



7 June 2023

To the Creditor as Addressed

**Dixon Advisory & Superannuation Services Pty Ltd
(Subject to Deed of Company Arrangement) (“the Company” or “DASS”)
ACN 103 071 665**

We refer to previous correspondences regarding the Company, in particular our last correspondence dated 22 February 2023.

The purpose of this correspondence is to provide you with a further update on the status of the deed administration.

Amendment to the Deed of Company Arrangement

As you are aware, the Company executed a Deed of Company Arrangement (**DOCA**) on 16 December 2022 following a resolution passed by the Company’s creditors at the adjourned second meeting of creditors held on the same day.

The executed DOCA included terms that the DOCA would automatically terminate if settlement of the class action proceedings (**Representative Proceedings**) did not occur by 30 June 2023 (**Sunset Date**).

The parties to the Representative Proceedings are currently conducting settlement negotiations. Given the mediation between the parties has not concluded, the Deed Administrators are not able to disclose any details regarding the negotiations as they are subject to ongoing without prejudice privilege.

Court approval is required for any class action proceeding to be settled, which will likely take some time. Given the protracted settlement negotiations, there is no prospect that the settlement will be finalised before the Sunset Date (i.e. before 30 June 2023).

The Deed Administrators believe that the outcome to creditors will be better if the DOCA is not terminated, due to the collection of the Tranche B payment (\$4 million) and potential to access any recoveries related to the Representative Proceedings. Accordingly, the Deed Administrators have made the decision that it is in the best interest of the creditors that the Sunset Date for the settlement of the Representative Proceedings be extended.

It was the intention of the parties to the DOCA whilst negotiating the terms of the DOCA that the Sunset Date for the settlement of the Representative Proceedings could be amended via agreement between the parties. However, upon subsequent review by the parties to the DOCA, it was apparent the actual wording of the executed DOCA did not specifically reflect the intention of the parties and wishes of the creditors as it relates to the ability to amend the Sunset Date. The actual wording of the DOCA did not allow the parties to amend the Sunset Date without passing a resolution of the creditors.

PricewaterhouseCoopers, ABN 52 780 433 757
2 Riverside Quay, SOUTHBANK VIC 3006,
GPO Box 1331, MELBOURNE VIC 3001
T: +61 3 8603 1000, F: +61 3 8603 1999, www.pwc.com.au

Liability limited by a scheme approved under Professional Standards Legislation.

While the Deed Administrators are comfortable that the creditors of the Company approved the DOCA based on the intended terms outlined above, in order to avoid any future complications, we formed the view that the wording of the DOCA should be amended.

Options available to amend the DOCA

Two mechanisms to amend the DOCA were considered by the Deed Administrators, being via a meeting of the Company's creditors or filing an application with the Federal Court of Australia (the **Court**).

The Deed Administrators estimate that the cost of convening and holding a meeting of creditors would have been between \$200,000 and \$350,000. To avoid incurring such cost, the Deed Administrators brought an urgent application before the Court under s 447A of the Corporations Act 2001 on 30 May 2023 seeking Orders to vary the wording of the DOCA.

Prior to filing such an application, the Deed Administrators sought the view of the Committee of Inspection (**COI**), which unanimously passed a resolution agreeing to the proposed amendment to the wording of the DOCA (set out below) and that the Deed Administrators should apply to the Court seeking such an Order.

The Orders sought were that the DOCA be varied to amend clause 18.1(b) so that it reads as follows:

“18.1(b) Notwithstanding anything in clause 18.1(a), the parties and each person bound by this Deed agree that the Sunset Date and Completion End Date can be varied in accordance with clause 18.1(a) of this Deed in writing and signed by all parties to this Deed without passing a resolution at a meeting of the Deed Company's creditors under s 445A of the Act.”

Orders to this effect were made by the Court on 5 June 2023. The Deed Administrators will now take the necessary steps with the relevant parties to amend the Sunset Date for the settlement of the Representative Proceedings, likely to be towards the end of 2023.

Any creditor who wishes to challenge the Orders may apply to the Court to do so within five (5) business days.

A copy of these Orders made by the Court are attached and have been uploaded to the Deed Administrators' website.

We recommend creditors review these documents as they will provide you with further details. The Deed Administrators' website can be accessed by following the below link: <https://insolvency.pwc.com.au/>

Update on the Deed Administration

As outlined in our previous correspondence, the key focus of the Deed Administrators is to formally determine the claims of creditors and distribute the funds available under the DOCA.

Since our previous correspondence on 22 February 2023, we have undertaken the following tasks:

- Prepare a detailed memorandum which will form the basis of an application to the Court for directions on the following matters:
 - confirmation of the quantification of loss methodology used to calculate creditors' claims;

- the treatment of creditors who have either wound up their self-managed superannuation funds (**SMSF**), or are in the process of doing so;
- the timeframe and proposed approach to the distribution; and
- use of the Creditor Portal to facilitate the distribution process.
- Considered feedback provided by creditors in relation to the Creditor Portal. We have recommended updates to the Creditor Portal to support and facilitate the distribution. A demonstration of the proposed Creditor Portal updates was presented to the COI, who agreed with the suggested changes;
- Attended multiple mediations between the parties of the Representative Proceedings and engaged with our solicitors and the class action solicitors to facilitate a settlement agreement;
- Tracked progress of the Compensation Scheme of Last Resort (**CSLR**). The CSLR was read in the House of Representatives for the second time on 21 March 2023. The conclusion of this reading indicated that the CSLR is intended to be operational from December 2023;
- Received and responded to a further request for information and documentation from the Australian Securities and Investment Commission; and
- Continued to receive and respond to enquiries from creditors.

As creditors can appreciate, the above tasks are complex, time consuming and the completion of same is largely dependent on the time it takes for the Court to hear and consider various matters. Accordingly, we do not expect to be in a position to make a distribution to the creditors of the Company until the first half of 2024.

We will keep creditors informed of any update to this expected timeline.

Action required by creditors

Creditors should note that, at this juncture, **they are not required to take any action**.

Prior to the declaration and payment of any distribution, the Deed Administrators will undertake a formal proof of debt process. As part of this process, the Deed Administrators will liaise with the creditors to explain the proof of debt process and provide detailed instructions on how to submit a claim against the Company for distribution purposes.

Please note that the Deed Administrators will only be in a position to commence the formal proof of debt process once the Orders and directions referred to above have been received from the Court, as the Orders and directions will determine the nature of the proof of debt process.

All creditors will be afforded the opportunity to submit a proof of debt for the purpose of a distribution prior to any distribution being made and you will be contacted in this regard following receipt of the Orders and directions from the Court regarding the proof of debt process.

Guidance for creditors altering a SMSF

We are aware that some creditors are considering altering, dissolving or deregistering their DASS client (or former client) entity (for example, by dissolving their SMSF and moving to an industry or retail superannuation fund, or appointing a new trustee to manage their SMSF). We are also aware that, in some instances, creditors have already dissolved their DASS client entity or are responsible for administering a deceased estate.

We have received a number of queries from creditors regarding these various situations and are working to obtain appropriate legal advice and directions from the Court to best assist creditors in navigating this topic.

Notwithstanding, it is important that you seek your own independent legal advice if you are considering taking, or have already taken, any of the steps below:

1. alter, dissolve or deregister your DASS client entity (including your SMSF);
2. assign a claim to another entity; or
3. otherwise take any action that may affect your ability to make a claim against the Company.

While we appreciate this does not yet answer your queries regarding the impact that altering your DASS client entity may have, or provide a timeframe, the Deed Administrators need to undertake a considered process before providing impacted creditors with any guidance.

Creditor contact details

To ensure all creditors continue to receive important and relevant communications from the Deed Administrators, please notify us of any change to your contact details (particularly email address) by email at **au_dass_queries@pwc.com**.

Creditor queries

If creditors have any questions regarding the deed administration of DASS or general information regarding the DOCA, please refer to the Frequently Asked Questions document in the first instance, which can be found at <https://insolvency.pwc.com.au/>

Should creditors have any queries that aren't addressed in the Frequently Asked Questions document, please send your queries to au_dass_queries@pwc.com.

Yours sincerely



Stephen Longley, Craig Crosbie and Rebecca Gill
Joint & Several Deed Administrators

Encl.



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID383/2023

IN THE MATTER OF DIXON ADVISORY & SUPERANNUATION SERVICES PTY LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 103 071 665

STEPHEN GRAHAM LONGLEY, CRAIG DAVID CROSBIE AND REBECCA LOUISE GILL IN THEIR CAPACITY AS JOINT AND SEVERAL DEED ADMINISTRATORS OF DIXON ADVISORY & SUPERANNUATION SERVICES PTY LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 103 071 665
Plaintiffs

ORDER

JUDGE: JUSTICE MCELWAIN

DATE OF ORDER: 05 June 2023

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

1. Dixon Advisory & Superannuation Services Pty Ltd (subject to deed of company arrangement) (ACN 103 071 665) (**DASS**) be joined as plaintiff to this proceeding.
2. Pursuant to s 447A(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), Part 5.3A of the Corporations Act is to operate in relation to DASS in such a way as to empower the Court to vary the deed of company arrangement dated 16 December 2022 (**DOCA**) between DASS, the deed administrators (Stephen Graham Longley, Craig David Crosbie and Rebecca Louise Gill (**Deed Administrators**)), E&P Financial Group Limited (ACN 609 913 457) and E&P Operations Pty Ltd (ACN 080 207 076).
3. Pursuant to s 447A(1) of the Corporations Act, the DOCA is varied to amend clause 18.1(b) in the following terms:

(b) Notwithstanding anything in clause 18.1(a), the parties and each person bound by this Deed agree that the Sunset Date and Completion End Date can be varied in accordance with clause 18.1(a) of this Deed in



writing and signed by all parties to this Deed without passing a resolution at a meeting of the Deed Company's creditors under s 445A of the Act.

4. Pursuant to s 447A(1) of the Corporations Act, Part 5.3A of the Corporations Act is to operate in relation to DASS in such a way that the DOCA may be varied by agreement of the parties to it as provided for in the varied clause 18.1(b) as set out in paragraph 2 above, notwithstanding the effect of s 445A of the Corporations Act.
5. The plaintiffs are to provide a copy of these orders to creditors of DASS within 5 business days as follows:
 - (a) where the Deed Administrators have an email address for a creditor, by notifying that creditor via email;
 - (b) where the Deed Administrators do not have an email address for a creditor but have a postal address, by notifying that creditor via post; and
 - (c) by publishing them on the website maintained by the Deed Administrators at <https://insolvency.pwc.com.au/singleEntityCases/dixon-advisory-superannuation-services-pty-ltd/casePage>.
6. Any person on demonstrating sufficient interest have liberty to apply on 5 business days' notice in relation to these orders, specifying the relief sought.
7. The Deed Administrators' costs and expenses incidental to this application be costs in the deed administration of DASS.

Date that entry is stamped: 6 June 2023

Sia Lagos
Registrar