



12 February 2024

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.

Amendments to the Deed of Company Arrangement

As you are aware, on 14 November 2023, a Deed of Settlement was entered into between the various parties with respect to the class action proceedings (**Representative Proceedings**).

The terms of the Deed of Company Arrangement (**DOCA**) executed on 16 December 2022 contemplated the settlement of the Representative Proceedings. However, the DOCA was drafted and executed before the settlement was finalised, and before the terms of Deed of Settlement were agreed. Given the final terms included in the Deed of Settlement, there were some amendments required to be made to the DOCA to harmonise the operation of the DOCA and Deed of Settlement, and to ensure the best possible outcome for creditors of the Company is achieved.

On 29 January 2024, the Deed Administrators made an application to the Federal Court of Australia (**Court**) to further amend the terms of the DOCA, and the Orders sought were made by the Court on 9 February 2024. A copy of the Orders is attached for your reference.

In summary, the amendments to the DOCA sought in the application were as follows:

- to amend the definition of "Settlement of the Representative Proceedings" so that it also captures the permanent stay or dismissal of those proceedings (the **Settlement Definition Amendment**); and
- to remove the condition that less than 1% of the group members opt out of the Representative Proceedings for "Completion" of the DOCA, (the **Opting Out Amendment**).

Settlement Definition Amendment

The Settlement Definition Amendment was required to address the following key issue:

- a condition to "Completion" of the DOCA is that the "Settlement of the Representative Proceedings" occurs before the "Sunset Date", failing which the DOCA automatically terminates;
- the Deed of Settlement provides that the Representative Proceedings are permanently stayed against the Company.

The Deed Administrators concluded that there was a risk that a permanent stay of the proceeding would not satisfy the definition of "Settlement of the Representative Proceedings" as set out in the DOCA (which requires the "comprehensive settlement and

.....
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

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final resolution" of the Representative Proceedings). If it would not, then, at the Sunset Date, the DOCA would automatically terminate. This amendment ensured that the permanent stay did meet the definition of "Settlement of the Representative Proceedings", and, in turn, that the DOCA will not prematurely terminate.

The reason the Representative Proceedings are being permanently stayed against the Company (rather than dismissed) is to ensure that group members, and creditors more broadly, can potentially participate in the Compensation Scheme of Last Resort (**CSLR**).

Opting Out Amendment

The Opting Out Amendment was required to address the following:

- the DOCA included a condition to "Completion" of the DOCA that less than 1% of group members opt out of the Representative Proceedings; and
- if Completion does not occur, then the DOCA automatically terminates.

The Deed Administrators were of the view that the figure of 1% was too uncertain, and the automatic termination may be too rigid a mechanism, because:

- opting out of the Representative Proceedings does not, in this case, disqualify a group member from participating in the settlement sum (because the settlement sum forms part of the DOCA deed fund, which all creditors can participate in, including a group member who has opted out); and
- it is possible that a large number of group members will opt out, as there are no real consequences for doing so.

If 1% of the group members were to opt out of the Representative Proceedings, the DOCA would automatically terminate, and the Company would immediately be placed into liquidation. In this scenario, it is unlikely that any creditors would receive the benefits they would otherwise receive under the terms of the DOCA. Accordingly, the DOCA has been amended to remove this condition.

Creditor queries

If creditors have any questions regarding the deed administration of the Company 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



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
and another named in the schedule
Plaintiffs

ORDER

JUDGE: JUSTICE BEACH

DATE OF ORDER: 9 February 2024

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

1. The plaintiffs have leave to file an amended interlocutory process in the form submitted to the chambers of Beach J on 6 February 2024.
2. Pursuant to s 447A(1) of the *Corporations Act 2001* (Cth), Part 5.3A of the Act is to operate in relation to the second plaintiff (DASS) in such a way as to empower the Court to vary the deed of company arrangement dated 16 December 2022 (DOCA) between the first plaintiffs (the Deed Administrators), DASS, 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 Act, the DOCA is varied as follows:
 - (a) the definition of 'Settlement of the Representative Proceedings' in clause 1.1 is amended in the following terms:

comprehensive settlement and final resolution or the permanent stay or dismissal of the Representative Proceedings, which includes any necessary



court approval (including the expiration of the 49-day period provided for an appeal from those orders) and resolution of any and all appeals, and, if a settlement, a release of all claims against all respondents (other than the Deed Company) to the Representative Proceedings.

- (b) sub-clause 8.2(a)(2) is deleted.
4. Pursuant to ss 37AF and 37AG of the *Federal Court of Australia Act 1976* (Cth), pages 1 to 43 of the annexure marked “RG-3” to the affidavit of Rebecca Louise Gill affirmed on 29 January 2024 are to be marked “confidential” and not made available for inspection until further order, on the ground that they contain confidential information the disclosure of which may prejudice the proper administration of justice.
5. The plaintiffs are to provide a copy of these orders to the 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 has liberty to apply on 5 business days’ notice to the plaintiffs 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: 9 February 2024


Registrar



Schedule

No: VID383/2023

Federal Court of Australia

District Registry: Victoria

Division: General

Second Plaintiff

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