

CD ANYWHERE PTY LTD (IN LIQUIDATION)
ACN 078 082 112

REPORT TO ANNUAL AND FINAL MEETINGS OF CREDITORS AND MEMBERS

The Corporations Act requires a liquidator to:

- either convene an annual meeting of creditors or, alternatively, provide an annual report to creditors and
- convene a final meeting of creditors and members.

The purpose of these meetings (or the annual report) is to provide creditors with an account showing how the winding up has been conducted and how the property of the company has been disposed.

Liquidator's Appointment

I was appointed Administrator of the company on 24 October 2008. A meeting of creditors, held on 28 November 2008, resolved that the company be wound up and I became the Liquidator of the company.

Report as to Affairs

The Report as to Affairs submitted by the directors disclosed assets, which were valued at \$3,085,521, and liabilities of \$1,246,365, excluding the amount owed to holders of fixed and floating charges. The Report as to Affairs did not include any estimates of realisable values for the company's assets.

In the Administrator's Report to Creditors dated 17 November 2008, I estimated the realisable value of the company's assets to be \$725,000. My estimate of the company's liabilities, at that time, was \$6,973,219.

Summary of Receipts and payments

Liquidator's six-monthly accounts of receipts and payments under section 539 (Form 524) have been made up to, 27 November 2009, and filed with the Australian Securities and Investments Commission.

Total realisations, and payments, to date are summarised at Appendix 1.

Realisation of Assets

Debtors (Report as to Affairs \$753,344; estimated realisable value \$605,000; actual realisations \$580,580.71)





The debts owed to the company can be divided into 3 categories: trade debtors, employees and directors, and associated entities, including CD Anywhere International Pty Ltd.

I initially anticipated realisations of about \$100,000 on one debt owed by an employee and director. I am now satisfied that the debtor concerned lacks the ability to pay more than a small proportion of the debt.

Realisations on the balance of the debtors were better than originally anticipated.

Plant and equipment (Report as to Affairs \$1,004,253; estimated realisable value \$53,000, actual realisations \$32,240.90)

The plant and equipment was initially estimated to realise close to its written down value, after adjusting for items that were likely to be of nominal value only or not cost-effective to realise. At the time the Administrator's Report to Creditors was prepared, an auctioneer's estimate was not available.

The written down value of plant and equipment is not necessarily a good indication of the amount that will be obtained for it at auction. The plant and equipment was auctioned and, in the event, realised slightly more than the auctioneer's estimate of fair market value.

Vehicles (Report as to Affairs \$242,412; estimated realisable value \$32,000, actual realisations \$4,090.91)

The majority of the company's vehicles were subject to finance agreements. However, the amount shown for vehicles in the Report as to Affairs did not take these liabilities into account. In the event, deficiencies were sustained by the secured creditors on the realisation of the vehicles.

I initially anticipated that two or three of the company's vehicles might prove to be unencumbered. However, this was the case for only one older vehicle.

Dividends to creditors

Dividends have been paid to creditors with priority claims, resulting in employee entitlements and superannuation guarantee charge being paid in full.

A dividend of \$80,000 was paid to the first-ranking charge holder, the National Australia Bank Ltd, on 23 September 2009. A further dividend may be paid on finalisation of the liquidation, if there are sufficient funds.

It is evident that no dividend will be paid to the second-ranking charge holder, Positive Expectations Pty Ltd, or to ordinary unsecured creditors in this liquidation.





Liquidator's Remuneration

The meeting of creditors held on 28 November 2008 passed two resolutions concerning remuneration. These were:

That the remuneration of the Administrator of the company (including all matters incidental and leading to his appointment) be fixed in respect of himself, his partners and employees at the rates set out in the document "Information for Creditors on Remuneration and Costs in Insolvency Administrations", but not to exceed \$96,300.00 (exclusive of GST and disbursements).

That the remuneration of the Liquidator be fixed in respect to himself, his partners and employees for the period commencing on the date of the resolution that the company be wound up to the conclusion of this administration at the rates set out in the document "Information for Creditors on Remuneration and Costs in Insolvency Administrations", and that the Liquidator be authorised to make periodic payments on account of such accruing remuneration, such remuneration being subject to review by the Court on the application of creditors in accordance with sec 504 of the Corporations Act but not to exceed \$85,700.00 (exclusive of GST and disbursements) unless approved by the Committee of Inspection or a further resolution at a general meeting of creditors.

As the administration progressed, it proved to be more complex than initially anticipated. Due to this, I considered it necessary that my remuneration be reviewed. This was considered by meetings of the Committee of Inspection held on 28 September 2009 and 12 October 2009.

After much discussion, and the provision of some additional information to the Committee, the Committee resolved that my remuneration as liquidator be increased to a total of \$153,300.00. Of this amount, I am currently owed \$7,331.75, which will be paid on closure of the liquidator's bank account, provided there are sufficient funds once other costs of the liquidation have been settled. If there are insufficient funds, this amount will not be paid or will not be paid in full.

Detailed information about the work done, and the remuneration drawn will be available from Tenbenschel and Dee's website at <http://tendee.com.au/current.html>.

The amount quoted in the statement of receipts and payments includes both the Administrator's and Liquidator's remuneration. Of this amount, \$77,760.25, excluding GST and disbursements, relates to the administrator's remuneration, with the balance being the liquidator's remuneration.

A further \$10,971.00 is payable to the liquidator for disbursements. The majority of this is for storage of company records for the prescribed period at a commercial storage facility.¹ This amount may be reduced if creditors authorise me to destroy the records earlier and

¹ The liquidator is required to retain the company's records for 6 years. There are over 130 boxes (4 pallets) of records.





ASIC approves this action. Destruction of company records will be considered at the upcoming annual meeting to be held 28 January 2010.

Investigations

I have considered possible further investigations in the following areas:

- Insolvent trading;
- CD Anywhere Pty Ltd's dealings with CD Anywhere International Pty Ltd and CD Anywhere New Zealand Ltd, including its loans to CD Anywhere International Pty Ltd; and
- Possible preferences to 3 creditors.

However, given the nature of the charge held by the National Australia Bank, there are no funds available to the liquidator to pursue these enquiries. I have considered possible alternative sources of funding but, at this stage, they do not appear to be feasible.

Creditors are also unlikely to benefit significantly from further investigations as:

- Any return is contingent on the matters being successfully prosecuted and funds being recovered.
- There would be costs involved in further investigating these matters, prosecuting them and recovering funds.
- Even if significant funds were recovered, it is unlikely that the majority of trade creditors would receive a significant dividend, unless these creditors were prepared to provide an indemnity and/or funds and they received the benefit of an order under section 564 of the Corporations Act.

I do not have any objection to any creditor taking its own action against the directors under section 588M of the Corporations Act.

If no other matters arise that should prolong the liquidation, the final meeting will proceed on 28 January 2010 immediately after the annual meeting, and the winding up will be complete.

Dated this 8th day of January 2010.

BEJ Tenbense
Liquidator





Appendix 1

Realisations	Administrator's Estimate of Realisable Value	Amount Realised
Debtors	\$ 605,000.00	\$ 580,580.71
Stock	\$ 35,000.00	\$ 43,727.28
Plant and Equipment	\$ 53,000.00	\$ 32,240.90
Cash at bank		\$ 6,000.74
Cash on hand		\$ 5,546.44
Vehicles	\$ 32,000.00	\$ 4,090.91
Insurance refunds		\$ 3,012.06
Overpaid debtors		\$ 34.69
Bank interest		\$ 0.63
Total	\$ 725,000.00	\$ 675,234.36
Payments		
Remuneration		\$ 223,728.50
Priority dividends		\$ 160,561.84
Dividends to secured creditors		\$ 80,000.00
Net warehouse expenses		\$ 129,865.86
Agents and Auctioneer's fees		\$ 18,504.18
Insurance		\$ 15,837.05
Administration costs		\$ 13,311.11
Advertising		\$ 5,576.98
Superannuation		\$ 4,069.74
Photocopying		\$ 3,022.84
Legal expenses		\$ 1,993.60
Postage		\$ 1,774.09
Bank fees & charges		\$ 662.71
Retention of Title payment - Universal Music		\$ 1,000.00
Net GST		\$ 4,970.90
Total		\$ 664,879.40
Balance on hand		\$ 10,354.96

