

**Circular to stakeholders  
5 October 2005**

<b>Gympie Gold Limited</b>	<b>ACN 000 759 535</b>
<b>Southland Mining Limited</b>	<b>ACN 000 610 926</b>
<b>Southland Coal Pty Limited</b>	<b>ACN 000 077 225</b>
<b>Gympie Eldorado Gold Mines Pty Limited</b>	<b>ACN 068 754 530</b>

**(Receivers and Managers Appointed to All)  
(All in Liquidation)**

We refer you to our last circular to stakeholders dated 24 June 2005, and provide the following update in relation to the Liquidation of the abovenamed companies.

**Annual meeting of creditors and members**

Under the Corporations Act, an annual meeting of members and creditors is required for companies in liquidation following voluntary administration. The purpose of this meeting is to present an account of the winding up. This circular summarises the current position in the winding up of the above companies.

**Status of the receivership**

The Receivers and Managers remain in control of the four group companies. The Receivers and Managers are Messrs Love, Geroff and others of Ferrier Hodgson, another firm of chartered accountants. The Receivers and Managers were appointed by the first ranking secured creditors of the Group and have primary responsibility to those creditors. Attached are information sheets for creditors providing general information on *Companies in liquidation* and *Companies in receivership*.

As Liquidators, we can request reports from the Receivers and Managers on the conduct of the receivership but substantially must wait until the receivership is concluded to determine whether there will be any surplus for other creditors. We continue to liaise with the Receivers and Managers, who provide periodic feedback to us on the progress of the receivership.

At this time, \$20.4 million of the primary ranking secured creditors' debt remains. Unless this shortfall is satisfied in full from the remaining assets of the companies in receivership, there will be no return to second ranking secured or unsecured creditors. The only material remaining asset is the insurance claim in relation to the fire at the Southland Colliery.

### **Insurance claim update**

The Receivers and Managers have lodged an insurance claim for \$41 million together with significant information in support of the claim. The group's insurers, QBE, had the claim under consideration for an extended period of time but had not accepted liability or confirmed it would indemnify Southland.

As a result, Thiess, the operator and co-insured, commenced proceedings against the insurer in December 2004. The lawyers for QBE and the London underwriters finally denied their clients indemnity under the insurance policy in February and March 2005. The Receivers and Managers are attempting to proceed with public examinations of QBE and its experts, a process which is subject to a decision of the Court of Appeal following a hearing on 6 and 7 June 2005. The Receivers and Managers are waiting on this decision before determining whether to commence proceedings themselves against the insurers.

### **Restructure of Gympie Gold Limited**

In conjunction with the Receivers and Managers, the Liquidators have signed a heads of agreement in relation to a proposal by Ascent Capital for the restructure of Gympie Gold Limited ("GGL"). This proposal allows for the creditor claims of GGL to be transferred out of the company into a Creditors Trust, leaving a solvent listed company shell which can be reinstated to trading on the Australian Stock Exchange ("ASX"). As consideration, Ascent Capital will pay \$800,000 to be shared between the secured and unsecured creditors after meeting administration costs and fees. These funds would not otherwise be available to creditors in the absence of the proposed restructure. This contribution equates to an estimated 0.5c return to unsecured creditors.

Under the proposal, existing shares will be consolidated on a 15:1 basis, to enable the issue of further shares to raise new capital. The restructure allows for the reinstatement of GGL shares to trading on the market, and hence a potential upside to their value in the future. The proposed share consolidation and issue of new shares to raise new equity will substantially dilute the interests of existing GGL shareholders but will provide a small return and enable shareholders to sell their shares and crystallise losses if they choose to do so.

The process for the restructure involves the company being placed back into Voluntary Administration, to allow for a Deed of Company Arrangement ("DOCA") to effect the creation of a Creditors Trust. In addition to the support for the proposal already given by the secured creditors, the restructure will be subject to three further levels of approval. Firstly, approval by the Court for the Liquidators to again be appointed as Voluntary Administrators, then approval by the company's creditors at meeting of creditors for the company to enter into a DOCA, and finally approval by the shareholders of the restructure at a meeting of members. ASX approval is also required for the reinstatement of the company's securities to trading on the market, a requirement that applies to all companies that seek to be reinstated.

The Court application is due to be lodged in early October, and the meeting of creditors will be scheduled within 30 days of the application being approved. It is anticipated that the DOCA process will be completed by the end of March 2006, and shares will be trading on the market again within 2-3 weeks of the liquidation ending. Distributions to creditors from the Creditors Trust are expected to be made shortly after the completion of the DOCA and receipt of the full consideration.

### Committee of inspection

During the liquidation, the Liquidators have liaised with the elected committee of inspection representing creditors of the companies in liquidation. The committee comprises representatives of the following creditors:

National Australia Bank Limited  
Downer EDI Limited  
JPMorgan Trust Australia Limited, as Trustee for the Noteholders

The Liquidators acknowledge the contribution and assistance of those creditors serving on the committee, to the liquidation.

### Noteholders

Noteholders in GGL are treated as unsecured creditors of the company in that their claims rank alongside other unsecured creditors in the liquidation and ahead of the claims of shareholders. Noteholders are represented by the Trustee, JPMorgan Trust Australia Limited. The Liquidators have received advice that the Trustee represents all Noteholders pursuant to the Unsecured Subordinated Trust Deed dated 15 May 2002 and that individual Noteholders should not lodge their own claims. The Trustee lodged a proof of debt on behalf of all Noteholders for \$40.9 million on 7 January 2004.

### Sales of shares

I refer to Ascent Capital's offer to purchase shares of existing shareholders for a nominal value, as disclosed in our circular dated 24 June 2005. I note the this offer remains open, but the relevant contact to effect such sales has changed to Allison Roach of Emerald Corporation, who can be contacted on 08 9420 9600 by any interested parties. Shareholders should consider their own circumstances when evaluating any offers. The Liquidators do not express any opinion in relation to any offers to acquire GGL shares.

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For further information in the future, creditors and shareholders should refer to our website at [www.mcgrathnicol.com.au](http://www.mcgrathnicol.com.au) or [www.gympiegold.com.au](http://www.gympiegold.com.au).

Should creditors or shareholders require any further clarification, please contact any of Christian Logue, Ben Ryan or Nick Lawry of this office.

Dated 5 October 2005



M C Smith  
Liquidator



J D Hayes  
Liquidator



ASIC

Australian Securities & Investments Commission



Insolvency Practitioners Association of Australia

## ***INFORMATION FOR CREDITORS***

### **Companies in Liquidation**

1. If a company is in financial difficulty, its Shareholders, Creditors or the Court can put the company under the control of an independent person called the Liquidator:
  - Rights and duties of Liquidators and Creditors of companies in *Liquidation*; and
  - Role of ASIC and the Court.
2. This leaflet, from the Insolvency Practitioners Association of Australia (IPAA) and the Australian Securities and Investments Commission (ASIC), is a general information guide only to highlight the differences between various types of appointments or administration. Creditors should seek their own advice about specific circumstances since this is not intended to be a summary of the law. This leaflet outlines the:
  - collect, preserve and sell the company's assets, including any surplus arising from a receivership;
  - investigate and report to Creditors any undue (unfair) preferences which may be recoverable and any rights of action against officers of the company for Insolvent Trading or Misfeasance;
  - pay the cost of liquidation and certain priority claims including employee entitlements;
  - enquire into the conduct of the company's affairs and its directors and report to ASIC;
  - distribute available funds to Creditors; and
  - complete the liquidation, and apply for deregistration of the company
3. The most common form of Liquidation occurs when Creditors vote for Liquidation following an Administration, or a failed Deed of Company Arrangement. A Liquidator may also be appointed by the Court following an application, usually by a Creditor, to wind up the company.

Alternatively, the company's Shareholders may resolve to liquidate an insolvent company, nominate a Liquidator and call a meeting of Creditors to confirm the appointment of the nominated Liquidator or appoint a Liquidator of the Creditors choice.

The Liquidator's duty is to all the company's Creditors.
4. The Liquidator shall:
  - collect, preserve and sell the company's assets, including any surplus arising from a receivership;
  - investigate and report to Creditors any undue (unfair) preferences which may be recoverable and any rights of action against officers of the company for Insolvent Trading or Misfeasance;
  - pay the cost of liquidation and certain priority claims including employee entitlements;
  - enquire into the conduct of the company's affairs and its directors and report to ASIC;
  - distribute available funds to Creditors; and
  - complete the liquidation, and apply for deregistration of the company
5. A Liquidator need not spend time and money, except for lodging documents and reports as required under the Corporations Law, unless there are enough assets from which to pay his or her costs and expenses.

#### **Liquidator's Rights and Duties**

3. The most common form of Liquidation occurs when Creditors vote for Liquidation following an Administration, or a failed Deed of Company Arrangement. A Liquidator may also be appointed by the Court following an application, usually by a Creditor, to wind up the company.

Alternatively, the company's Shareholders may resolve to liquidate an insolvent company, nominate a Liquidator and call a meeting of Creditors to confirm the appointment of the nominated Liquidator or appoint a Liquidator of the Creditors choice.

The Liquidator's duty is to all the company's Creditors.

Creditors may agree to indemnify or reimburse a Liquidator for costs and expenses if they believe the Liquidator can recover further assets for their benefit. On such occasions, after recovering the additional assets, the Liquidator or Creditor can apply to the Court for an order to compensate the indemnifying creditors for the additional risk in funding the recovery by the Liquidator.

If there are insufficient or no assets, the Liquidator remains unpaid unless the Creditors agree to reimburse the Liquidator.

The Liquidator is remunerated at a rate or fixed amount approved by the Creditors, the Committee of Inspection or by the Court. The basis should follow the IPAA Statement of Best Practice—Remuneration. Refer *website www.ipaa.com.au*.

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## Creditor's Rights

6. A *Secured Creditor* holds a charge over a part or all of the company's assets.

The rights of the Secured Creditor are set out in a document called a Mortgage Debenture document or Deed of Registered Charge. One right is the power to appoint a Receiver when the company fails to meet its obligations under the debenture or charge. This right continues if the company is being liquidated. You can obtain a copy of the Charge documentation from any ASIC Business Centre.

7. Unsecured Creditors have no legal right to obtain payment from a Receiver. They should deal with the Liquidator.
8. Unsecured Creditors have a number of rights when a company is wound up. These include the right to:
- share in any available funds after costs of liquidation, priority payments and Secured Creditors have been paid;
  - choose the Liquidator in a Creditors' Voluntary winding up;
  - attend and vote at meetings of Creditors on various matters, including the fixing of the Liquidator's remuneration;
  - take part in the appointment and be a member of a Committee of Inspection; and
  - receive information about the liquidation of the company including the sale of its assets and the way in which the proceeds are distributed.
9. In limited circumstances, a Creditor may sue a director for the company's losses if the company kept trading while unable to pay its debts on time.

10. A Committee of Inspection has a number of duties and powers, including approving the Liquidator's remuneration and advising or consulting with the Liquidator on various matters.

11. Unsecured Creditors should attend meetings called by the Liquidator. This is the best chance to ask questions and learn about the company's affairs. Creditors may also obtain a copy of the Receiver's or Liquidator's six monthly statement of receipts and payments from any ASIC Business Centre.

## ASIC's Role

12. ASIC may investigate complaints against companies, their officers and insolvency practitioners.
13. ASIC may look into matters concerning a Liquidator. However, ASIC will usually not become involved in matters of commercial judgement. Creditors should attempt to resolve such matters with the Liquidator concerned and only come to ASIC if this fails.

## The Court's Role

14. The Court will decide on matters referred to it by Liquidators, Creditors, ASIC or other parties, and make any orders it thinks fit. Such matters include an application:
- To have questions decided or powers exercised in a winding up;
  - To delay or prevent the liquidation; and
  - To hear an appeal from a person who has a complaint about any act, omission or decision of a Liquidator.
15. Creditors should attempt to resolve such matters with the Liquidator concerned and only go to Court if this fails.

*March 1999  
Updated August 2003*

See Separate Sheets titled:

***Information for Creditors – Companies in Receivership  
Information for Creditors – Companies under Part 5.3A Administration***

**Copies of these sheets may be obtained from an IPAA member, IPAA National Office and  
ASIC Infoline on 1300 300 630**



ASIC

Australian Securities & Investments Commission



Insolvency Practitioners Association of Australia

## ***INFORMATION FOR CREDITORS***

### **Companies in Receivership**

1. If a company is in financial difficulty a Secured Creditor or the Court may put the company under the control of an independent person who can be a: -

- Receiver or a Receiver and Manager, Controller or Managing Controller; (Receiver) or
- Administrator; or
- Liquidator.

It is possible for a company in Receivership to also be placed in Liquidation or Administration.

2. This leaflet, from the Insolvency Practitioners Association of Australia (IPAA) and the Australian Securities and Investments Commission (ASIC), is a general information guide only to highlight the differences between the various types of appointments or administrations. Creditors should seek their own advice about specific circumstances since this is not intended to be a summary of the law. This leaflet outlines the:

- Rights and duties of Receivers and Creditors of companies in *Receivership*; and
- Role of ASIC and the Court.

#### **Receiver's or Receiver and Manager's Rights and Duties**

3. A Receiver is appointed by a *Secured Creditor* or in special circumstances by the Court. A Secured Creditor is someone to whom the company has given a "charge", such as a mortgage, over all or part of its assets in return for value, usually loan funds. Anyone can see if a registered charge exists by checking company records at an ASIC Business Centre. The Receiver must collect and look after the company assets over which the Secured Creditor has a charge and sell sufficient assets to discharge the security.

If the Receiver has been appointed pursuant to a floating charge, the money collected will be applied to:

- First, pay certain priority claims, including employee entitlements such as wages, superannuation contributions and leave payments;
- Second, pay the Secured Creditor, and
- Third, if there are any funds left over, pay the company or its Liquidator, if one has been appointed.

4. The Receiver owes a prime duty to the company's Secured Creditor. He/she owes no duty to Unsecured Creditors other than a general duty of care.

5. The Receiver must report to ASIC on any matter which may be irregular and which could cause ASIC to look into the conduct of anyone involved with the company's management or control.

6. The Receiver is usually paid from the money collected by selling the company's assets. The charge documents should authorise and specify the basis of the Receiver's remuneration. The basis should follow the IPAA Statement of Best Practice Remuneration. Refer *website www.ipaa.com.au*.

#### **Creditor's Rights**

7. A Secured Creditor holds a charge over a part or all of the company's assets. The rights of the Secured Creditor are set out in a document called a Mortgage Debenture document or Deed of Registered Charge. One right is the power to appoint a Receiver when the company fails to meet its obligations under the debenture or charge. This right exists even if the company is in liquidation. You can obtain a copy of the Charge document from any ASIC Business Centre.

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8. Unsecured Creditors have no legal right to obtain payment from a Receiver other than for goods or services ordered by authority of the Receiver. They should contact the Liquidator, if appointed.

If Unsecured Creditors are not paid, they may apply to the Court to have the company liquidated. If a Liquidator is appointed he/she is required to review the actions of the Receiver and determine whether there have been any undue preference (unfair) payments to any other unsecured Creditors.

9. Where a company in receivership is also in liquidation, *Unsecured Creditors* have a number of rights. These include the right to:

- Share in any available funds after priority payments and Secured Creditors have been paid;
- Choose the Liquidator unless one is appointed by the Court;
- Attend and vote at meetings of Creditors, convened by the Liquidator, on various matters including the fixing of the Liquidator's remuneration;
- Participate in the appointment and activity of a Creditors' Committee of Inspection, if formed by the Creditors;
- Receive information about the liquidation of the company including the sale of its assets and the way in which the proceeds are distributed. Creditors may also obtain a copy of the Receiver's or Liquidator's six monthly statement of receipts and payments from any ASIC Business Centre.

10. In limited circumstances, and only in liquidation, a Creditor may sue a director for the company's losses if the company was trading while unable to pay its debts on time.

#### **ASIC'S Role**

11. ASIC may investigate complaints against companies, their officers and Insolvency Practitioners.

12. ASIC may look into matters concerning a Receiver. However, ASIC will usually not become involved in matters of commercial judgement. Creditors should attempt to resolve such matters with the Receiver concerned and only come to ASIC if this fails.

#### **The Court's Role**

13. The Court will decide on matters referred to it by Creditors, ASIC or other parties, and make any orders it thinks fit. Such matters include an application:

- To have questions decided or powers exercised by a Receiver;
- To hear an appeal from a person who has a complaint about any act, omission or decision of a Receiver.

Creditors should attempt to resolve such matters with the Receiver concerned and only go to Court if this fails.

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