation.

I have conducted an investigation into the affairs of the company. I detail below preliminary results of my investigation, including but not limited to:

- unfair preferences (s.588FA).
- uncommercial transactions (s.588FB).
- unfair loans (s.588FD).
- insolvent trading (s.588G and s.588V).
- directors' duties (s. 180 – 184); and
- other breaches

4.1 Unfair Preference Payments (s588FA)

A transaction is an unfair preference if it results in a creditor receiving from the company, in respect of an unsecured debt, more than the creditor would receive from the company if the transaction were set aside and the creditor were to prove for the debt in the winding up of the company.

If the payment(s) to the creditor was made within the six (6) months preceding the appointment of the Administrator, a Liquidator can take action to recover funds from the preferred creditor and distribute them according to the order of priority contained in Section 556 of the Corporations Act 2001. If an unfair preference was paid to a creditor at a time when the company was insolvent, or the company becomes insolvent because of, or because of matters including the payment of the unfair preference, a Liquidator can seek to recover the preference payment if a related entity was a party to the transaction and the transaction was entered into during the four years preceding the appointment of the Liquidator: Section 588FE(4) of the Act. The definition of a "related entity" in Section 9 of the Act is exhaustive and includes a director or member of the company or of a holding company or subsidiary.



It is a prerequisite to a claim to recover an unfair preference that a Liquidator is able to establish that the company was insolvent at the time the payment was made and that the recipient of the payment knew or should have known that the company was insolvent.

Comment

I am not aware of any payments under s.588FA.

4.2 Uncommercial Transactions (s588FB)

Section 588FB(1) provides that a transaction of a company is an uncommercial transaction if a reasonable person in the company's circumstances would not have entered into the transaction having regard to certain factors. These factors are: the benefits (if any) and the detriment to the company as a result of entering into the transaction; the respective benefits to other parties to the transaction; and any other relevant matter. An uncommercial transaction may be avoided by a Liquidator if it was undertaken during the 2 years preceding the appointment of the Administrator. If an uncommercial transaction was entered into at a time when the company was insolvent, or the company becomes insolvent because of, or because of matters including entering into the transaction, a Liquidator can seek to recover the preference payment if a related entity was a party to the transaction and the transaction was entered into during the four years preceding the appointment of the Liquidator: Section 588FE(4).

Comment

I am not aware of any uncommercial transactions.

4.3 Unfair Loans (s588FD)

Unfair loans to a company can be deemed as voidable transactions by a Liquidator, subject to an Order of the Court. A loan to a company is unfair if the interest on the loan or the charges in relation to the loan were extortionate when the loan was made or have since become extortionate because of a variation in its terms. A statutory defence is available to a defendant in proceedings.

Comment

I am not aware of any unfair loans. I have examined in particular the terms of the loans made by Mr Birthistle to the company and do not consider them to constitute unfair loans.

4.4 Transactions with the Purpose of Defeating Creditors (s588FE(5))

Transactions with the purpose of defeating creditors can be deemed as voidable transactions by a Liquidator if they are transactions which occur at a time when the company was insolvent, occurred during the 10 years preceding the appointment of an Administrator and the company became a party to the transaction for the purpose of defeating, delaying or interfering with the rights of creditors in a winding up of the company.

Comment

I am not aware of any transactions under s588FE(5).

4.5 Unreasonable Director-Related Transactions (s588FDA)

Unreasonable director-related transactions can be deemed as voidable transactions by a Liquidator. These transactions occur during the 4 years preceding the appointment of an Administrator and involve the payment, conveyance, transfer, disposition, issue of securities or incurring of an obligation made by the company to a director or close association of a director (or person on behalf of a director or close associate) in



circumstances where it is expected a reasonable person would not have entered into the transactions having regard to the benefit (if any) or detriment to the company entering into the transaction.

Comment

I am not aware of any transactions under s588FDA that are likely commercial to pursue.

4.6 Discharging a Debt of a Related Entity (s588FH)

Where a company engages in an uncommercial transaction or makes an unfair preference payment, and the result is that a liability that had been guaranteed by a related entity is discharged, a liquidator may in certain circumstances look to the related entity to recover the amount discharged. This enables a Liquidator to recover an unfair preference or uncommercial transaction from the related entity, rather than the other party to the transaction.

Comment

I am not aware of any transactions under s588FH.

4.7 Arrangements to Avoid Employee Entitlements (s596AB)

Part 5.8A of the Act aims to protect the entitlements of a company's employees from agreements and transactions that are entered into with the intention of defeating the recovery of those entitlements.

It is an offence under s596AB(1) for a person to enter into an agreement or transaction with the intention of, or with intentions that include the intention of:

- preventing recovery of employee entitlements; or
- significantly reducing the amount of employee entitlements recoverable.

Comment

I am not aware of any transactions under s596AB.

4.8 Circulating Security Interest created within 6 months (s588FJ)

A recovery may be available in respect to the creation of any circulating security interest over the assets of the company within the six (6) months prior to the date a winding up application is filed. There is no s588FJ issue in this matter.

4.9 Insolvent Trading (s588G)

The Corporations Act 2001 provides in Section 588G that directors have a duty to prevent a company incurring liabilities where they know or ought to know that the company is insolvent. The directors can be liable to compensate the company (Section 588M) for losses resulting from insolvent trading, subject to defences available.

A director will engage in insolvent trading in breach of s588G if the Company incurs a debt and:

- a) the Company is insolvent at the time of incurring the debt or becomes insolvent by incurring the debt;

- b) at the time the debt is incurred, there are reasonable grounds for suspecting that the Company is insolvent or will become insolvent;
- c) the director is aware of such grounds or a reasonable person in a like position in a Company in the circumstances of the Company would be so aware; and
- d) the director fails to prevent the Company from incurring the debt.

Under s95A of the Act, a company is insolvent if it is unable to pay all of its debts as and when they become due and payable. This has generally been viewed as importing a cash flow test rather than a balance sheet or net assets test.

There are three primary consequences for directors of a breach of s588G.

- a) Civil penalty - A breach may attract a pecuniary penalty for the director personally of up to \$200,000. In addition, the ASIC may apply for the disqualification of a director from taking part in the management of companies.
- b) Compensation - if the relevant company is wound up, proceedings may be brought against a director personally to pay compensation to the company in an amount equal to the debts incurred in contravention of the section. A compensation claim may be brought against directors by a Liquidator, a creditor (with the consent of a Liquidator) or ASIC.
- c) Criminal liability - In some cases where there is actual suspicion of insolvency and the failure to prevent the incurring of the debt is dishonest, criminal liability may apply with a fine of up to 2,000 penalty units (\$340,000) or imprisonment for up to five years, or both.

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

To determine insolvency, the Courts lean toward the "cash flow" test. The cash flow test is regarded as being able to pay one's debts as and when they become due and payable.

The key indicia of insolvency determined by Court cases are as follows:

1. Continuing losses.
2. Liquidity ratios below 1.
3. Overdue Commonwealth and State taxes
4. Unpaid superannuation
5. Poor relationship with present Bank or financier, including inability to borrow further funds.
6. No access to alternative finance.
7. Inability to raise further equity capital.
8. Suppliers placing the Company on COD, or otherwise demanding special payments before resuming supply.
9. Creditors paid outside trading terms.
10. Issuing post-dated cheques.
11. Dishonoured cheques.
12. Special arrangements with selected creditors.

13. Solicitors demands, summons(es), judgements or warrants issued against the company or its property.
14. Payments to creditors of rounded sums which are not reconcilable to specific invoices.
15. Inability to produce timely and accurate financial information to display a company's financial position and performance.

A director is afforded statutory defences in respect to an insolvent trading action under Section 588H. These defences include that the directors took all reasonable steps to prevent a company from trading whilst insolvent.

By reference to the analysis of the balance sheet (refer to Annexures), and also, the ageing of creditors at 8 March 2021, the Company had cashflow issues. However, it augmented its cashflow with funds from MPL and Brendan Birthistle and other sources as outlined in paragraph 2.8.

The CBA facility originated principally prior to 2016.

The Company received financial support from related entities and other parties as indicated in paragraph 2.8.

The Company also had protection provided by (pre-COVID-19) Safe Harbour from 19 September 2018 to February 2019. It entered into (pre-COVID) Safe Harbour arrangements with William Buck, as its Safe Harbour adviser.

It is my assessment that the Company initiated adequate short term funding arrangements, reduction in overheads, and by agreement with counter-parties, rescheduling of dates that liabilities were due and payable, through until 31 December 2020. In January 2021 there are signs that some liabilities were incurred, that were due and payable, without arrangements.

Significant funding would be consumed to pursue Directors for an insolvent trading claim and before legal proceedings (if any) are commenced, regard must be had to the ability of the director to meet such a claim.

Recoveries by a liquidator for insolvent trading are uncertain and low (if any). As I have indicated earlier in this report, I estimate the high point of any recovery (before taking into account a liquidator's fees and costs, legal fees and costs and other overheads) to be in the order of \$387,591. The net figure would be much lower, and the primary beneficiaries of any recovery, being the company's two largest creditors by far, would be the Commonwealth Bank and Mr Birthistle himself

4.10 Director's Personal Financial Position

Financial position of the Company's directors and several former directors is unknown.

4.11 Directors' Duties (ss180-184))

I am not aware of any breaches. Several shareholders have contacted me to make observations. If the company has misled or deceived shareholders in the course of trade, causing them to suffer loss, then there is possibly a "Sons of Gwalia" claim, that is, a claim for compensation for the losses incurred in acquiring shares. However due to legislative amendments made in the wake of the Sons of Gwalia case, such claims are postponed until after all other creditors are paid in full.

At this point, based solely on the information supplied, I could not be satisfied the shareholders have a claim. First, shareholders have to show the company did in fact mislead/deceive. Second shareholders need to show that that behaviour in fact resulting in suffering loss (for example by buying shares, the shareholder would not



otherwise have bought). Not every shareholder, if any, who has lost money in an insolvency has a Sons of Gwalia claim. Moreover, there is no prospect of sufficient recovery in a winding up to pay such a claim.

5 ADMINISTRATOR'S OPINION

In terms of section 75-225(3)(b) of the *Insolvency Practice Rules (Corporations) 2016 (Rules)*, I provide the Opinion below.

Pursuant to section 435A of the Corporations Act 2001 (Cth), the objective of the voluntary administration regime is to provide for the business, property and affairs of an insolvent company to be administered in a way that:

- (a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or
- (b) if it is not possible for the company or its business to continue in existence--results in a better return for the company's creditors and members than would result from an immediate winding up of the company.

I observe that the secondary objective--that is to say, providing a better return for the company's creditors and members--only applies "if it is not possible for the company or its business to continue in existence".

In this matter, a DOCA has been proposed (Annexure 8) which provides for the company to continue in existence, with a view to being recapitalised for the purposes of a presumed future business. This appears likely to achieve the primary objective of the voluntary administration regime. Although, by virtue of the wording of the Act, the secondary objective does not arise, it is also observed that the proposed DOCA appears likely to provide a better future return for members than an immediate winding up.

In contrast, a liquidation (winding up) of the company will not see the company or its business continue in existence, resulting in a failure of the primary objective of the voluntary administration process. Nor does it appear probable that the secondary objective of the regime would be met in a winding up. It is possible that some creditors may receive an uncertain dividend in a winding up, however there is no realistic prospect of any return to members, and in my assessment the most likely outcome in a liquidation (winding up) is that there would be no return to either creditors or members, failing both objectives of the regime.

In a liquidation, a liquidator will have powers to prosecute for recoveries including Part 5.7B of the Corporations Act 2001. The prospects of liquidator recoveries are uncertain or low based on my enquiry and investigation. Furthermore, a liquidator would need funding to pursue recoveries, examinations and or proceedings, and the circumstances of this matter would not likely attract funding including litigation funding.

In circumstances where the proposed DOCA (Annexure 8) meets the primary objective of the voluntary administration regime, and a liquidation (winding up) will not meet that objective, and appears unlikely even to meet the secondary objective of the regime, my recommendation is that creditors support the proposed DOCA.

The third option is to end the administration and return control of the company to its board. Given the company's circumstances I cannot recommend this option.

Summary

- DOCA – recommended
- Ending of the Administration – not recommended
- Liquidation – not recommended.

6 CREDITORS' TRUST

What is a creditors' trust?

A creditors' trust is a legal mechanism designed to enable a company to exit more quickly from a DOCA than would otherwise be possible. Ordinarily, a company will continue to be bound by a DOCA (and will be required by law to state that it is "subject to deed of company arrangement" after its company name in all public documents) until the DOCA is wholly "effectuated".

Effectuation (completion) of a DOCA is ordinarily a lengthy process, which involves collating the whole of the DOCA fund, calling for creditors to lodge their final claims, adjudicating those claims and dealing with any disputes arising in respect thereof, attending to statutory advertising, distributing dividend cheques, waiting for all dividend cheques to be presented and to clear, dealing with any further distribution or final accounting arising from cheques which have not been presented, and engaging in other administrative and accounting tasks and making statutory lodgements.

Under a creditors' trust, instead of waiting for this process to be finalised, a trust fund is created for the benefit of creditors as soon as the DOCA commences. The DOCA administrator's role is generally limited to setting up the trust and paying all available funds to the trustee, and the trustee of the trust then attends to the tasks noted above.

In the meantime, the DOCA administrator declares that the DOCA has been successfully completed (effectuated), and the company immediately ceases to be subject to external administration, and is returned to the control of its board, with no further opportunity for the DOCA administrator to intervene.

What are the disadvantages of creditors' trusts?

The Australian Securities and Investments Commission (**ASIC**) has previously expressed concerns about the use of creditors' trusts, and in particular a concern that, if a *DOCA* is not complied with, it can be terminated and the company can be placed into liquidation, however, if a *creditors' trust* is not complied with, creditors have no automatic right to terminate the trust and place the company into liquidation.

ASIC has also expressed concern that rights available to creditors under a DOCA, such as the right to appeal to the Supreme or Federal Court against decisions taken by a DOCA administrator, are not available to creditors under a creditors' trust. Under a creditors' trust, the rights of creditors are more limited, and the ability to force the company into liquidation in the event something goes wrong is abrogated.

In 2005 (updated 2018), ASIC released a Regulatory Guide, RG 82, dealing with these concerns and providing guidance. A copy of the Regulatory Guide may be viewed online at <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-82-external-administration-deeds-of-company-arrangement-involving-a-creditors-trust/>.

Why is a creditors' trust being used in this case?

In this case, BCP has indicated a preference for a creditors' trust so that the company is able to exit more quickly from external administration.

This expedited exit from external administration will enable the balance of BCP's proposal to proceed without further delay. It is noted that BCP's proposal involves a share consolidation (requiring a general meeting and resolutions of shareholders), and the return of the company to official quotation on the ASX (requiring the satisfaction of a number of criteria and the overarching approval of the ASX).

Why is the administrator recommending creditors agree to a creditors' trust?

The administrator is aware of the issues with creditors' trusts, but considers that, in the specific circumstances of this case, the advantages of a creditors' trust outweigh (significantly) the potential disadvantages.

In this case, BCP's major financial contribution to the DOCA will be funded as a lump sum, rather than in a series of payments to be made over time. This diminishes significantly the risk that payment will not be made, or that the trustee of the creditors' trust will find itself needing to take steps to enforce payment.

Moreover, BCP itself is a highly experienced corporate advisory firm which has, to date, rehabilitated 26 ASX-listed companies using the method proposed in this case (or a variation thereof). Its strong reputation and direct commercial interest in making its proposal succeed (without which it obtains no return on its significant investment of time and money) further diminishes, in the administrators' view, the risk of non-compliance.

Finally, the trustee of the creditors' trust is not proposed to be BCP or a BCP staff member, but the administrator himself, an experienced and independent registered liquidator overseen by ASIC. Once the creditors' trust is established, the administrator will immediately become the trustee, and will administer the trust for the benefit of participating creditors.

Against the risks inherent in a creditors' trust, the administrator is mindful that a compelling commercial case is made for the use of a creditors' trust, that BCP has a strong track record of the successful use of this mechanism, and that BCP's proposal, taken as a whole, is to the advantage of creditors when compared with an immediate winding up of the company.

Under BCP's proposal, creditors are expected to benefit from an injection of funds that would otherwise not be available. The company's two major creditors, CBA and Brendan Birthistle, will (subject to documentation) support the proposal by agreeing not to claim distribution in competition with other creditors. The CBA will also (subject to documentation) withdraw its security over the company, leaving it unencumbered.

None of those benefits would be available in a winding up of the company. Instead, at most, a liquidator of the company might (on a "best case" scenario, if funded, and subject to the vagaries of litigation) recover compensation for insolvent trading (see section 4.9 of this report), which would then be used first and foremost to pay the liquidator's (increased) costs and those of the liquidator's legal team, with any balance to be distributed to *all* creditors, including Mr Birthistle and the CBA.

Accordingly, in the specific circumstances of this case, and whilst mindful of the issues inherent in any proposal involving a creditors' trust, the administrator considers that the case for a creditors' trust has been made out, the explanation given for the need for a creditors' trust is cogent, the risks inherent in the specific structure proposed are comparatively small, and on a balanced analysis any potential disadvantages are comfortably outweighed by the advantages of the proposal, taken as a whole, when compared to the alternative (being a winding up).

If creditors have any specific concerns or enquiries about creditors' trusts, please do not hesitate to raise them with me or my staff.

7 ESTIMATED RETURN TO CREDITORS

Corporations Act 2001 section 556 prevails in determining the order of priority of payment of creditors' claims. If the Company enters into liquidation, Corporations Act 2001 section 556 will apply and there will be no dividend from the Company's assets for any class of creditors – no dividend for preferential creditors including employees, no dividend for secured creditors, and no dividend for unsecured creditors. There are no assets of commercial value. There is no expectation of recoveries under Part 5.7B of the Corporations Act 2001 or other legislation. Former employees could make claims under FEG.

If the Company enters into the proposed DOCA, there will be a dividend for preferential creditors including employees to the extent of available funds.

In either a liquidation or the proposed DOCA there will be no dividend available for unsecured creditors.

8 SUMMARY OF ADMINISTRATOR'S RECEIPTS AND PAYMENTS

Attached, as **Annexure 7**, is a schedule summarising the Administrator's receipts and payments during the administration period 8 March 2021 and 6 April 2021.



There is currently \$24,642 in the bank account. Some of these funds will be applied to Administrator's disbursements. The remainder will increase and DOCA Fund (if any) and increase funds available to preferential creditors including employees.

These funds will be dispersed to satisfy expenses incurred in adhering to ASX compliance and share registry services.

9 REMUNERATION

Attached, as **Annexure 9**, is a Remuneration Report, provided in accordance with Sections 449E(7) of the Act, covering the Administration period and the liquidation period (if the Company enters into liquidation at the Decision Meeting).

If you have any questions, please contact Levi Consulting.

DATED this 13th day of April 2021.

A handwritten signature in black ink, appearing to read "David Levi".

David Levi
Administrator
dlevi@leviconsulting.com.au
T 02 8507 4100 M 0418 602 466

Levi Staff:

Lauren Waldon
lwaldon@leviconsulting.com.au

Dean Kalas
dkalas@leviconsulting.com.au

Annexure 1

**IMPELUS LIMITED (ADMINISTRATOR APPOINTED)
ACN 089 805 416**

ASIC search

Search is available at www.asic.gov.au or on request.

Annexure 2

**IMPELUS LIMITED (ADMINISTRATOR APPOINTED)
ACN 089 805 416**

Chronology

**IMPELUS LIMITED
(ADMINISTRATOR APPOINTED)
CHRONOLOGY**

DATE	EVENT
1/10/1999	Incorporated as Sharon Austen Limited. Its business purpose was the sale and distribution of on line sex aids and erotic products. The company had several name changes over the years with its final name being Impelus Limited hereinafter referred to as Impelus.
1/10/1999	Sharon Louise Austen Dunne appointed director
1/10/1999	Corey Hendrick Vincent appointed director
1/10/1999	Gordon Bradley Elkington appointed director
1/10/1999	John Weston Seaforth Mackenzie appointed director
23/03/2000	Ulrich Huelle appointed director
11/05/2000	Sharon Austen Limited (ASX code: SEX) listed on the ASX
15/12/2000	Martin Roger Greenberg appointed director
15/12/2000	Gordon Bradley Elkington resigns as director
15/12/2000	John Weston Seaforth Mackenzie resigns as director
23/05/2001	Christopher Thorpe appointed director
23/05/2001	Craig Anthony Ellis appointed director
23/05/2001	Jenny Anne Bull appointed director
23/05/2001	Corey Hendrick Vincent resigns as director
23/05/2001	Martin Roger Greenberg resigns as director
4/07/2002	Sharon Louise Austen Dunne resigns as director
26/08/2002	Name changed to Gallery Global Networks Limited (ASX Code GBN) . Change of name was made to more accurately reflect the diversified nature of the business which included phone services and billing solutions, wholesale of videos, DVDs, adult products and publications, mail order to the retail market, the manufacture of video and DVD and online sales and content.
1/04/2003	Neil Wiles commence employment with Impelus.
28/09/2004	Jenny Anne Bull resigns as director
30/11/2004	Craig Anthony Ellis resigns as director
2/12/2005	Name Change to Mobileactive Limited and sector changed to IT (ASX Code: MBA)
6/12/2005	Gavin Roger Whyte appointed director
6/12/2005	Ulrich Huelle resigns as director
6/12/2006	Successful placement of 18,500,000 shares raising \$1.2 million for company expansion, general working capital resources and to cover placement costs
1/07/2010	Alexander Andrew Kelton appointed director
3/02/2012	Raised \$1.1 million in a private placement to Auster Capital Partners
8/02/2013	Raised \$ 1 million in a private placement to be utilised for the capital acquisition of mobile marketing platforms
26/03/2014	Successfully completed \$11.75 million capital raising by way of placement to Australian and Institutional investors. Impelus acquires the Performance Factory for \$3.2 million plus \$4 million
21/11/2014	Performance Factory acquired for total consideration of \$3.2 million and further \$4 million subject to profit targets.
29/05/2015	Impelus acquired Marketing Punch Limited for \$4.64 million . In addition to upfront consideration, and subject to achieving 100% of financial targets over the next three years, there will be additional cash consideration of \$3 million per year for each year of successful achievement.
10/06/2015	Impelus invested in Clipp Pty Ltd by acquiring 31% of company acquired from existing shareholders of Clipp by MBE through the issue of 4.59 million new MBE Shares at \$0.26 per share and 2.29 million MBE options to shareholders. A \$3.5 million Convertible note was issue to Clipp with quarterly drawn down of funds over 18 months.
29/09/2015	Impelus secured a AU 8.68 million debt facility from CBA to partly fund the acquisition of Marketing Punch and fast track the growth of the funds other international operations.
6/06/2016	Successfully completed a \$12 capital raising through the placement of shares. Funds to be used for accelerating growth opportunities with telco's for Direct Carrier Billing; leveraging the scalability of its operations; acquisition of related earnout payments; additional customer acquisition; working capital and costs of the offer
30/06/2016	Revenue \$60 million, Profit \$4.9 million Net Assets \$39 million (Consolidated including Marketing Punch Limited)
18/11/2016	Felix Chen employed by Global One Mobile Entertainment Pty Limited starting as Assistant accountant and then progressing to CFO in December 2020
4/04/2017	Gavin Roger Whyte resigns as director
30/06/2017	Revenue \$52 million, Profit \$1.3 million Net Assets \$41 million (Consolidated including MPL)
18/07/2017	Neil Gordon Wiles appointed director
14/08/2017	Impelus acquired C2B Solutions Pty Limited a profitable and strategically compelling Performance Marketing company for an overall consideration of \$6.5 million.
17/11/2017	Christopher Thorpe resigns as director
29/11/2017	Ian Elliot appointed director
13/12/2017	Name change to Impelus Limited
14/12/2017	Establishment of the Heynes Royal Commission into the Bankng Superannuation and Financial Services Industry.
1/02/2018	Telecommunications Carrier to cease providing Direct Carrier Billing Services
29/06/2018	Alexander Andrew Kelton resigns as director
30/06/2018	Revenue \$25 million, Loss (\$29 million) [After impairment of \$29 million of intangible assets] Net Assets \$14 million (Consolidated including MPL)
24/07/2018	Impelus announced a progressive exit from its Direct Carrier Billing operations and intends to focus on Digital Performance marketing operations with a focus on premium lead generation.
6/08/2018	Announcement to market that Impelus has strengthened its market in the UK through the enhancement of its lead generation capabilities.
6/09/2018	Announced it has received commitments from existing and new shareholders for the placement of 100,000,000 new fully paid ordinary shares at \$.02 per share to raise a total of \$2 million. Also undertaking a Share Purchase Plan to raise a further \$1 million

**IMPELUS LIMITED
(ADMINISTRATOR APPOINTED)
CHRONOLOGY**

20/09/2018	Impelus Limited engaged William Buck to provide guidance on the application of Safe Harbour legislation.
9/10/2018	Announces appointment of Independent Non-Executive Director Mr Geoff Nesbitt
22/10/2018	Non-core subsidiary business, Clipp Pty Limited has been sold for \$300,000 cash to pay down debt.
9/11/2018	Ian Elliot resigns as director
12/11/2018	Ian Elliot resigns as Chairman
16/11/2018	Maureen Smith is appointed Director - temporary appointment
19/11/2018	Entered into a Convertible Note Agreement to raise \$1.5 million with Brendan Birthistle. The funds were needed to raise further equity capital for the purposes of retiring bank debt and continuing the company's operations.
19/11/2018	Update to shareholders on funding. Convertible note of \$1.5 million to be issued to Brendan Birthistle and existing shareholder.
20/11/2018	Operations Restructure Announcement to ASX that bank debt decreased further from \$7.97 million as at 31 December 2017 to \$5.83 million at 31 October 2018. Senior management, the board and Company secretary have volunteered to take pay reductions of 10% and 15% and incoming chairman Brendan Birthistle to have zero remuneration. The costs savings and funds from the recently announced capital raising provide Impelus with strengthened operating conditions to enhance the performance of the Company's core Digital Customer Acquisition and Lead Generation Operations in Australia and the United Kingdom.
30/11/2018	Bank debt reduced by a further \$500,000.
30/11/2018	Maureen Ann Smith resigns as director
4/12/2018	Brendan Birthistle appointed Chairman
15/01/2019	Announces the resignation of Managing Director and CEO, Neil Wiles.
31/01/2019	Birthistle transfers by way of loan \$250,000 to Impelus Limited
12/02/2019	Birthistle transfers by way of loan \$250,000 to Impelus Limited
21/02/2019	Vanessa Chidwari of BoardRoom Limited appointed company secretary
7/06/2019	Impelus secured funds to accelerate performance - Impelus advises it has secured \$620,000 under a Loan Agreement with Connaught Consultants (Finance) Pty Limited (a company which is controlled by Chairman Mr Brendan Birthistle
30/06/2019	Revenue \$12 million, Loss (\$12.2 million) Net Assets \$4 million (Consolidated including MPL)
23/07/2019	Birthistle transfers by way of loan \$400,000 to Impelus Limited
9/09/2019	Birthistle transfers by way of loan \$20,000 to Impelus Limited
10/09/2019	Birthistle transfers by way of loan \$20,000 to Impelus Limited
11/09/2019	Birthistle transfers by way of loan \$20,000 to Impelus Limited
12/09/2019	Birthistle transfers by way of loan \$20,000 to Impelus Limited
13/09/2019	Birthistle transfers by way of loan \$20,000 to Impelus Limited
18/09/2019	Birthistle transfers by way of loan \$200,000 to Impelus Limited
25/10/2019	Secured a loan facility with company chairman Brendan Birthistle of \$500,000. \$200,000 has been drawn down under the facility arrangements to sales and marketing initiatives.
28/10/2019	Craig Robert Poole appointed director
13/11/2019	Impelus entered into a Deed of Variation of the Deed of Release and Settlement entered into with Neil Wiles. (it is assumed the earlier date is an error.
15/11/2019	Neil Gordon Wiles resigns as director
15/11/2019	Impelus entered into a Deed of Release and Settlement regarding the employee entitlements of Neil Wiles. The Agreement references the poor financial position of the company.
12/12/2019	Birthistle transfers by way of loan \$150,000 to Impelus Limited
22/01/2020	Birthistle transfers by way of loan \$150,000 to Impelus Limited
28/01/2020	Maureen Smith appointed director
28/01/2020	Craig Robert Poole resigns as director
1/02/2020	Felix chum appointed CFO
4/03/2020	Birthistle transfers by way of loan \$150,000 to Impelus Limited
1/06/2020	Secured a further loan from Brendan Birthistle of \$150,000. funds to allow the company flexibility in managing its cash flow to meet ongoing working capital requirements.
30/06/2020	Revenue \$9.4 million, Loss (\$6.6 million) Net liabilities \$2 million (Consolidated including MPL)
7/08/2020	Maureen Smith resigns as director
24/11/2020	Felix Chen appointed permanent CFO replacing Simon Allison
24/11/2020	Chairman's Address to shareholders: Overall, we entered 2020 with three main problems company-wide: soft revenue, low profit margins and an unhealthy reliance on a few major customers (in Australia at least). Progress towards solving these problems has been slow and frustrating. Acquisitions since 2014 total around \$32 million. Impairments of Intangible Assets, Clipp, Goodwill and Debtors (2018-2020): \$37 million approximately.
27/01/2021	Company requested a voluntary suspension of its official quotation pending the release of an announcement regarding its financial condition and its ability to meet the requirements of Chapter 12 of the ASX Listing Rules on an ongoing basis
8/03/2021	Levi was appointed Administrator



Annexure 3

**IMPELUS LIMITED (ADMINISTRATOR APPOINTED)
ACN 089 805 416**

Related Entities

Annexure 4

IMPULUS LIMITED CONTROLLED ENTITIES SUMMARY

This document was compiled by Levi Consulting.

Subsidiary Name	Nature of Business and other observations	Director One or most recent former Director	Director Two	Director Three	Registration Status	Country of Incorporation	Number of PPSR registered	Secured Party	PPSR Registration Number
1 Global One Mobile Entertainment Pty Ltd (Administrator Appointed) (ACN 050 119 430)	The company operated as the legal entity to hold various contracts with the mobile content providers with respect to the direct carrier billing business. Once the direct carrier billing business went into decline this company was used as a service company to provide administrative and payroll services to the Group. This company is currently in Administration. Levi was appointed Administrator on 8 March 2021.	David Haines			In Administration	Australia	2	Universal Music Australia Pty Ltd CBA	201208270105672 201509150074208
2 Divolution Limited (ACN 091 648 145)	The company was an unlisted public company in the adult product industry. It ceased to trade in 2003 but was only recently deregistered.	David Haines	Meurseen Smith	Brendan Birihistle	Deregistered	Australia	1	CBA	201509150074212
3 Solvers Pty Ltd (formerly 1st Screen Pty Ltd) (ACN 153 233 919)	The company operated in the marketing and advertising industry. The company operated to create advertising videos and photos for clients. The company ceased to trade in 2018 and was deregistered in 2021.	David Haines			Deregistered	Australia	1	CBA	201509150074622
4 6G Pty Ltd (ACN 087 080 718)	The company was set up as a subsidiary of Divolution Limited to sell adult products. The company ceased to trade in 2005 and was deregistered in 2021.	David Haines			Deregistered	Australia	1	CBA	201509150074599
5 Lead Proof Pty Ltd (formerly 7A Pty Ltd) (ACN 128 373 553)	The company operated as the legal entity to hold various contracts with the mobile content providers with respect to the direct carrier billing business. The company ceased to trade in FY 2010 and was deregistered in 2021.	David Haines			Deregistered	Australia	1	CBA	201509150074580
6 8Z Pty Ltd (ACN 131 873 151)	The company operated as the legal entity to hold various contracts with the mobile content providers with respect to the direct carrier billing business. The company ceased to trade during FY 2016.	David Haines			Deregistered	Australia	1	CBA	201509150074628
7 Convey Pty Ltd (formerly Level 3 Pty Ltd) (ACN 156 869 992)	The company was the market facing company with respect to the direct carrier billing business. It appears that internet advertisements for the direct carrier billing business were made in its name. The company ceased to trade during FY 2016 and was deregistered in 2021.	David Haines			Deregistered	Australia	1	CBA	201509150074895
8 Mobipay Pty Ltd (formerly Convey Pty Ltd) (ACN 087 303 848)	The company was set up as a subsidiary of Divolution Limited to sell adult products. Then it operated as the legal entity to hold various contracts with respect to the direct carrier billing business, for example, Stiglat and Optus. The company ceased to trade during FY 2016 and was deregistered in 2021.	David Haines			Deregistered	Australia	1	CBA	201509150074946
9 Convey Global Pie Ltd	The company's operations were in relation to the direct carrier billing in Singapore.	Brendan Birihistle	Ismail Bin Senih		In the process of deregistration	Singapore			
10 The Performance Factory Pty Ltd (ACN 149 294 782)	The company operated in the performance marketing industry. The company operated to generate leads for customers via digital technology. The company was acquired by Impetus Limited in 2015. The lead generation business was transferred to Impetus APAC Pty Limited in 2018. This company ceased to trade in FY 2018 and was deregistered in 2021.	David Haines			Deregistered	Australia	1	CBA	201509150074980
11 C2B Solutions Pty Ltd (ACN 605 174 347)	The company operated in the performance marketing industry. The company acted like a broker to earn commission between the clients and the lead providers like The Performance Factory. The business was acquired by Impetus Limited in 2017. The business was transferred to Impetus APAC Pty Limited. It ceased to operate in FY 2018 and was deregistered in 2021.	David Haines			Deregistered	Australia	1	CBA	20180116026214
12 Impetus EMEA Limited (formerly Eggmobi UK Limited)	The company was incorporated as Eggmobi in the UK to preserve the name. It didn't trade. The Company is dormant.	David Haines			Registered	UK			
13 ADDGLU Pty Ltd (formerly Vizmond Pty Ltd) (ACN 160 956 847)	This company was acquired by Impetus Limited together with Vizmond Media Pty Limited (refer below). This company never traded and was deregistered in 2021.	David Haines			Deregistered	Australia	1	CBA	201509150075071
14 Vizmond Media Pty Ltd (ACN 132 219 320)	The company operated in the performance marketing industry. The company operated to generate leads for customers via digital technology. The company was acquired by Impetus Limited and the business was transferred to Impetus APAC Pty Limited. The company ceased to trade in 2018 and was deregistered in 2021.	David Haines			Deregistered	Australia	1	CBA	201509150075044
15 Marketing Punch Limited	The company operates in the performance marketing industry. The company operated to generate leads for customers via digital technology. The Company continues to operate in the UK but is no longer a subsidiary of Impetus Limited, effective 31 March 2021	Brendan Birihistle	David Haines		Registered	UK			
16 Impetus APAC Pty Ltd (formerly Marketing Punch Pty Ltd) (Administrator Appointed)	APAC's business purpose was to increase the sales of its clients by providing relevant contact data that is likely to result in a sale for the client. The contact data is referred to as a "lead". The contact data comprises: Contact name, telephone number and email address, age indicators as indicated by an age band, year of birth or date of birth and postcode. APAC sourced its contact data externally through a third-party provider who collected the data from various websites, digital surveys and digital promotions such as in digital newspapers, Facebook etc... Levi was appointed Administrator on 8 March 2021.	David Haines			In Administration	Australia	0	Nil	
17 MBL Option Plan Managers Pty Ltd	Impetus established a trust in 2009 for the sole purpose of obtaining shares for the benefit of participants, including subscribing for or acquiring, allocating, holding and delivering Shares in Impetus under the Option Plan. MBL Option Plan Managers Pty Limited was set up to act as the initial trustee of the trust. Based on investigations to date the trust is inactive and has no assets and liabilities.	David Haines			Registered	Australia	0	Nil	

This document was compiled by Leri Consulting.

Subsidiary Name	Nature of Business and other observations	Director One or most recent former Director	Director Two	Director Three	Registration Status	Country of Incorporation	Number of PPSR registered	Secured Party	PPSR Registration Number
18 MBL Employee Share Plan Managers Pty Ltd	Impelus established a trust in 2009 for the sole purpose of obtaining shares for the benefit of employees, including subscribing for or acquiring, allocating, holding and delivering Shares in Impelus under the Option Plan. MBL Employee Share Plan Managers Pty Limited was set up to act as the first trustee of the Trust. Based on our investigations to date the trust is inactive and has no assets and liabilities.	David Haines			Registered	Australia	0	Nil	

Annexure 4

**IMPELUS LIMITED (ADMINISTRATOR APPOINTED)
ACN 089 805 416**

Summary of Report on Companies Affairs and Property

Annexure 4

Impelus Limited (Administrator Appointed)
ACN 089 805 416

Report on Company Activities and Property as at 8 March 2021

Assets	Report on Company Activities and Property as at 8 March 2021	Estimated Realisable Value
	\$	\$
Land	0	0
Debtors	0	0
Cash on Hand		0
Cash at Bank	6,554	-
Stock	0	0
Work in progress	0	0
Plant	0	0
Other – Intellectual property systems at written down value	1,189,466	0
Other – Investments in controlled entities at written down value	1,353,518	0
Total	2,549,538	0
Liabilities		
Preferential - SGC	6,786	0
Preferential claim by by employee	891,029	0
Secured - CBA	4,362,455	0
Unsecured – unrelated	218,226	0
Unsecured - related (claim by Brendan Birthistle)	2,025,975	0
Total	7,504,471	0

Notes by the Administrator

- i. Cash at bank** The balance in the account on appointment was transferred to the Administrator's control on appointment. A payment of \$22,000 was received from the UK subsidiary Marketing Punch Limited.
- ii. Intellectual property systems.** The intellectual property systems are outdated systems and have little or no realisable value.
- iii. Controlled entities.** The Controlled Entities are Global One Mobile Entertainment Pty Limited and Impelus Apac Pty Limited which are in Administration and are likely to enter into liquidation. They have no realisable value. It also includes Marketing Punch Limited which is dealt with in the body of this report.

Annexure 5

**IMPELUS LIMITED (ADMINISTRATOR APPOINTED)
ACN 089 805 416**

Estimated assets and liabilities as at 8 March 2021

Annexure 5

Impelus Limited (Administrator Appointed)

ACN 089 805 416

Estimated assets and liabilities, as at 8 March 2021 – estimate prepared by Administrator

This schedule indicates the Administrator's preliminary assessment of estimated assets and liabilities as at 8 March 2021.

Assets	Estimated Book Value – Position at 8 Mar 21	Scenario 1 Estimated Realisable Value	Scenario 2 Estimated Realisable Value
	\$	\$	\$
Land	0	0	0
Debtors	0	0	0
Cash on Hand	0	0	0
Cash at Bank	6,554	0	0
Stock	0	0	0
Work in progress	0	0	0
Plant	0	0	0
Other – Intellectual property systems at written down value	1,189,466	0	0
Other – Investments in controlled entities at written down value	1,353,518	0	0
Total	2,549,538	0	0
Liabilities			
Preferential - SGC			6,786
Preferential - Neil Wiles employee entitlements	0	0	874,647
Secured	4,362,455	4,362,455	4,362,455
Unsecured – unrelated	0	387,951	387,591
Contingent unsecured claim by Brendan Birthistle	0	0	2,025,975
Total	4,362,455	4,750,406	7,657,454

Notes by the Administrator

- i. **Cash at bank** The balance in the account on appointment was transferred to the Administrator's control on appointment.
- ii. **Intellectual property systems.** The intellectual property systems are outdated systems and have little or no realisable value.

Annexure 6

**IMPELUS LIMITED (ADMINISTRATOR APPOINTED)
ACN 089 805 416**

Estimated creditors' claims, as at 8 March 2021 – estimate prepared by Administrator

Annexure 6

Impelus Limited (Administrator Appointed)
ACN 089 805 416
Estimated creditors' claims as at 8 March 2021

I summarise the estimated liabilities to creditors below.

Liabilities	\$
Priority	
Superannuation	6,786
Employee entitlements	874,647
	<hr/>
	881,433
Secured	
Commonwealth Bank of Australia	4,362,455
	<hr/>
	4,362,455
Unsecured – unrelated	
BoardRoom Pty Ltd	14,568
ASX	377
cabcharge Australia Ltd A/c 760413	1,464
DFK Laurence Varnay	8,800
Energy Australia	7,358
Leading Edge Global Pty Ltd	12,066
Link Administration Services Pty Ltd	8,918
Mark Schiliro & Associates Pty Ltd	47,227
Pathfinder Consulting	31,900
Thomson Geer Lawyers Sydney	3,260
Turks Legal	550
Attvest Finance Pty Ltd	27,905
American Express	22,574
Telstra	2,182
Australian Taxation Office	168,442
Careers Australia Group Limited	30,000
	<hr/>
	387,591
Unsecured – related	
Brendan Birthistle	2,025,975
	<hr/>
	2,025,975
	<hr/>
Total estimated creditors' claims	7,657,454

Notes

- i. **Australian Taxation Office** - Each company in the Group is jointly and severally liable for the tax liability.
The primary liability is with Impelus APAC Pty Limited which is in Administration.
- ii. **Commonwealth Bank** - The Bank holds security over the assets of both Impelus Limited and Global One Mobile Limited

Annexure 7

**IMPELUS LIMITED (ADMINISTRATOR APPOINTED)
ACN 089 805 416**

Financial statements and historical financial performance

Financial statements are extracted from the records of the Company. The Administrator has not conducted verification procedures or audit. Impelus Limited and its controlled entities was subject to audit to end FY 2020

Financial statements are included in relation to Impelus Limited, and also, the consolidated group.

Balance Sheet
Impelus Limited (Holding Company not consolidated group) ACN 089 805 416

	31 Dec 2020	30 Jun 2020	30 Jun 2019	30 Jun 2018	30 Jun 2017
	\$	\$	\$	\$	\$
Assets					
Current Assets					
Cash at Bank	0	0	0	0	0
Trade and Other Receivables	0	0	0	0	1,356,736
Other Current Assets	0	0	0	173,552	0
Total Current Assets	0	0	0	173,552	1,356,736
Non-current Assets					
Trade and other receivables	0	0	252,992	252,992	252,992
Deferred Tax Asset	0	0	3,172,914	1,866,432	914,772
Intangible Assets	1,411,384	2,099,329	4,235,124	6,624,192	7,518,923
Intercompany Loan Accounts	0	0	-5,789,305	-6,959,228	2,861,457
Investment	1,354,549	1,361,017	1,361,879	1,355,734	3,254,749
Goodwill	0	0	0	2,500,000	15,941,483
Total Non-current Assets	2,765,934	3,460,347	3,233,604	5,640,123	30,744,377
Total Assets	2,765,934	3,460,347	3,233,604	5,813,675	32,101,113
Liabilities					
Current Liabilities					
Employees	0	0	0	0	0
Trade liabilities	0	0	0	0	0
Current Deferred Consideration	0	0	0	0	4,626,606
Deferred Tax Liabilities	0	0	3,461,115	2,459,181	1,561,162
Income Tax Payable	0	0	0	0	656,489
Total Current Liabilities	0	0	3,461,115	2,459,181	6,844,257
Total Liabilities	0	0	3,461,115	2,459,181	6,844,257
Net Assets	2,765,934	3,460,347	-227,511	3,354,494	25,256,856
Equity					
Current Year Earnings	-694,413	3,018,858	-5,296,171	-23,726,302	462,182
Issued Capital	50,896,338	50,896,338	50,227,338	48,453,838	46,629,898
Reserves	38,887	38,887	38,887	98,222	98,222
Retained Earnings	-46,971,029	-49,989,887	-44,693,716	-20,967,414	-21,429,595
Foreign Currency Translation Reserve	-503,850	-503,850	-503,850	-503,850	-503,850
Total Equity	2,765,934	3,460,347	-227,511	3,354,494	25,256,856

Profit & Loss
Impelus Limited (Holding Company not consolidated group) ACN 089 805 416

	Dec-20 \$	Jun-20 \$	Jun-19 \$	Jun-18 \$	Jun-17 \$
Total Income	0	0	0	0	0
Gross Profit	0	0	0	0	0
Total Operating Expenses	694,413	2,406,473	5,296,171	28,257,459	2,783,548
Operating Profit (EBIT)	-694,413	-2,406,473	-5,296,171	-28,257,459	-2,783,548
Non-operating Revenue	0	5,425,331	0	4,531,157	3,245,729
Net Profit	-694,413	3,018,858	-5,296,171	-23,726,302	462,182

CONSOLIDATED BALANCE SHEET AS AT YEAR END OF FY 2016 TO FY 2020
IMPELUS LIMITED AND CONTROLLED ENTITIES

	2020	2019	2018	2017	2016
	\$	\$	\$	\$	\$
Assets					
Current Assets					
Cash and cash equivalents	1,013,091	1,206,701	3,334,276	9,071,741	17,955,835
Trade and other receivables	1,361,742	2,316,581	3,460,156	9,402,899	13,511,280
Other Current Assets	727,406	1,350,933	3,043,733	2,903,301	761,373
Income Tax Receivable	-	74,747	-	-	-
Total Current Assets	3,102,240	4,948,962	9,838,165	21,377,941	32,228,488
Non-current Assets					
Trade and other receivables	-	252,992	252,992	249,804	539,187
Net PP&E	243,893	499,695	822,649	1,281,407	1,647,719
Deferred tax assets	-	-	572,219	1,943,829	-
Intangible assets	3,378,900	6,670,800	10,129,446	15,418,567	11,889,143
Investment	-	-	-	-	3,686,721
Right-of-use Assets	61,773	385,697	-	-	-
Goodwill	-	-	2,500,000	20,087,209	18,711,483
Other non-current assets	6,300	6,300	6,300	6,300	9,024
Total Non-current Assets	3,690,866	7,815,484	14,283,606	38,987,116	36,483,277
Total Assets	6,793,105	12,764,446	24,121,771	60,365,057	68,711,765
Liabilities					
Current Liabilities					
Trade and other payables	1,792,400	1,474,968	1,847,589	3,555,083	5,906,883
Deferred consideration	-	-	-	4,626,606	5,666,666
Borrowings	684,569	1,529,698	2,727,490	314,936	343,264
Income tax payable	-	-	80,131	656,489	1,521,903
Short-term provisions	582,528	849,803	753,036	1,481,812	1,467,978
Lease Liability	82,461	-	-	-	-
Total Current Liabilities	3,141,958	3,854,468	5,408,246	10,634,926	14,906,694
Non-current liabilities					
Deferred consideration	-	-	-	-	7,066,666
Borrowings	5,525,000	4,362,752	4,171,790	5,994,380	5,626,666
Deferred tax liabilities	185,426	3,675,399	-	1,735,476	967,056
Sundry Creditor	201	-	-	-	-
Provisions	-	39,490	36,617	22,332	171,607
Total non-current liabilities	5,710,628	8,077,641	4,208,407	7,752,188	13,831,995
Total Liabilities	8,852,585	11,932,110	9,616,653	18,387,114	28,738,689
Net Assets	-	2,059,480	4,005,252	41,977,943	39,973,076
Equity					
Issued capital	50,896,338	50,227,338	48,453,838	46,629,898	45,300,648
Reserves	38,887	38,887	98,222	98,222	793,484
Retained earnings	-	52,118,699	45,471,653	33,377,840	-
Foreign currency reserve	-	876,006	789,320	669,103	383,283
Total Equity	-	2,059,480	4,005,252	41,977,943	39,973,076

CONSOLIDATED PROFIT & LOSS FOR YEARS ENDED FY 2016 TO FY 2020
IMPELUS LIMITED AND CONTROLLED ENTITIES

	2020	2019	2018	2017	2016
	\$	\$	\$	\$	\$
Total Income	9,410,601	12,074,388	25,510,096	52,555,202	60,563,131
Total Cost of Sales	- 5,720,654	- 6,472,566	- 8,365,883	- 18,012,225	- 13,029,120
Gross Profit	3,689,947	5,601,822	17,144,213	34,542,977	47,534,011
Gross Margin	39%	46%	67%	66%	78%
Total Operating Expenses	- 10,625,795	- 16,682,634	- 46,657,865	- 33,722,076	- 40,139,851
Operating Profit (Loss) (EBIT)	- 6,935,848	- 11,080,811	- 29,513,651	820,902	7,394,161
Income tax (expense) / benefit	415,769	363,049	788,525	774,776	- 2,478,045
Net (Loss) from Continuing Operations	- 6,520,079	- 10,717,762	- 28,725,126	1,595,678	4,916,116
Discontinued Operations					
Net (Loss) from Discontinued Operations after tax	- -	1,553,895	-	-	-
Net (Loss) for the year	- 6,520,079	- 12,271,657	- 28,725,126	1,595,678	4,916,116
Other comprehensive income	- 126,968	416	- 285,820	- 224,797	158,486
Total comprehensive income	- 6,647,046	- 12,271,242	- 29,010,946	1,370,881	4,757,630
Add back impairments	- 1,242,645	- 6,506,007	- 29,571,285	- 138,439	- 116,647
Net Losses/Profit after adding back impairments	- 5,404,401	- 5,765,235	560,339	1,509,320	4,874,277
% decline in profit (loss)	6%	1129%	63%	69%	

Annexure 8

**IMPELUS LIMITED (ADMINISTRATOR APPOINTED)
ACN 089 805 416**

Summary of Deed Proposal (also known as Benelong Proposal)

Annexure 8

Impelus Limited (In Administration)
ACN 089 805 416

Summary of Benelong Proposal – to be read in conjunction with Annexure 9

Benelong Capital Partners Pty Ltd (**BCP**), a private funder, has made a proposal for the company to execute a deed of company arrangement (**DOCA**).

The proposed DOCA is part of a broader recapitalisation proposal under which it is proposed to release the company from its debts, leaving an ASX-listed corporate shell, with the hope of recapitalising that shell and conducting a business or businesses through it moving forward.

The identity or nature of that business or those businesses is not known at this point in time, and will ultimately depend on the actions of the company, and those standing behind it, once the recapitalisation is complete.

The main elements of this broader proposal (**Recapitalisation Proposal**) may be summarised as follows:

1. BCP will make a contribution of \$206,750, which will be contributed to a fund for the benefit of the company's creditors. However, as part of the proposal, the company's major creditor, Brendan Birthistle, has agreed not to claim. The Company's secured creditor, Commonwealth Bank of Australia (**CBA**), will deal directly with BCP and not claim in the DOCA. The BCP contribution is conditional on the approval of the CBA and shareholders of the company.
2. The fund will almost immediately be transferred to a creditors' trust (**Trust**), whereafter it will be distributed in accordance with the provisions of the *Corporations Act 2001* (Cth) (**Act**) as if the company were being wound up (except that Mr Birthistle has agreed not to receive distribution nor will CBA).
3. In addition to making the abovementioned capital contribution, BCP will:
 - (a) at its own expense, procure the removal, by Commonwealth Bank of Australia (**CBA**), of its security over the company; and
 - (b) take all steps necessary to obtain the necessary shareholder and ASX approvals for the proposal to proceed.
4. In return for the foregoing outlays and commitments, BCP, or its nominee, will:
 - (a) take a shareholding of up to 96%, or such lesser figure as BCP may agree, in the restructured company;
 - (b) subject to approval of the Recapitalisation Proposal, be entitled to be reimbursed by the company (out of the company's own funds, without recourse to the creditor fund) for its out-of-pocket costs associated with obtaining shareholder and ASX approval, including payments made into the DOCA and to CBA

The DOCA is therefore only one element of the broader Recapitalisation Proposal. Viewed in isolation, the DOCA provides for the following specific components of the arrangement:

1. BCP will make a contribution of \$206,750, as aforesaid.
2. This amount will be transferred to the Trust.
3. The trustee of the Trust will distribute this amount in the order prescribed by the Act as if the company were being wound up, save that Mr Birthistle has agreed not to claim distribution nor has CBA.
4. In return, the company will be released from all creditor claims (including Mr Birthistle's claim and CBA).

BCP will also need to procure the removal of the CBA's security interest, and progress the other aspects of the Recapitalisation Proposal presented to Shareholders.

On present projections, the DOCA is expect to result in the following distributions being made out of the Trust:

Costs and expenses of the administration	\$123,000
Costs and expenses of the DOCA administration	\$8,250
Distribution to priority (employee) creditors *	75,500
Distribution to non-priority (ordinary unsecured creditors)	nil
	\$206,750

- Note if a GST refund is received, expected to be around \$11,000 this sum will also be distributed to preferential creditors

It is accordingly not expected that any distribution will be made to ordinary unsecured creditors. Despite this shortcoming, the DOCA is recommended, for three reasons:

1. No alternative DOCA proposal has been made by any other party that results in a more favourable outcome for ordinary unsecured creditors.
2. The DOCA as currently proposed appears almost certain to achieve the primary objective of the voluntary administration regime, as set out in the Act.
3. The only alternatives to the DOCA would be for the company to be returned to its board (i.e. taken out of administration), or wound up and placed into liquidation. It is not expected that ordinary unsecured creditors would receive any significant benefit in either of those scenarios.

Analysis

Pursuant to section 435A of Act, the objective of the voluntary administration regime to provide for the business, property and affairs of an insolvent company to be administered in a way that:

(a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or

(b) if it is not possible for the company or its business to continue in existence--results in a better return for the company's creditors and members than would result from an immediate winding up of the company.

I observe that the secondary objective—that is to say, providing a better return for the company's creditors and members—only applies "if it is not possible for the company or its business to continue in existence".

In this case, the Recapitalisation Proposal (of which the DOCA is a key element) provides for the company to continue in existence, with a view to being recapitalised for the purposes of a presumed future business. This appears likely to achieve the primary objective of the voluntary administration regime.

Although, by virtue of the wording of the Act, the secondary objective does not arise if the primary objective is achieved, it is also observed that the proposed arrangement appears certain to provide a better return for members than an immediate winding up, in that members will stand to benefit from any dividends paid by the company through future trading, or by selling their shares in the company on the open market in due course.

In contrast, present projections are that a liquidation (winding up) of the company will not see the company or its business continue in existence, resulting in a failure of the primary objective of the voluntary administration process.

It also appears probable that the secondary objective of the regime ("a better return for the company's creditors and members") would also not be met in a winding up. Certainly, there is no prospect of any return to members.

In my assessment the most likely outcome in a winding up would be that there would be no return to either creditors or members. It must also be remembered that the CBA's security would remain in place in a winding up, and Mr Birthistle would remain entitled to press his claim. Both of these things would either extinguish, or diminish significantly, the potential of any return to creditors.

Recommendation

In circumstances where the proposed DOCA would meet the primary objective of the voluntary administration regime, and a winding up would not meet that objective (and there is doubt about whether it would even meet the secondary objective), my recommendation is accordingly that creditors vote in favour of the proposed DOCA.

Annexure 9

**IMPELUS LIMITED (ADMINISTRATOR APPOINTED)
ACN 089 805 416**

Estimated funds available to creditors in DOCA and Liquidation scenarios

Annexure 9

Impelus Limited (In Administration)

Liquidation versus DOCA

	DOCA based on Benelong Proposal	Liquidation
Estimated outcome for Impelus Limited	AUD	AUD
Assets		
Cash		
Debtors	0	0
Plant	0	0
Inventory	0	0
Investment	0	0
Other - liquidator recoveries Pt 5.9B	0	0
Other - proceeds Deed Fund	206,750	0
	<u>206,750</u>	<u>0</u>
Preferential		
Voluntary Administrator's fees (Inc GST)	121,000	
Voluntary Administrator's disbursements	2,000	
Deed Administrator's fees	8,250	
Employees' claims	75,500	0
	<u>206,750</u>	<u>0</u>
Estimated surplus for unsecured creditors	<u>0</u>	<u>0</u>

To be read in conjunction with Annexure 8

Annexure 10

**IMPELUS LIMITED (ADMINISTRATOR APPOINTED)
ACN 089 805 416**

Declaration of Independence, Relevant Relationships and Indemnities (s 436DA of the Act)

A copy of the DIRRI was included in the Notice sent to creditors on 10 March 2021. A copy was lodged with ASIC on 10 March 2021, and a copy was tabled at the first creditors' meeting on 17 March 2021. No amendment is required. Indemnity funds have not been received.

CORPORATIONS ACT 2001

Section 436DA

**IMPELUS LIMITED (ADMINISTRATOR APPOINTED)
ACN 089 805 415**

DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES

This document is prepared pursuant to s436DA of the *Corporations Act 2001*. The purpose of this document is to assist creditors with understanding any relationships that the administrator has and any indemnities and upfront payments that have been provided to the administrator. None of the relationships disclosed in this document are such that the independence of the administrator is affected.

This information is provided to you to enable you to make an informed assessment on any independence concern, so you have trust and confidence in our independence, and if not, can act to remove and replace the liquidator if you wish.

This declaration is made in respect of David Levi, and also, his firm, Levi Consulting Pty Ltd.

The format and style guide of this document is consistent with the law, and also, the ARITA Code of Professional Practice and other professional standards.

This document requires the appointee appointed to an insolvent entity to make declarations as to:

- A. their independence generally;
- B. relationships, including
 - B1 the circumstances of the appointment;
 - B2 any prior professional services for the Insolvent within the previous 24 months;
 - B3 any relationships with the Insolvent and others within the previous 24 months;
 - B4 that there are no other relationships to declare; and
- C. any indemnities given, or up-front payments made, to the Practitioner.

A. Independence

David Levi and Levi Consulting Pty Ltd have undertaken a proper assessment of the risks to independence prior to David Levi accepting the appointment as administrator of Impelus Limited ("the Company") in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to independence. Neither David Levi nor Levi Consulting Pty Ltd are aware of any reasons that would prevent David Levi (or Levi Consulting Pty Ltd) from accepting this appointment.

B. Declaration of Relationships

B1. Circumstances of appointment

This appointment was referred by Mark Schiliro, MNSA Pty Ltd ("**the Referrer**"). The reasons that this relationship does not result in a conflict of interest or duty are indicated below.

Mark Schiliro has not referred to David Levi or Levi Consulting Pty Ltd any matters within the previous 24 months, other than in respect of the Company and also in respect of two other controlled entities of the Company where Levi has also been appointed administrator. These companies are Impelus APAC Pty Ltd ACN 154 497 800, and Global One Mobile Entertainment Pty Ltd ACN 090 119 430.

Referrals from solicitors, business advisors and accountants are commonplace and do not impact on the independence of David Levi or his firm, Levi Consulting Pty Ltd in carrying out duties as administrator.

There is no expectation, agreement or understanding between David Levi, Levi Consulting Pty Ltd and the Referrer about the conduct of this administration and the administrator is free to act independently and in accordance with the law and the requirements of the ARITA Code of Professional Practice.

On 26 February 2021 - Call from Mark Schiliro, MNSA Pty Ltd.

On 2 March 2021 - Attended Board meeting with Brendan Birthistle, Chairman, and Felix Chen, Chief Financial Officer. General advice sought and given as to the ordinary incidences of a voluntary administration, including timeframes and costs, and other non-specific information.

On 2 March 2021 - Call with Felix Chen, Chief Financial Officer to discuss the financial position of the Company and its controlled entities.

On 3 March 2021 - Felix Chen, Chief Financial Officer, attended the office of Levi Consulting Pty Ltd.

On 4 March 2021 - Attended a second Board meeting with Brendan Birthistle, Chairman, and other Board members.

On 5 March 2021 - Attended a third Board meeting with Brendan Birthistle, Chairman, and other Board members.

On 5 March 2021 - Indicated that indemnity funds would be required to be held in the trust account of the company's lawyers for \$30,000 on account of the anticipated remuneration and disbursements of David Levi in acting as administrator of the Company and its controlled entities.

These meetings do not affect my independence for the following reasons:

- The Courts and the ARITA's Code of Professional Practice specifically recognise the need for practitioners to provide advice (if any) on the administration process and the options available and do not consider that such advice (if any) results in a conflict or is an impediment to accepting appointment.
- The nature of the advice provided to the Company (if any) is such that it would not be subject to review and challenged during the course of the administration.
- Pre-appointment advice (if any) will not influence my ability to be able to fully comply with the statutory and fiduciary obligations associated with the administration of the Company in an objective and impartial manner.

I have provided no other information or advice to the Company, its current and former directors and its advisors prior to my appointment beyond that outlined in this DIRRI.

I have received no remuneration.

B2. Prior Professional services to the Insolvent

Neither David Levi, nor his firm, Levi Consulting Pty Ltd, have provided any professional services to, or in relation to Impelus Limited (or Impelus APAC Pty Ltd, and Global One Mobile Entertainment Pty Ltd) in the previous 24 months other than for the purposes of drafting minutes and notices.

B3. Relevant Relationships (excluding Professional Services to the Insolvent)

Neither David Levi nor a person at Levi Consulting Pty Ltd have, or have had, within the preceding 24 months, a relationship with Impelus Limited (or Impelus APAC Pty Ltd, and Global One Mobile Entertainment Pty Ltd) other than, the appointment of David Levi as administrator of each entity contemporaneously.

Name	Nature of relationship	Reasons
Impelus Limited Impelus APAC Pty Ltd Global One Mobile Entertainment Pty Ltd	Director in common	The appointment as administrator to Impelus Limited or Impelus APAC Pty Ltd and Global One Mobile Entertainment Pty Ltd does not result in a conflict of interest or duty because: <ul style="list-style-type: none"> • At the time of the appointment of David Levi as administrator, he was not aware of any conflict of interest between any of the controlled entities and the Company. Should such a conflict arise, David Levi will keep creditors informed and take appropriate action to resolve any conflict. • The role undertaken by David Levi as administrator of the Company will not influence my ability to comply with the statutory and fiduciary obligations required in an objective and impartial manner.

B4. No other relevant relationships to disclose


There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with the Company, an associate of the Company, a former insolvency practitioner (if any) appointed to the Company or any person or entity that is entitled to enforce a security interest in the whole or substantially the whole of the Company property that should be disclosed.

C. Indemnities and up-front payments


David Levi indicated prior to consenting to act as administrator of the Company that indemnity funds would be required to be held in the trust account of the Company's lawyers for \$30,000 on account of the anticipated remuneration and disbursements of David Levi in acting as administrator of the Company and its controlled entities. There are no conditions on the conduct or outcome of the administration attached to the provision of these funds.

Neither David Levi nor Levi Consulting Pty Ltd have been indemnified in relation to this administration, other than the arrangements in the above paragraph and any indemnities that the administration may be entitled to under statute. Neither David Levi nor Levi Consulting Pty Ltd have received any up-front payments in respect of our remuneration or disbursements.

Dated: 10 March 2021



 David Levi in his personal capacity



 Levi Consulting Pty Ltd, by its director, David Levi

Note:

If circumstances change, or new information is identified, I am/we are required under the [Corporations Act 2001/Bankruptcy Act 1966] and ARITA's Code of Professional Practice to update this Declaration and provide a copy to creditors with my/our next communication as well as table a copy of any replacement declaration at the next meeting of the insolvent's creditors. For creditors' voluntary liquidations and voluntary administrations, this document and any updated versions of this document are required to be lodged with ASIC.

Annexure 11

**IMPELUS LIMITED (ADMINISTRATOR APPOINTED)
ACN 089 805 416**

**Summary of Administrator's receipts and payments
From 8 March 2021 to 7 April 2021**

IMPELUS LIMITED (ADMINISTRATOR APPOINTED)

Commonwealth Bank

CASH BOOK for the period 8 March to 6 April 2021

Receipts

Date	Received from	Nature	Reference	Bank
8/3/2021	Opening balance	C>Wealth bank	1	6,554.40
9/03/21	Freelink Australia	Debtors	2	4,355.34
10/03/21	Xero Australia	Debtors	5	27.00
1/04/21	Cwealth Bank	Interest	11	0.01
				4,382.35
		check		0.00

Payments

Date	Paid to	Nature	Reference	Bank Amount
9/03/2021	Freelink Australia	Audit fee (subsequently reversed)	3	4,355.34
10/03/2021	Xero Australia	Subscription	4	27.00
15/03/2021	C>Wealth Bank	fees	6	6.00
15/03/2021	C>Wealth Bank	fees	7	1.93
15/03/2021	C>Wealth Bank	fees	8	6.00
15/03/2021	C>Wealth Bank	fees	9	7.43
31/03/21	Impelus Limited Macquarie Bank	Transfer of pre-appointment funds	10	6,433.04
1/04/2021	C>Wealth Bank	fees	12	4.86
1/04/21	C>Wealth Bank	fees	13	15.00
				10,856.60
		check		0.00

Bank Reconciliation

Balance brought forward	6,554.40
Add Receipts	4,382.35
Less Payments	10,856.60
Bank balance as at 6 April 2021	80.15

Balance as per bank statement as at 6 April 2021 80.15

Unpresented deposits

Unpresented payments

0.00

Cashbook balance as at 6 April 2021

80.15

Diff 0.00

Key dates

8 March 2021 - Appointed Administrator

IMPELUS LIMITED (ADMINISTRATOR APPOINTED)

Macquarie Bank

CASH BOOK 8 March 2021 to 6 April 2021

Receipts

Date	Received from	Nature	Chq No	Bank
16/3/2021	Marketing Punch Ltd	Advance against professional costs MBO	1	21,985.00
26/3/2021	Impelus APAC	Incorrect Payment to Corega Pty Ltd	4	1,725.36
26/03/2021	Impelus APAC	Incorrect Payment to Maureen Smith	5	369.00
1/04/2021	Brendan Birthistle	Share purchase	7	185.00
1/04/2021	Commonwealth Bank	Transfer pre-appointment funds	8	6,433.04
				30,697.40

check 0.00

Payments

Date	Paid to	Nature	Reference	Bank Amount
26/03/2021	Corega Pty Ltd	Mauren Smith - Rent a space	2	369.00
26/03/2021	Maureen Smith	Salary	3	1,725.36
31/03/2021	Macquarie bank	Service fee	6	0.80
1/04/2021	The First Principle	AFR Advertising & consulting	9	3,960.00
				6,055.16
				0.00

check 0.00

Bank Reconciliation

Balance brought forward	0.00
Add Receipts	30,697.40
Less Payments	6,055.16
Bank balance as at 6 April 2021	24,642.24

Balance as per bank statement as at 6 April 2021 24,642.24

Unpresented deposits

Unpresented payments

0.00

Cashbook balance as at 6 April 2021 **24,642.24**

Diff 0.00

Key Dates

8 March 2021 - Appointed Administrator



Annexure 12

**IMPELUS LIMITED (ADMINISTRATOR APPOINTED)
ACN 089 805 416**

Remuneration Report – s60-5 of Insolvency Practice Schedule (Corporations) (Schedule 2 to Corporations Act 2001)

**IMPELUS LIMITED (ADMINISTRATOR APPOINTED)
ACN 089 805 416**

Remuneration Report – s60-5 of Insolvency Practice Schedule (Corporations) (Schedule 2 to Corporations Act 2001)

Overview

This document provides information in connection with current and future remuneration. Estimates provided may vary. Amounts stated do not include GST.

History

I was appointed Administrator of the Company on 8 March 2021.

On 17 March 2021, the first creditors' meeting was held.

On 8 April 2021, this report will be sent to creditors by the Administrator including the Administrator's report into the affairs of the Company, his opinion on the future of the company, and notice of the Decision Meeting to be held on 20 April 2021.

At the Decision Meeting, creditors will resolve whether the Company enters into a Deed of Company Arrangement or Liquidation.

Calculation of Remuneration

Remuneration Methods

There are four methods that can be used to calculate remuneration:

1. **Time based.** This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person spent on the tasks performed. Time is calculated in 6 minute intervals.
2. **Fixed fee.** The total fee charged is quoted at the commencement in a fixed amount. Sometimes, a practitioner will finalise an administration for a fixed fee.
3. **Percentage.** The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of asset realisations.
4. **Contingency.** The fee is structured to be contingent on a particular outcome being achieved. A contingency fee may apply in circumstances where significant risk is being taken by the practitioner.

Method Chosen

Given the nature of this matter, it is proposed that remuneration be calculated on a time basis. This is because it provides a fair reflection of the value of the work performed; the amount charged can be substantiated by ledgers indicating time spent; the different levels of experience, expertise and skills by those performing tasks are recognized; it is difficult to plan for all variables involved with such matter, many of which are outside of the control of the practitioner, to be able to rely on the fixed fee basis and it is not possible to estimate, with certainty, the total fees to complete all tasks. Creditors are able to be assured that fees charged are for work performed – time is recorded and charged in six minute increments.

Explanation of hourly rates

The rates for our remuneration calculation are set out in the following table together with a general guide showing the qualifications and experience of staff engaged in the administration and the role they take in the administration. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage. Time is calculated in 6 minute units. In some matters, staff may be re-classified to a higher or lower classification arising from academic qualifications and experience.

	\$/Hour	
Appointee	625	Registered Liquidator and/or Trustee, bringing specialist skills to insolvency administration
Associate	500	Minimum 10 years experience, at least 5 years at manager level, qualified and capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in his/her own right.
Manager 1 (Senior Manager)	500	Minimum 7 years experience, at least 3 years at manager level, tertiary qualified and capable of controlling all aspects of an administration. Experienced at all levels and considered very competent.
Manager 2	375	5- 7 years experience, tertiary qualified with well developed technical and commercial skills and capable of controlling all aspects of an administration. Experienced at all levels and considered competent. Ability to plan and control administration and staff.
Supervisor	325	4 - 6 years experience. Likely tertiary qualified or significant experience. Well developed technical and commercial skills. Ability to assist and co-ordinate planning and control of medium to large administration.
Senior 1	275	2 – 4 years experience. Likely tertiary qualified or nearing completion. Assists planning and control of small to medium sized assignments as well as performing some of the more difficult work on larger administrations.
Senior 2	250	1 – 2 years experience. Likely tertiary qualified or nearing completion. Required to assist in day to day fieldwork under supervision of more senior staff.
Intermediate 1	190	0 – 2 years experience. University graduate with little or no professional experience, required to assist in day to day fieldwork under supervision of more senior staff.

All amounts exclude GST.

Remuneration Approval Request

Executive Summary

This remuneration report details approval sought for the following fees:

Period	Report Reference	Amount (ex GST)
8 March 2021 to 6 April 2021 (actual)	See Schedule 1 below	\$90,597
7 April 2021 to end of Administration Period (estimate)	See Schedule 2 below	\$30,000
Commencement of Liquidation to end of Liquidation (estimate)	See Schedule 3 below	\$50,000
DOCA Period		\$7,500

Approval for the future remuneration sought is based on an estimate of the work necessary to the completion of the administration. Should additional work be necessary beyond what is contemplated, further approval may be sought from creditors.

SCHEDULE 1

Part 1 Declaration

I, David Levi of Levi Consulting Pty Ltd, have undertaken a proper assessment of this remuneration claim for my appointment as Administrator of Impelus Limited in accordance with the law and applicable professional standards. I am satisfied that the remuneration claimed was in respect of necessary work, properly performed, or to be properly performed, in the conduct of the Administration.

Part 2 Description of Work

Company:	Impelus Limited (Administrator Appointed)	Period From: 8 March 2021 Period To: 6 April 2021
Practitioner(s):	David Levi	Firm: Levi Consulting Pty Ltd
Administration Type:	Voluntary Administration	

Task Area	General Description	Includes
Assets Number of hours: 74.0 Cost: \$37,452	Assets subject to specific charges (if any)	All tasks associated with realising a charged asset. Telephone secured creditors and their advisors.
	Debtors	Reviewing and assessing debtors ledgers
	Other Assets	Tasks associated with realising other assets Consider asset position. Telephone and email stakeholders. Telephone and email parties to provide information to assess nature and extent of assets, including director.
Creditors Number of hours: 40.7 Cost: \$14,445	Creditor Enquiries	Consider estimated financial position. Telephone and email stakeholders. Telephone and email parties to provide information to assess the nature and extent of liabilities, including the director.
Investigation Number of hours: 90.3 Cost: \$36,633	Conducting investigation	Communicate with directors. Review ASIC, PPSR searches and make enquiry. Instruct lawyer for VA. Make enquiry for potential issues for investigation. Engage in communication with CBA on bank accounts; arrange for other Australian banks to be notified. Conduct due diligence via telephone call and email to assess chronology, current status financial and non-financial issues; business and assets; key personnel; other. Seek to source books and records.
Administration Number of hours: 10.6 Cost: \$2,068	Strategy	Statutory issues arising from appointment as Administrator. Delegate and supervise Levi personnel arising from appointment as VA. Review, statutory and operational issues, financial and non-financial arising from appointment as VA. Statutory issues arising from appointment as Administrator. Day 1 VA following appointment as VA. Determine timetable.

Task Area	General Description	Includes
		Delegate and supervise Levi personnel on statutory issues, post appointment issues; send formal Notice to first ranking secured creditor. Telephone receivers who advised appointment as receiver. Brief discussion on appointment.
	Document maintenance/file review/checklist	Filing of documents File reviews Updating checklists
Total number of hours: 215.6 Cost: \$90,597		

Part 3 Calculation of Remuneration - for the period from 8 March 2021 to 6 April 2021 (inclusive).

Position	\$/hour (Ex GST)	Total Hours	Total \$	Task Area						
				Assets Hrs \$	Creditors Hrs \$	Employees Hrs \$	Investigation Hrs \$	Trade On Hrs \$	Dividend Hrs \$	Administration Hrs \$
Appointee D Levi	625	62.2 Hrs	\$38,875	29.5 Hrs \$18,438	7.7 Hrs \$4,813		25.0 Hrs \$15,625			
Manager 1	500	64.0 Hrs	\$32,000	33.5 Hrs \$16,750	8.0 Hrs \$4,000		22.5 Hrs \$11,250			
Senior 2	250	45.6 Hrs	\$11,400	2.9 Hrs \$725	14.7 Hrs \$3,675		27.1 Hrs \$6,775			0.9 Hrs \$225
Intermediate	190	43.8 Hrs	\$8,322	8.1 Hrs \$1,539	10.3 Hrs \$1,957		15.7 Hrs \$2,983			9.7 Hrs \$1,843
Total		215.6 Hrs	\$90,597	3.0 Hrs \$1,875	40.7 Hrs \$14,445		90.3 Hrs \$36,633			10.6 Hrs \$2,068P
GST			\$9,060							
Total (Inc GST)			\$99,657							
Average Hourly Rate			\$420	\$506	\$355		\$406			\$195

Purpose

To provide details of the Administrator's actual remuneration from 8 March 2021 to 6 April 2021 inclusive.

Nature of Work

- * Statutory issues upon appointment including documents, convening and attending first creditors' meeting.
- * Commercial issues upon appointment to obtain a commercial understanding of the affairs of the company
- * Consider the future options for the company.
- * Investigate the affairs of the company
- * Communicate with creditors, including telephone, email

All amounts exclude GST.

Additional information is available on request.

SCHEDULE 2

Part 1 Declaration

I, David Levi of Levi Consulting Pty Ltd, have undertaken a proper assessment of this remuneration claim for my appointment as Administrator of Impelus Limited in accordance with the law and applicable professional standards. I am satisfied that the remuneration claimed was in respect of necessary work, properly performed, or to be properly performed, in the conduct of the Administration.

Part 2 Description of Work

Company:	Impelus Limited (Administrator Appointed)	Period From: 6 April 2021 Period To: End of Administration Period
Practitioner(s):	David Levi	Firm: Levi Consulting Pty Ltd
Administration Type:	Voluntary Administration	

Task Area	General Description	Includes
Assets Number of hours: 3.0 Cost: \$1,875	Debtors	Reviewing and assessing debtors ledgers
	Other Assets	Tasks associated with realising other assets Consider asset position. Telephone and email stakeholders. Telephone and email parties to provide information to assess nature and extent of assets, including director.
Creditors Number of hours: 31.9 Cost: \$12,524	Creditor Enquiries	Consider estimated financial position. Telephone and email stakeholders. Telephone and email parties to provide information to assess the nature and extent of liabilities, including the director.
Investigation Number of hours: 31.7 Cost: \$14,675	Conducting investigation	Communicate with the director. Review ASIC, PPSR searches and make enquiry. Instruct lawyer for VA. Make enquiry for potential issues for investigation. Engage in communication with CBA on bank accounts; arrange for other Australian banks to be notified. Conduct due diligence via telephone call and email to assess chronology, current status financial and non-financial issues; business and assets; key personnel; other. Seek to source books and records.
Administration Number of hours: 4.4 Cost: \$926	Strategy	Statutory issues arising from appointment as Administrator. Delegate and supervise Levi personnel arising from appointment as VA. Review, statutory and operational issues, financial and non-financial arising from appointment as VA. Statutory issues arising from appointment as Administrator. Determine timetable. Delegate and supervise Levi personnel on statutory issues, post appointment issues; send formal Notice

Task Area	General Description	Includes
		to first ranking secured creditor. Telephone receivers who advised appointment as receiver. Brief discussion on appointment.
	Document maintenance/file review/checklist	Filing of documents File reviews Updating checklists
Total number of hours: 71.0 Cost: \$30,000		

Part 3 Calculation of Remuneration - for the period from 7 April 2021 to end of Administration Period (inclusive).

Position	\$/hour (Ex GST)	Total Hours	Total \$	Task Area						
				Assets Hrs \$	Creditors Hrs \$	Employees Hrs \$	Investigation Hrs \$	Trade On Hrs \$	Dividend Hrs \$	Administration Hrs \$
Appointee D Levi	625	22.0 Hrs	\$13,750	3.0 Hrs \$1,875	7.0 Hrs \$4,375		12.0 Hrs \$7,500			
Manager 1	500	19.6 Hrs	\$9,800		9.4 Hrs \$4,700		10.2 Hrs \$5,100			
Senior 2	250	14.4 Hrs	\$3,600		18.4 Hrs \$2,100		4.5 Hrs \$1,125			1.5 Hrs \$375
Intermediate	190	15.0 Hrs	\$2,850		7.1 Hrs \$1,349		5.0 Hrs \$950			2.9 Hrs \$551
Total		71.0 Hrs	\$30,000	3.0 Hrs \$1,875	31.9 Hrs \$12,524		31.7 Hrs \$14,675			4.4 Hrs \$926
GST			\$3,000							
Total (Inc GST)			\$33,000							
Average Hourly Rate			\$423	\$625	\$393		\$463			\$210

Purpose

An estimate of Administrator's remuneration for the period from 7 April 2021 to end of Administration Period

Nature of Work

- * Preparation of creditors' report dated 8 April 2021
- * Convening Creditors' meeting and attendance
- * Communicating with stakeholders
- * Other matters

Estimate

This is an estimate. The value of time may vary from the estimate. Assumes that administration ends on or about the date of the Decision Meeting.

All amounts exclude GST.

Part 1 Declaration

I, David Levi of Levi Consulting Pty Ltd, have undertaken a proper assessment of this remuneration claim for my appointment as Liquidator of Impelus Limited (if appointed) in accordance with the law and applicable professional standards. I am satisfied that the remuneration claimed is in respect of necessary work, to be properly performed, in the conduct of the liquidation.

Part 2 Description of Work

Company:	Impelus Limited (Administrator Appointed)	Period From: Commencement of Liquidation Period To: End of Liquidation
Practitioner(s):	David Levi	Firm: Levi Consulting Pty Ltd
Administration Type:	Creditor Voluntary Liquidation	

Task Area	General Description	Includes
Creditors Number of hours: 43.7 Estimated Cost: \$17,933	Creditor Enquiries	Receive and follow up creditor enquiries via telephone, email Maintain creditors' list Review and prepare correspondence to creditors and their representatives via facsimile, email and post
	Secured creditor reporting	Preparing reports to secured creditors
	Creditor reports	Preparing investigation and general reports to creditors including 70-40 report
	Dealing with proofs of debt	Receipting and filing POD's when not related to a dividend
	Meeting of Creditors (if required)	Preparation meeting notices, proxies and advertisements Forward notice of meeting to all known creditors Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting. Preparation and lodgement minutes of meetings with ASIC Respond to stakeholder queries and questions immediately following meeting
Investigation Number of hours: 64.3 Estimated Cost: \$29,395	Conducting investigation	Preparation of investigation file Lodgement of investigation with the ASIC Preparation and lodgement of supplementary report if required Examinations, proceedings (if any)
Administration Number of hours: 12.6 Estimated Cost: \$2,670	Correspondence	
	Document maintenance/file review/checklist	Filing of documents File reviews Updating checklists
	Bank account administration	Preparing correspondence opening and closing accounts Requesting bank statements Bank account reconciliations Correspondence with bank regarding specific

Task Area	General Description	Includes
		transfers
	ASIC Form 524 and other forms	Preparing and lodging ASIC forms including 524, etc
	ATO & other statutory reporting	Notification of appointment Preparing BAS
	Finalisation	Notifying ATO of finalisation
	Planning / Review	Discussions regarding status of administration
	Books and records / storage	Sending job files to storage
Total number of hours: 120.6		
Total estimated cost: \$49,997		

Part 3 Calculation of Remuneration - for the period from Commencement of Liquidation to Completion of Liquidation.

Position	\$/hour (Ex GST)	Total Hours	Total \$	Task Area						
				Assets Hrs \$	Creditors Hrs \$	Employees Hrs \$	Investigation Hrs \$	Trade On Hrs \$	Dividend Hrs \$	Administration Hrs \$
Appointee D Levi	625	37.6 Hrs	\$23,500		11.3 Hrs \$7,063		26.3 Hrs \$16,438			
Manager 1	500	28.1 Hrs	\$14,050		12.4 Hrs \$6,200		15.7 Hrs \$7,850			
Senior 2	250	33.6 Hrs	\$8,400		14.5 Hrs \$3,625		14.5 Hrs \$3,625			4.6 Hrs \$1,150
Intermediate	190	21.3 Hrs	\$4,047		5.5 Hrs \$1,045		7.8 Hrs \$1,482			8.0 Hrs \$1,520
Total		120.6 Hrs	\$49,997		43.7 Hrs \$17,933		64.3 Hrs \$29,395			12.6 Hrs \$2,670
GST			\$5,000							
Total (Inc GST)			\$54,997							
Average Hourly Rate			\$415		\$410		\$457			\$212

Purpose

An estimate of Liquidator's remuneration in the event that the company enters into liquidation on 20 April 2021.

Nature of Work

If the company enters into liquidation at the Decision Meeting on 20 April 2021 then the estimated costs of attending to the minimum statutory issues, including investigation and reporting to the ASIC, liaise with creditors, are likely to be \$50,000 plus GST.

Estimate

This is an estimate. The value of time may vary from the estimate.

All amounts exclude GST.

Statement of remuneration claim

At the meeting of creditors to be held on 19 April 2021, creditors will be asked to pass the following resolutions to approve my remuneration. Details to support these resolutions are included in Schedules 1 to 3 to this Remuneration Report.

Resolution – Administrator’s Actual Fees – Period 8 March 2021 to 6 April 2021

“That the remuneration of the Administrator of Impelus Limited for the period 8 March 2021 to 6 April 2021, in respect of the Administrator and his staff, calculated at the hourly rates of the Administrator’s firm, be approved in the amount of \$90,057 plus GST, and that the Administrator can draw the remuneration immediately or as required.”

Resolution – Administrator’s Future Fees

“That the remuneration of the Administrator of Impelus Limited for the period from 7 April 2021 to the end of the Administration period, in respect of the Administrator and his staff, calculated at the hourly rates of the Administrator’s firm, be approved up to the amount of \$30,000 plus GST, and that the Administrator can draw the remuneration immediately or as required.”

Resolution – Liquidator’s Prospective Fees

“That the remuneration of the Liquidator (if appointed) of Impelus Limited, for the period from appointment, in respect of the appointee and his staff, be calculated at the hourly rates of the Liquidator’s firm, approved up to an interim amount of \$50,000 plus GST, and that the Liquidator can draw the remuneration immediately or as required.”

Disbursements

Disbursements are divided into three types:

1. Externally provided professional services charged at cost.

These are amounts reimbursed to the Administrator out of the assets of the company in administration at cost; that is, at the same value as invoiced by the service provider.

Effective 1 September 2017, the Administrator does not need a resolution of creditors to pre-approve payment of such disbursement from the assets of the company in administration for the following reasons:

- i. The Administrator is seeking reimbursement at invoice value with no additional profit or charge;
- i. The service provider is unrelated to the Administrator and the Administrator's firm and or service entity (if any).
- ii. The incurring of the expense was warranted and the need to incur the expense can be demonstrated.

The rationale is that the transaction is at cost, and the Administrator is not making any profit, notional or otherwise, above invoiced cost, and therefore, the law (effective 1 September 2017) does not require a resolution of creditors to approve reimbursement of the disbursement.

2. Externally provided non-professional costs.

These costs include but are not limited to travel (rail, bus, cab, Uber, air, ferry, ship), accommodation including related expenses (hotel, motel, meals, meal allowance, telephone, and other expense charged by the provider of accommodation), search fees (ASIC searches, PPSR searches, AFSA searches, real property searches), printing costs that are outsourced for example to Kwik Kopy, postage charges, courier charges, meeting room hire for a meeting of creditors held outside the Administrator's office premises, stationery charges specific to the matter, storage and destruction costs invoiced by Grace Records.

For each of these costs, the service provider for travel, accommodation, search fees, printing costs and other non-professional external service providers will render an invoice. The invoiced amount is the cost value.

Effective 1 September 2017, the Administrator does not need a resolution of creditors to pre-approve payment of such disbursement from the assets of the company in administration for the following reasons:

- i. The Administrator is seeking reimbursement at invoice value with no additional profit or charge;
- i. The service provider is unrelated to the Administrator and the Administrator's firm and or service entity (if any);
- ii. The incurring of the expense was warranted and the need to incur the expense can be demonstrated.

The rationale is that the transaction is at cost, and the Administrator is not making any profit, notional or otherwise, above invoiced cost, and therefore, the law (effective 1 September 2017) does not require a resolution of creditors to approve reimbursement of the disbursement.

3. Internal disbursements

Effective 1 September 2017, the law does require some disbursements to be approved by resolution of creditors before they are reimbursed.

Internal disbursements may include in-house photocopying, meeting room charge for a meeting of creditors held within the Administrator's office premises, teleconference costs, telephone costs, video conferencing costs, file set-up charges, stationery. For each of these categories, the Administrator's firm or the Administrator's service entity determines cost by estimating direct costs plus indirect costs to then calculate total cost.

For internal disbursements of the kind disclosed, effective 1 September 2017, the Administrator needs to have creditors pass a resolution to approve reimbursement of such disbursements.

The legislators have introduced the requirement in the interests of communication to creditors.

It is common for professional service firms to charge Internal disbursements. These disbursements, if charged to the administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

In summary I am not required to seek creditor approval for disbursements that are charged to the administration at invoiced cost by service providers unrelated to the Administrator or the Administrator's firm. However, for Internal disbursements, where there is an element of profit or advantage to the Administrator or a related entity of the Administrator, approval to the reimbursement of disbursements must be obtained from creditors. If there is no element of profit or advantage and the supplier is unrelated then no creditor approval is required.

In this matter, the Administrator and the Deed Administrator (if appointed) will seek reimbursement for any Internal disbursements and seek creditors' approval at the creditors' meeting to be held on 24 April 2020 of the following resolution:

Resolution – Internal Disbursements

“That the Internal Disbursements incurred by the Administrator/Liquidator and his firm from appointment to completion of the Administration/Liquidation, calculated at the rates detailed in Remuneration Report, are approved up to a capped amount of \$500 plus GST, and the Administrator can draw the payment from available funds”.

The following are the rates for Internal Disbursements

In-house photocopying	25c/page
Meeting room charge	\$150/hour
Teleconference costs	\$2/minute
Telephone costs	\$0
Video conferencing costs	\$0
File set-up charges	\$250
Records storage	\$1 per box, per month
Records destruction	\$10 per box

ASIC Supervisory Cost Recovery Levy (“the Levy”)

Effective 1 July 2017, ASIC will impose on registered liquidators an annual Levy which has two components: a fixed component being a Minimum Levy of \$2,500 for each registered liquidator, and a graduated component. The value of the graduated component for each registered liquidator will be based upon their level of activity (or Metrics) judged by: (i) their number of appointments at 1 July each year; (ii) the publication of certain notices on the ASIC’s Published Notices Website (PNW), and; (iii) the lodgement of certain documentation: regulation 20 of the *ASIC Supervisory Cost Recovery Levy Regulations 2017* (Cth).

The charge associated with the graduated component of the Levy cannot be determined by ASIC until six months after the end of each financial year.

ARITA have indicated that there are three options in which the Levy may be recovered by an insolvency practitioner, being:

1. Increase in Charge to Hourly Rates

A registered liquidator may increase their hourly rate to a degree that would allow them to recover their charge associated with the Levy. However, this method does not directly link the incurrence of metric events to specific clients, and so may not represent the most accurate way of reflecting the cost of the Levy.

2. Adopting a mixed fee structure

A registered liquidator could alter their fee structure to charge both a variable cost associated with their time, and a fixed cost associated with an estimate for the Levy costs associated with that appointment.

3. Charging an administration expense

A registered liquidator is able to make their best estimate as to their costs relating to the Levy, and charge this cost as an administration expense.

I will adopt the third option. The method allows better matching to reflect actual or prospective costs incurred under the Levy.

Creditors are requested to approve the payment from the Deed Administration as an administration expense the amount of the estimated Levy payable to the ASIC for the liquidation using the estimated cost for each metric event in the table below. For each metric where, for example, there are multiple meetings, or numerous disclaimers of property, then the number of metric events and cost will increase.

Metric actions which attract the Levy	Estimated cost for each Metric (\$)
Appointment	150
Notice to submit particulars of debts or claims	150
Notice of intention to declare a dividend	150
Lodgement of a deed of company arrangement	150
Other	450
Total estimated cost	1,050

At the creditors’ meeting to be held on 24 April 2020, I will seek creditors’ approval of the following resolution:

Resolution – Administration expense – ASIC Levy

“That if the Company is wound up, the estimated Levy for the liquidation pursuant to ASIC Supervisory Cost Recovery Levy Regulations 2017, calculated at the rates detailed in the Remuneration Report, is approved up to a capped amount of \$1,050, and that the Liquidator can draw the payment from available funds.”

Queries

The above information is provided to assist creditors in considering the appropriateness of the remuneration claim/s that is/are being made.

Please see Creditor Information Sheet (Information Sheet 85: Approving fees: a guide for creditors) issued by the Australian Securities and Investments Commission, which can be accessed at www.asic.gov.au/insolvencyinfosheets. Remuneration can be approved by creditors, by the Committee of creditors (if any), or failing that, by the Court.

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

- ARITA at www.arita.com.au/creditors
- ASIC at www.asic.gov.au (search for "fees of insolvency practitioners").

Creditors should feel free to contact the Administrator's office to seek further information in relation to remuneration.

Annexure 13

**IMPELUS LIMITED (ADMINISTRATOR APPOINTED)
ACN 089 805 416**

ARITA Creditor Information Sheet: Offences, Recoverable Transactions and Insolvent Trading

Creditor Information Sheet

Offences, Recoverable Transactions and Insolvent Trading



Offences

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

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

Recoverable Transactions

Preferences

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

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

Uncommercial Transaction

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

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

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

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

Unfair Loan

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

Arrangements to avoid employee entitlements

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

Unreasonable payments to directors

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

Voidable charges

Certain charges over company property are voidable by a liquidator:

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

Insolvent trading

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

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

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

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

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

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

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

Annexure 14

**IMPELUS LIMITED (ADMINISTRATOR APPOINTED)
ACN 089 805 416**

ARITA Information Sheet: Approving remuneration of an external administrator

Annexure 14

**IMPELUS LIMITED (ADMINISTRATOR APPOINTED)
ACN 089 805 416**

ARITA Information Sheet: Approving remuneration of an external administrator

Information sheet: Approving remuneration of an external administrator

If you are a creditor in a liquidation, voluntary administration or deed of company arrangement you may be asked to approve the external administrator's remuneration. An external administrator can be a liquidator, voluntary administrator or deed administrator. The process for approving the remuneration for each of these is the same.

This information sheet gives general information to help you understand the process of approving an external administrator's remuneration and your rights in this process. The following topics are covered in this information sheet:

- About external administrations
- External administrator's remuneration and costs
- Calculating remuneration
- Information you will receive
- Approving remuneration
- Who may approve remuneration
- Deciding if remuneration is reasonable
- What can you do if you decide the remuneration is unreasonable?
- Reimbursement of out of pocket costs
- Queries and complaints
- More information.

About external administrations

If a company goes into liquidation, voluntary administration or enters into a deed of company arrangement, an independent person is appointed to oversee the administration. They are called an external administrator and include a liquidator, voluntary administrator and deed administrator, depending on the type of administration involved. In this information sheet they are simply referred to as an external administrator.

The duties of an external administrator are specified in legislation and they must adhere to certain standards while conducting the administration.

All external administrators are required by law to undertake certain tasks which may not benefit creditors directly (e.g. investigating whether any offences have been committed and reporting to the Australian Securities and Investments Commission (ASIC)).

External administrator's remuneration and costs

External administrators are entitled to be paid for the necessary work they properly perform in the administration.

An external administrator is entitled:

- to be paid reasonable remuneration, for the work they perform, once this remuneration has been approved,
- to be paid for internal disbursements they incur in performing their role (these costs do need approval), and
- to be reimbursed for out-of-pocket costs incurred in performing their role (these costs do not need approval).

Common internal disbursements are stationery, photocopying and telephone costs.

Commonly reimbursed out-of-pocket costs include:

- legal fees
- a valuer's, real administration agent's and auctioneer's fees
- postage costs
- retrieval costs for recovering the company's computer records, and
- storage costs for the company's books and records.

Creditors have a direct interest in the amount of an external administrator's remuneration and costs, as these will generally be paid from the administration before any payments are made to creditors.

Remuneration and internal disbursements must be approved in accordance with the Corporations Act and Insolvency Practice Rules (Corporations) before it can be paid.

If there is a shortfall between the external administrator's remuneration and the assets available from the administration, in certain circumstances the external administrator may arrange for a third party to pay the shortfall. As a creditor, you will be provided details of any such arrangement.

If there are not enough assets to pay the external administrator's remuneration and costs, and there is no third party payment arrangement, the external administrator remains unpaid.

Calculating remuneration

An external administrator may calculate their remuneration using one (or a combination) of a number of methods, such as:

- on the basis of time spent working on the administration, according to hourly rates
- a quoted fixed fee, based on an estimate of the costs
- a percentage (usually of asset realisations), or
- a contingent basis on a particular outcome being achieved.

Charging on the basis of time spent is the most common method used. External administrators have a set of hourly rates that they will seek to charge. These rates are set to reflect the seniority, skills and experience of staff and, where applicable, the complexity and risks of the bankruptcy. They cover staff costs and overheads.

If remuneration is being charged on a time basis, the external administrator must keep time sheets noting the number of hours spent on the tasks performed.

Creditors have a right to question the external administrator about the remuneration and the rates to be charged. They also have a right to question the external administrator about the fee calculation method used and how the calculation was made. The external administrator must justify why the chosen fee calculation method is appropriate for the administration.

Information you will receive

There are different types of remuneration reports that you may receive during the course of an external administration. The following table details the reports and when you might receive them.

Document	Information it contains	When you will receive it
Initial Remuneration Notice (IRN)	<ul style="list-style-type: none"> • A brief explanation of the types of methods that may be used to calculate fees. • The external administrator's chosen fee calculation method(s) and why it is appropriate. • Details of the external administrator's rates, including hourly rates if time spent basis is used. • An estimate of the external administrator's remuneration. • The method that will be used to calculate disbursements. 	<p>Voluntary Administration – with the notice of first meeting.</p> <p>Creditors' voluntary liquidation – within 10 business days of appointment.</p> <p>Court liquidation – within 20 business days of appointment.</p>
Remuneration Approval Report (RAR)	<ul style="list-style-type: none"> • A summary description of the major tasks performed, or likely to be performed. • The costs associated with each of those major tasks and the method of calculation. • The periods at which the external administrator proposes to withdraw funds from the administration for remuneration. • An estimated total amount, or range of total amounts, of the external administrator's remuneration. • An explanation of the likely impact of that remuneration on the dividends (if any) to creditors. • Where internal disbursements are being claimed, the external administrator will report to creditors on the amount and method of calculation of these disbursements. 	<p>Sent at the same time as:</p> <ul style="list-style-type: none"> • the notice to creditors of the meeting at which approval of remuneration will be sought; or • the notice to creditors of the proposal without a meeting by which approval of remuneration will be sought <p>If approval of remuneration is not being sought, a RAR will not be provided.</p>

Approving remuneration

The meeting of creditors (or committee of inspection) gives a chance for those participating to ask questions about the external administrator's remuneration. Fees are then approved by a vote of the creditors. Alternatively, the external administrator may seek approval of remuneration via a proposal without a meeting. Whichever method is used, the external administrator must provide the same report to creditors about their remuneration (Remuneration Approval Report).

Creditors may be asked to approve remuneration for work already performed and/or remuneration estimate for work not yet carried out. If the work is yet to be carried out, the external administrator must set a maximum limit (cap) on the future remuneration approval. For example, 'future remuneration is approved, calculated on hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X'.

If the remuneration for work done then exceeds this figure, the external administrator will have to ask the creditors to approve a further amount of remuneration, after accounting for the amount already incurred.

If an external administrator can't get the creditors' approval, an application can be made to the Court to determine their remuneration.

When there are limited funds available in the administration, or the external administrator's remuneration is below a statutory threshold, an external administrator is entitled to draw a one-off amount of up to that threshold plus GST, without creditor approval. This amount is currently \$5,000 (indexed).

Who may approve remuneration?

Committee of inspection approval

A committee of inspection will generally only be established where there are a large number of creditors and/or complex matters which make having a committee desirable. Committee members are chosen by a vote of all creditors and work with the external administrator to represent the creditors' interests.

If there is a committee, the external administrator will ask it to approve the remuneration. A committee makes its decision by a majority in number of its members present in person at a meeting, but it can only vote if a majority of its members attend.

In approving the remuneration, it is important that committee members understand that they represent all the creditors, not just their own individual interests.

Creditors' approval

Creditors approve remuneration by passing a resolution at a creditors' meeting. Creditors may vote according to their individual interests.

To approve an external administrator's remuneration, a resolution is put to the meeting to be decided on the voices or by a 'poll' (if requested by the external administrator or a person participating and entitled to vote at the meeting). A poll requires a count of each vote and its value to be taken and recorded for each creditor present and voting.

A proxy is a document whereby a creditor appoints someone else to represent them at a creditors' meeting and to vote on their behalf. A proxy can be either a general proxy or a special proxy. A general proxy allows the person holding the proxy to vote how they want on a resolution, while a special proxy directs the proxy holder to vote in a particular way.

A creditor will sometimes appoint the external administrator as a proxy to vote on the creditor's behalf. An external administrator is only able to vote on remuneration if they hold a special proxy.

There are provisions for a resolution to be passed by creditors without a meeting. This still requires a majority in value and number of creditors voting to vote in favour of the resolution. Creditors representing at least 25% in value of those responding to the external administrator's proposal can object to the proposal being resolved without a meeting of creditors.

Deciding if remuneration is reasonable

If you are asked to approve an external administrator's remuneration, your task is to decide if the amount of remuneration is reasonable, given the work carried out in the administration and the results of that work.

You may find the following information from the external administrator useful in deciding if the remuneration claimed is reasonable:

- the method used to calculate remuneration
- the major tasks that have been performed, or are likely to be performed, for the remuneration
- the remuneration/estimated remuneration (as applicable) for each of the major tasks
- the size and complexity (or otherwise) of the administration
- the amount of remuneration (if any) that has previously been approved
- if the remuneration is calculated, in whole or in part, on a time basis:
 - the period over which the work was, or is likely to be performed
 - if the remuneration is for work that has already been carried out, the time spent by each level of staff on each of the major tasks
 - if the remuneration is for work that is yet to be carried out, whether the remuneration is capped.

ARITA's Code of Professional Practice ('the Code') outlines the steps external administrators should take to make sure they fulfil their responsibilities to creditors when asking creditors to approve remuneration, including when those creditors are acting in their capacity as committee members. The Code is available on the ARITA website at www.arita.com.au.

If you need more information about remuneration than is provided in the external administrator's report, you should let them know before the meeting at which remuneration will be voted on.

What can you do if you think the remuneration is unreasonable?

If you think the remuneration being claimed is unreasonable, you should raise your concerns with the external administrator. It is your decision whether to vote in favour of, or against, a resolution to approve remuneration. You may also choose to not vote on the resolution (abstain).

You also have the power to put a resolution to the meeting. For example, you could put forward a resolution to change the way the external administrator charges for remuneration, or the periods at which the external administrator may withdraw funds. Any amending resolution must occur before the vote being taken on the resolution to approve remuneration. If the amended proposal is passed, the resolution is binding on the external administrator. However, such an amendment may result in the external administrator seeking to be replaced by another external administrator.

If the external administrator is seeking approval of remuneration via a resolution without a meeting and more than 25% in value of the creditors responding object using the form provided by the external administrator, the proposal will not pass. If the external administrator wants the proposal passed, a meeting will need to be convened and any creditor entitled to participate in the meeting has the right, before the vote is taken, to put a resolution to the meeting as mentioned above.

A creditor may apply to Court for a review of an external administrator's remuneration. Creditors also have the power to appoint, by resolution, a reviewing liquidator to review any remuneration approved within the six months and any disbursements incurred in the 12 months before the reviewing liquidator's appointment. The cost of a reviewing liquidator is paid from the assets of the external administration. An individual creditor may also appoint a reviewing liquidator with the external administrator's consent. An individual creditor seeking the appointment of a reviewing liquidator must pay the cost of the reviewing liquidator.

Reimbursement of out-of-pocket costs

An external administrator should be very careful incurring costs that must be paid from the administration; as careful as if they were incurring the expenses on their own behalf. Their report on remuneration sent to creditors must also include information on the out-of-pocket costs of the administration (disbursements).

Where these out-of-pocket costs are internal disbursements paid to the external administrator's firm (for example photocopying and phone calls) the external administrator must request creditor approval of these amounts. The external administrator may also ask for approval of internal disbursements in advance. If they do so, they will set the rates for those disbursements and a cap on the maximum amount that can be drawn.

If you have questions about any of these costs, you should ask the external administrator and, if necessary, bring it up at a creditors' or committee meeting. If you are still concerned, you have the right to seek the appointment of a reviewing liquidator (refer above).

Queries and complaints

You should first raise any queries or complaints with the external administrator or their firm.

If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ARITA at www.arita.com.au or with ASIC at www.asic.gov.au. ARITA is only able to deal with complaints in respect of their members.

More information

The [ARITA website](http://www.arita.com.au) contains the ARITA Code of Professional Practice which is applicable to all its members. ARITA also provides general information to assist creditors at www.arita.com.au/creditors.

ASIC includes information on its website which may assist creditors. Go to www.asic.gov.au and search for 'insolvency information sheets'.

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.