



DEM ASIA GROUP

22 May 2020

When replying please quote
Our ref: SETT

TO CREDITORS

Dear Sir/Madam

**RE: SETTLERS COMPANY PTY LIMITED ACN 606 610 904
 ATF SETTLERS PROPERTY TRUST ABN 78 694 717 061
 AND SETTLERS OPERATIONS PTY LIMITED ACN 609 526 605 (ADMINISTRATOR APPOINTED)
 (RECEIVERS & MANAGERS APPOINTED) ("THE COMPANIES")**

As previously advised, I was appointed Administrator of the Companies on 26 August 2019 pursuant to Section 436A of the Corporations Act 2001.

For your information and assistance, I attach the following:-

1. Notice of Meeting to be held via a virtual meeting on Friday 29 May 2020 at 11:30AM AEST.
2. Administrator's Report, including a Report on the Companies Activities and Property. The report contains a statement setting out my opinion about each of the following matters and my reasons for those opinions: -
 - a. Whether it would be in the creditors' interests for the Companies to execute a Deed of Company Arrangement.
 - b. Whether it would be in the creditors' interests for the Companies to be wound up.
 - c. Whether it would be in the creditors' interests for the administration to end.
3. Should you have any questions in relation to this matter, please contact my office on +61 2 8004 4315 or settlers@demasiagroup.com

Yours faithfully

DAMIEN MARK HODGKINSON

ADMINISTRATOR

Enc



DEM ASIA GROUP

CORPORATIONS ACT 2001

Section 439A

Insolvency Practice Rules (Corporations)

75-10, 75-15 & 75-225

NOTICE OF MEETING OF CREDITORS

**SETTLERS COMPANY PTY LIMITED ACN 606 610 904
ATF SETTLERS PROPERTY TRUST ABN 78 694 717 061
AND SETTLERS OPERATIONS PTY LIMITED ACN 609 526 605
(ADMINISTRATOR APPOINTED)
(RECEIVERS & MANAGERS APPOINTED)
("THE COMPANIES")**

NOTICE is given that a meeting of the creditors of the Companies will be held on Friday, 29 May 2020 at 11:30AM AEST. The meeting will be held using **virtual facilities only**, consistent with government policies in place due to the COVID-19, in accordance with IPR 75-35.

AGENDA

1. To receive a Report on the Companies' Activities and Property.
2. To receive a statement to creditors by the director, explaining the circumstances leading up to the Administration.
3. To receive the report of the Administrator.
4. Questions from creditors.
5. For creditors to resolve:
 - a. that the Companies execute a Deed of Company Arrangement; or
 - b. that the administration should end; or
 - c. that the Companies be wound up.
6. To fix the remuneration of the Administrator.
7. If the Companies are to execute a Deed of Company Arrangement to fix the remuneration of the Deed Administrator.
8. If the Companies are wound up, to consider appointing a Committee of Inspection.
9. If no Committee is appointed, to fix the remuneration of the Liquidator.
10. If no Committee is appointed, to consider the destruction of the books and records at the conclusion of the winding up.
11. Any other business that may be lawfully brought forward.

Virtual facilities will be available for the meeting. Please note under Insolvency Practice Rules (Corporations) (IPR) 75-35 that if you wish to participate in the meeting using such facilities you must provide the convener, not later than Wednesday, 27 May 2020 by 4:00pm AEST:

- (a) A written statement by email setting out:

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SUITE 4.02 · LEVEL 4 · 249 PITT ST · SYDNEY · NSW · 2000 · AUSTRALIA · O: +61 2 8004 4313

LIABILITY LIMITED BY A SCHEME APPROVED UNDER PROFESSIONAL STANDARDS LEGISLATION

PAGE 1



- (i) the name of the person and of the proxy or attorney (if any); and
- (ii) an address to which notices to the person, proxy or attorney may be sent; and
- (iii) a method by which the person, proxy or attorney may be contacted for the purposes of the meeting.

Creditors wishing to attend the second meeting of creditors must register by emailing the above information to jenny.kim@demasiagroup.com by Wednesday, 27 May 2020 by 4.00pm AEST. Once you have registered, an email with a link will be provided to join the virtual meeting.

Proxies to be used at the meeting should be given to me as Administrator to the person named a convening the meeting. A creditor can only be represented by proxy or by an attorney pursuant to IPR 75-150 & 75-155 and if a body corporate by a representative appointed pursuant to Section 250D.

Creditors will not be entitled to vote at this meeting unless they have previously lodged particulars of their claim against the company in accordance with IPR 75-85 and that claim has been admitted for voting purposes wholly or in part by the Administrator.

DATED this 22nd day of May 2020.

A handwritten signature in black ink, appearing to read 'Damien Hodgkinson'.

DAMIEN MARK HODGKINSON
ADMINISTRATOR

DEM Australasia Pty Limited
Suite 4.02, Level 4
249 Pitt Street
Sydney NSW 2000

Telephone: (02) 8004 4315

**FORM 535
CORPORATIONS ACT 2001**

Section 600G
Subregulation 5.6.49(2)

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Administrator of Settlers Company Pty Limited ACN 606 610 904 ATF Settlers Property Trust ABN 78 694 717 061
(Administrator Appointed) (Receivers & Managers Appointed)

1. This is to state that the company was, on 26 August 2019 ⁽¹⁾ and still is, justly and truly indebted to⁽²⁾ (full name):

('Creditor'):

of (full address)

for \$ dollars and cents.

Particulars of the debt are:

Date	Consideration ⁽³⁾ state how the debt arose	Amount \$	GST included \$	Remarks ⁽⁴⁾ include details of voucher substantiating payment

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any manner of satisfaction or security for the sum or any part of it except for the following:

Insert particulars of all securities held. Where the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, specify them in a schedule in the following form:

Date	Drawer	Acceptor	Amount \$ c	Due Date

I am **not** a related creditor of the Company ⁽⁵⁾

I am a related creditor of the Company ⁽⁵⁾

relationship: _____

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

Is the debt you are claiming assigned to you?

No Yes

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

Attached

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

\$ _____

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

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

DATED this day of 2020

Signature of Signatory.....

NAME IN BLOCK LETTERS

Occupation

Address

RECEIVE REPORTS BY EMAIL

Do you wish to receive all future reports and correspondence via email?

Yes No

Email:.....

See Directions overleaf for the completion of this form

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

Proof of Debt Form Directions

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

Annexures

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

**FORM 535
CORPORATIONS ACT 2001**

*Section 600G
Subregulation 5.6.49(2)*

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Administrator of Settlers Operations Pty Limited ACN 609 526 605 (Administrator Appointed) (Receivers & Managers Appointed) ("the Company")

1. This is to state that the Company was, on 26 August 2019 ⁽¹⁾ and still is, justly and truly indebted to⁽²⁾ (full name):

('Creditor'):
of (full address)

for \$ dollars and cents.

Particulars of the debt are:

Date	Consideration ⁽³⁾ state how the debt arose	Amount \$	GST included \$	Remarks ⁽⁴⁾ include details of voucher substantiating payment

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any manner of satisfaction or security for the sum or any part of it except for the following:
Insert particulars of all securities held. Where the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, specify them in a schedule in the following form:

Date	Drawer	Acceptor	Amount \$ c	Due Date

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

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

Is the debt you are claiming assigned to you? No Yes

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

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

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

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

DATED this day of 2020

Signature of Signatory.....

NAME IN BLOCK LETTERS

Occupation

Address

RECEIVE REPORTS BY EMAIL

Do you wish to receive all future reports and correspondence via email? Yes No

Email:.....

See Directions overleaf for the completion of this form

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

Proof of Debt Form Directions

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

Annexures

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

CORPORATIONS ACT 2001
Insolvency Practice Rules (Corporations)
75-150

APPOINTMENT OF PROXY
CREDITORS MEETING

SETTLERS COMPANY PTY LIMITED ACN 606 610 904
ATF SETTLERS PROPERTY TRUST ABN 78 694 717 061
(ADMINISTRATOR APPOINTED) (RECEIVERS & MANAGERS APPOINTED)
("THE COMPANY")

*I/*We ⁽¹⁾	
Of	
being a creditor of the Company, appoint ⁽²⁾ or in his or her absence	
to vote for me/us on my/our behalf at the meeting of creditors to be held on Friday, 29 May 2020 at 11:30am AEST, or at any adjournment of that meeting.	

Please mark any boxes with an X

Proxy Type: General Special

	For	Against	Abstain
Resolution 1 Accept the proposal for a Deed of Company Arrangement	<input style="width: 30px; height: 20px;" type="checkbox"/>	<input style="width: 30px; height: 20px;" type="checkbox"/>	<input style="width: 30px; height: 20px;" type="checkbox"/>
Resolution 2 Administrator to be appointed Deed Administrator	<input style="width: 30px; height: 20px;" type="checkbox"/>	<input style="width: 30px; height: 20px;" type="checkbox"/>	<input style="width: 30px; height: 20px;" type="checkbox"/>
Resolution 3 The liquidation of the Company	<input style="width: 30px; height: 20px;" type="checkbox"/>	<input style="width: 30px; height: 20px;" type="checkbox"/>	<input style="width: 30px; height: 20px;" type="checkbox"/>
Resolution 4 Approve the early destruction of the books and records of the company pursuant to Section 542 of the Corporations Act 2001 (should the Company be placed into liquidation)	<input style="width: 30px; height: 20px;" type="checkbox"/>	<input style="width: 30px; height: 20px;" type="checkbox"/>	<input style="width: 30px; height: 20px;" type="checkbox"/>
Resolution 5 "that the remuneration of the Administrator and his staff is approved from 26 August 2019 to 21 May 2020 in the sum of \$12,703.17 plus GST calculated for work already completed and billed by reference to the hourly rates applicable to the grades or classifications set out in the Remuneration Request Approval Report dated 21 May 2020, and that the Administrator be authorised to draw that amount as and when incurred".	<input style="width: 30px; height: 20px;" type="checkbox"/>	<input style="width: 30px; height: 20px;" type="checkbox"/>	<input style="width: 30px; height: 20px;" type="checkbox"/>
Resolution 6 "that the remuneration of the Administrator and his staff is approved from 22 May 2020 to the conclusion of Voluntary Administration is approved in the sum of \$3,110.00 plus GST calculated by reference to the hourly rates applicable to the grades or classifications set out in the Remuneration Request Approval Report dated 21 May 2020, and that the Administrator be authorised to draw that amount as and when incurred".	<input style="width: 30px; height: 20px;" type="checkbox"/>	<input style="width: 30px; height: 20px;" type="checkbox"/>	<input style="width: 30px; height: 20px;" type="checkbox"/>
Resolution 7 "that the remuneration of the Deed Administrator and his staff from the commencement of the DOCA to the conclusion of the DOCA is set on an interim basis in the sum of \$3,090.00 plus GST, to be calculated by reference to the hourly rates applicable to the grades or classifications set out in the	<input style="width: 30px; height: 20px;" type="checkbox"/>	<input style="width: 30px; height: 20px;" type="checkbox"/>	<input style="width: 30px; height: 20px;" type="checkbox"/>

**APPOINTMENT OF PROXY
 CREDITORS MEETING**

SETTLERS OPERATIONS PTY LIMITED ACN 609 526 605
 (ADMINISTRATOR APPOINTED) ((RECEIVERS & MANAGERS APPOINTED)
 ("THE COMPANY")

*I/*We ⁽¹⁾	
Of	
being a creditor of the Company, appoint ⁽²⁾ or in his or her absence	
to vote for me/us on my/our behalf at the meeting of creditors to be held on Friday, 29 May 2020 at 11:30am AEST, or at any adjournment of that meeting.	

Please mark any boxes with an X

Proxy Type: General Special

	For	Against	Abstain
Resolution 1 Accept the proposal for a Deed of Company Arrangement	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>
Resolution 2 Administrator to be appointed Deed Administrator	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>
Resolution 3 The liquidation of the Company	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>
Resolution 4 Approve the early destruction of the books and records of the company pursuant to Section 542 of the Corporations Act 2001 (should the Company be placed into liquidation)	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>
Resolution 5 "that the remuneration of the Administrator and his staff is approved from 26 August 2019 to 21 May 2020 in the sum of \$124,910.75 plus GST calculated for work already completed and billed by reference to the hourly rates applicable to the grades or classifications set out in the Remuneration Request Approval Report dated 21 May 2020, and that the Administrator be authorised to draw that amount as and when incurred".	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>
Resolution 6 "that the remuneration of the Administrator and his staff is approved from 22 May 2020 to the conclusion of Voluntary Administration is approved in the sum of \$6,960.00 plus GST calculated by reference to the hourly rates applicable to the grades or classifications set out in the Remuneration Request Approval Report dated 21 May 2020, and that the Administrator be authorised to draw that amount as and when incurred".	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>
Resolution 7 "that the remuneration of the Deed Administrator and his staff from the commencement of the DOCA to the conclusion of the DOCA is set on an interim basis in the sum of \$21,932.00 plus GST, to be calculated by reference to the hourly rates applicable to the grades or classifications set out in the Remuneration Request Approval Report dated 21 May 2020, and that the Deed Administrator be authorised to draw that amount as and when incurred".	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>	<input style="width: 30px; height: 20px; border: 1px solid black;" type="checkbox"/>

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.