

5 December 2022

## Henry Morgan Liquidation

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The board of directors of Benjamin Hornigold Ltd (Company or BHD) (ASX: BHD) provides the following update to shareholders in relation to Henry Morgan Ltd (HML).

While BHD is not a direct party to the HML liquidation, the Statutory Report to Creditors from the Liquidator (Aston Chace Group) contains important information and commentary.

We believe this information will enhance our prospects of achieving successful outcomes in relation to our outstanding claims.

Key findings of the report include:

### 1. Reasons for failure of HML's business

#### Fundamental change of purpose

HML deployed the majority of funds raised, not for the purpose set out in the Prospectus but for the purpose of investing in and paying fees to companies and businesses apparently connected with Mr McAuliffe.

#### Transactions

The value of investments in related companies and businesses, may have been significantly overstated in HML's accounts (increasing HML's NTA).

Furthermore, the management and performance fees payable to JBL by HML under the MSA, was based on the NTA of HML and the investment return based on the value of the NTA.

Overstating HML's accounts would have led to a higher NTA and higher fees payable to JBL.

HML's directors may have breached their duties.

#### Corporate governance concerns

HML may have had deficient corporate governance procedures such that it failed to comply with its obligations.

### 2. Assets and liabilities

The asset and liability position of HML as at the date of the liquidators appointment is uncertain.

The liquidators are undertaking further investigations into the Transactions, which include complex loans / investments made to and from entities and businesses connected with Mr McAuliffe, in circumstances where they have not been provided with all books and records of HML and the transactions may have resulted in breaches of directors' duties.

### **3. Recoverable transactions**

The liquidator's investigations are ongoing in relation to the transactions, which include share acquisitions, loans and fees paid to businesses and companies connected with Mr McAuliffe.

The liquidators are in the process of attempting to obtain litigation funding to undertake further investigations and commence public examinations of relevant parties.

This will involve issuing orders for production of documents to relevant parties.

The actions of Mr McAuliffe and other directors of HML require investigation, as does KPMG as auditors, other legal advisors of HML and JBL (which provided investment management services to HML).

### **4. Insolvent trading**

The liquidators are of the opinion that HML was insolvent from at least 30 June 2018, due to a deteriorating cash position and concerns from regulators.

The date of insolvency may be prior to this period, considering investments and loans with companies and businesses associated with Mr McAuliffe in which the valuations may have been overstated in HML's accounts.

BHD will continue to monitor the HML Liquidation process and look forward to providing our shareholders with updates when appropriate.

BHD will provide an update to shareholders as further information becomes available.

By authority of the Board

**Michael Glennon**



Chairman / Company Secretary

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