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HALIFAX INVESTMENT SERVICES PTY LTD (IN LIQUIDATION) (Halifax AU)

HALIFAX NEW ZEALAND LIMITED (IN LIQUIDATION) (Halifax NZ)

INVESTOR UPDATE – 7 August 2020

Update on joint sitting of the Federal Court of Australia and High Court of New Zealand

A joint hearing of the Federal Court of Australia and the High Court of New Zealand took place (on Microsoft Teams) on 31 August 2020. The following key issues were discussed:

1. *In specie* distribution

The Courts made orders that the First Defendant (Choo Boon Loo) be appointed to represent investors who seek an *in specie* distribution (meaning a distribution of assets eg shares rather than cash) from Halifax AU and/or Halifax NZ in respect of part or all of their entitlements. The Orders are available at the following link:

<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-investment-services/halifax-federal-court-australia-orders-j-gleeson%E2%80%9331-july-2020.pdf>

The Liquidators' position on this was that given evidence has already been filed by the Liquidators in relation to the issue of an *in specie* distribution (and in their view, an *in specie* distribution appears to be practically infeasible), a representative appointed to advance an argument in favour of an *in specie* distribution would need to satisfy the Court that it is reasonably arguable that *in specie* distribution is possible prior to incurring costs in the preparation of further evidence on this issue. The Liquidators' have no objection to an *in specie* distribution, so long as it is practically feasible and does not incur disproportionate time and cost.

2. Shareholder claim:

An application was filed by the majority shareholders in Halifax AU (**Majority Shareholders**), Jeffrey John Worboys and Hong Kong Capital Holdings Pty Limited (a company wholly owned by Matthew Barnett), to be joined to the Federal Court of Australia proceedings.

The Liquidators understand the position which the Majority Shareholders intend to take to be that Investor claims should be valued as at 23 November 2018, with the Majority Shareholders arguing that any surplus assets above the 23 November 2018 balance of the portfolio (taking into account the deficiency) should be paid to them. One of the bases of this position appears to be an argument that Investors' entitlements are only contractual and that they do not have a beneficial interest in any investment.

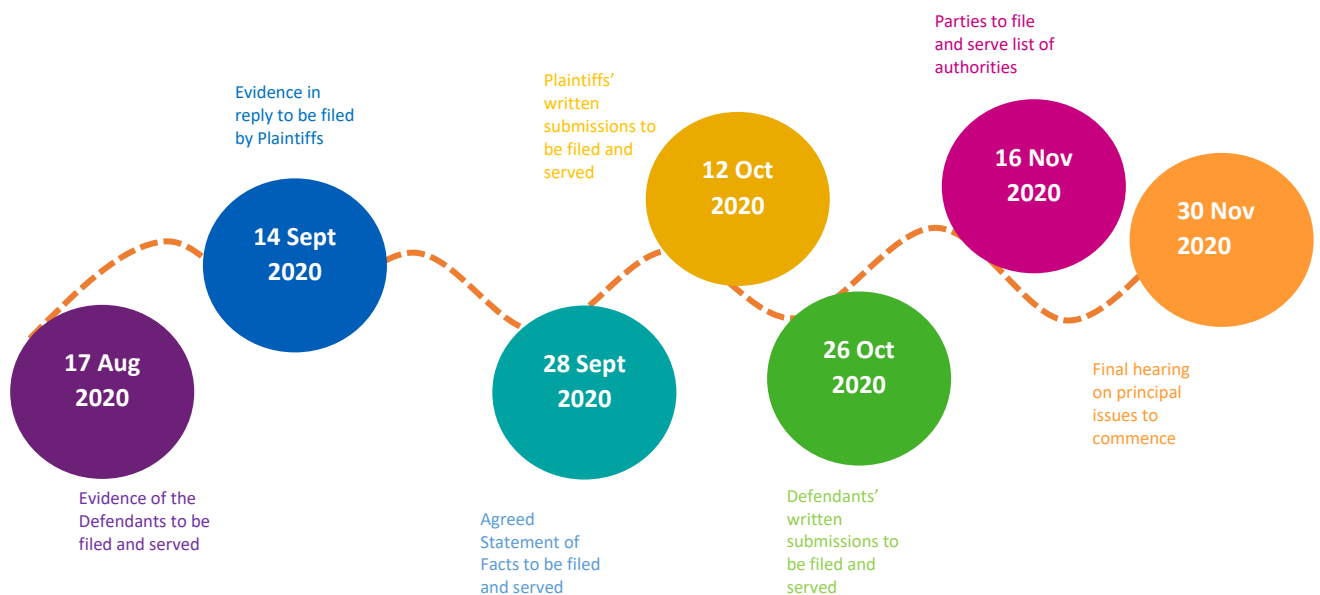
The Liquidators opposed the application for a number of reasons, including that it would cause further costs to be incurred in relation to the proceedings and that the argument advanced by the Majority Shareholders regarding how the 'surplus' should be distributed, lacked merit.

The Liquidators also requested that in circumstances where Orders are made by the Court to join the Majority Shareholders to the proceedings, an amount of \$100,000 be paid as security for further costs which may be incurred as a result of the joinder.

Justice Gleeson, reserved judgment on the issue of whether the Majority Shareholders should be joined to the proceedings. Investors will be provided with a further update on this issue in due course.

Timetable

As outlined in draft Orders proposed by the First Defendant, the previous timetable has now been vacated. However, the hearing scheduled to commence on 30 November 2020 has not been delayed. The timetable is now as follows:



Next steps

As previously advised, the speed by which a distribution will be able to occur will depend on a number of factors, including the decisions reached by the Courts, the time to sell assets which may need to be realised, the process for assessing investor claims and the impact of the deficiency.

Due to the time required to adjudicate on Investor claims and distribute available assets, we estimate that following receipt of final Court directions and orders after the hearing of all issues, it will take at least 6 months to make a distribution. The way in which investor claims will be adjudicated will be by reference to the directions and Orders provided by the Courts. This means we are not able to start the adjudication process until such time as the final hearing has been held and the Courts have delivered their directions and Orders.

As a result, we do not anticipate a distribution to all investors prior to June 2021, although this timeframe is subject to potential delays to the Court timetable.

Further information

Please visit the links to the following websites for a copy of all correspondence issued to Investors

Halifax AU: <https://home.kpmg/au/en/home/creditors/halifax-investment-services.html>

Halifax NZ: <https://home.kpmg/au/en/home/creditors/halifax-nz-limited.html>

Enquiries



Please direct any queries you may have via email to au-fmhalifax@kpmg.com.au.