

## **Circular to Creditors**

### **The Colonial Wine Company Pty Limited (Receivers and Managers Appointed) (In Liquidation) ACN 098 772 279**

We refer to our appointment as Liquidators of the above Company on 19 March 2010 and hereby provide creditors with our detailed report on the conduct of the liquidation to date.

#### **1.0 Executive Summary**

The key comments and conclusions drawn in this report are:-

- An annual meeting of the Company and creditors is to be held on 1 July 2011 to account for our acts and dealings, and the conduct of the winding up during the preceding year.
- Prior to our appointment, Receivers and Managers (“Receivers”) were appointed to all of the Company’s property. As Liquidators of the Company we did not control, nor were we involved in the realisation of any Company assets.
- The majority of the Company’s assets have been realised by the Receivers generating gross proceeds of approximately \$3.65 million.
- The Receivers anticipate that sufficient funds have been generated from the realisation of Company assets covered by the secured creditor’s floating charge to enable all priority creditors to be paid in full.
- We have been advised by the Receivers that insufficient funds have been realised to pay the secured creditor in full and as a consequence there will be no funds available to non-priority unsecured creditors of the Company from the realisation of the Company’s assets.

- Funding totalling \$22,855.35 was advanced to us from the Department of Education, Employment and Workplace Relations (“DEEWR”) in order to pay the entitlements due to the former employees of the Company.
- We have thoroughly investigated the failure of the Company and reported the results of our investigations to the Australian Securities and Investments Commission (“ASIC”). ASIC has decided not to commence an investigation into the matters we have raised with them.
- On 16 November 2010 we made demand on the Australian Taxation Office (“ATO”) for the sum of \$79,489.28 representing payments from the Company in the 6 month period prior to liquidation that we consider to be unfair preference payments voidable under the Corporations Act 2001 (“Act”). If we are successful in the recovery of the claim against the ATO a small dividend may be paid in the liquidation.
- We are aware of debts to external creditors totalling \$459,305 that were incurred at a time when the Company was insolvent that remain unpaid. It is our view that we could pursue a claim against the director personally for this sum. With the director residing overseas and the liquidation unfunded, we will only pursue this claim with financial support from the Company’s creditors.
- Our remuneration as Liquidators can only be paid if we recover funds into this administration and with the approval of a committee of inspection, creditors or the Court. We will not be seeking creditor approval for the payment of our unapproved remuneration at the forthcoming meeting of creditors whilst we are without funds to pay same.

## **2.0 Meeting of Creditors**

An annual meeting of the Company and creditors is to be held on 1 July 2011. The primary purpose of this meeting is to present an account of our acts and dealings, and of the conduct of the winding up during the preceding year as required by Section 508 of the Act. Attached at Annexure “A” to this circular is a formal notice of this meeting.

Creditors who wish to attend and / or vote at the meeting are requested to return to us a duly completed proxy and proof of debt form as soon as possible, and no later than 5.00pm on 30 June 2011. **If you have submitted a proof of debt previously, there is no need to submit this form again.** Blank proxy and proof of debt forms are attached to this report.

### **3.0 Assets Under Administration**

#### *3.1 Receivership Appointment*

Prior to our appointment, the Company's secured creditor took steps to enforce its securities and appointed Martin Lewis and John Hart of Ferrier Hodgson as Receivers to all of the Company's property on 2 March 2010.

The Receivers were solely responsible for all decisions regarding the Company's assets and their realisation. As Liquidators of the Company we did not control, nor were we involved in the realisation of any Company assets.

We enclose at **Annexure "B"** a schedule summarising the Receivers' receipts and payments during the receivership period until 1 March 2011 that confirms the following:-

- The majority of the Company's assets have been realised by the Receivers generating gross sale proceeds of approximately \$3.65 million;
- The Receivers have advised that the only assets left to realise are three leased assets and approximately \$25,000 is still to be collected from the sale of wine stocks;
- Funds totalling approximately \$2.59 million have been distributed to the Company's secured creditor; and
- The Receivers anticipate that sufficient funds have been generated from the realisation of Company assets covered by the secured creditor's floating charge to enable all priority creditors to be paid in full. This represents a payment in full of all unpaid superannuation, wages, leave and severance payments.

We have been advised by the Receivers that insufficient funds have been realised to pay the secured creditor in full. As a consequence of this, there will be no funds available to non-priority unsecured creditors of the Company from the realisation of the Company's assets.

#### *3.2 Receipts and Payments*

Attached at **Annexure "C"** is a summary of receipts and payments since our appointment as Liquidators and we make the following comments in relation to the summary:-

### *3.2.1 GEERS Advance*

The Commonwealth Government established the General Employee Entitlements & Redundancy Scheme (“**GEERS**”) to assist employees affected by the insolvency of their employer. Funding totalling \$22,855.35 was advanced to us from DEEWR following our verification of the entitlements payable to the former employees of the Company. These funds were immediately distributed to the former employees in payment of the following:-

<b>Entitlement</b>	<b>Gross Amount (\$)</b>
Wages	0.00
Annual Leave	6,908.26
Payment in lieu of notice	0.00
Redundancy	15,947.09
Long Service Leave	0.00
<b>Total</b>	<b>\$22,855.35</b>

DEEWR are likely to be re-paid in full by the Receivers.

### *3.2.2 Balance of Funds on Hand*

Our liquidation bank account currently has credit funds totalling \$6.25.

## **4.0 Investigations**

### *4.1 Report to ASIC*

We have provided a detailed report to ASIC in relation to our investigation into the affairs of the Company pursuant to Section 533 of the Act. We have received a response from ASIC and they have decided not to commence an investigation into the matters we have raised.

### *4.2 Unfair Preferences*

We have reviewed in detail the financial records of the Company over the period leading up to the liquidation and have noted that some creditors received debt repayments in the 6 months period prior to liquidation that have the characteristics of unfair preferential payments. Essentially these creditors appear to have been preferred over the general body of creditors and a liquidator may be able to recover the preferential payments made.

It is a defence to an unfair preference claim that at the time of the payments, the creditor had no reasonable grounds for suspecting that the Company was insolvent or would become insolvent, and became a party to the transaction in good faith.

We are without funds to obtain legal advice and additional evidentiary documentation that may be obtained through the legal process to determine the merits of pursuing the majority of these claims. Notwithstanding this, we have identified one strong claim that we are pursuing. On 16 November 2010 we made demand on the ATO for the sum of \$79,489.28 representing payments from the Company that we consider to be unfair preference payments voidable under the Act. In the event that we are successful in the recovery of this initial claim, the funds recovered will be utilised to investigate a number of other transactions made prior to the collapse of the Company.

The ATO will not make payment of the above sum without a Court Order and we are working to obtain the ATO's consent to judgement in order to keep legal costs to a minimum.

If we are successful in the recovery of the claim against the ATO a small dividend may be paid in the liquidation.

#### *4.3 Insolvent Trading*

Section 588M of the Act allows a director to be made personally liable in certain circumstances for any loss suffered by unsecured creditors stemming from a debt incurred by the company whilst the company was insolvent.

Section 95A (1) of the Act provides that a company is solvent, if and only if, the company is able to pay all its debts as and when they become due and payable. Section 95A (2) of the Act provides that a company that is not solvent, is insolvent.

We have taken into account the following matters in forming the view that the Company was unable to pay its debts as and when they became due and was accordingly insolvent from as early as April 2009:-

- Cash flow test of insolvency - an analysis of the Company's cash inflows and outflows (the net effect of which is the Company's bank balance) to determine whether the Company could pay its debts as and when they fell due for payment;
- Balance sheet test of insolvency – by determining whether the Company had sufficient working capital to enable it to pay its debts as and when they fell due for payment; and
- Analysing any anecdotal evidence of insolvency, such as unprofitable trading and demands for payment by creditors.

We are aware of debts to external creditors totalling \$459,305 that were incurred during the period commencing from April 2009 that remain unpaid at the date of liquidation and it is our view that we could pursue a claim against the director personally for this sum.

It is important to note that there are defences under the Act that may be available to the director. In addition, the director's capacity to satisfy any judgement claim is an important consideration prior to commencing litigation in this regard.

We understand that the director currently resides in France and litigation involving an overseas defendant would be very costly to pursue. As this liquidation is currently without funds we would only consider pursuing the above claim with financial support from the Company's creditors. If you have any interest in this regard, please contact Anthony Phillips to discuss.

## **5.0 Other Matters**

### *5.1 Creditors*

Reports have been issued to 76 creditors with total claims of approximately \$3.4 million and we have responded generally to correspondence and claims received from those creditors.

### *5.2 Statutory Lodgements*

During the course of this administration we have maintained accounting records and files in accordance with the requirements set out in the Act.

All documents required to have been lodged by us with ASIC and other bodies have been lodged.

## **6.0 Prospects of Dividend to Unsecured Creditors**

A dividend to creditors may only be paid in the liquidation if we are successful in the recovery of the unfair preference identified at Section 4.2 of this report and/or if an insolvent trading claim is brought against the director and is successful.

## **7.0 Liquidator's Remuneration**

The Act provides that remuneration can only be paid to a liquidator with the approval of a committee of inspection, creditors, or the Court. We will not be seeking creditor approval for the payment of our unapproved fees at the forthcoming meeting of creditors whilst we are without funds to pay same.

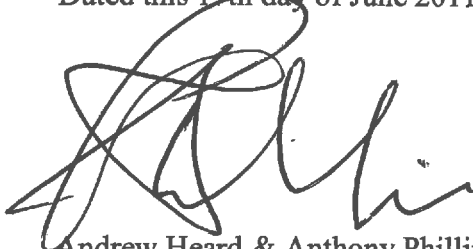
## **8.0 Further Action**

We are not currently in a position to advise creditors on when the winding up is likely to be completed but can advise that the following actions are to be undertaken in the Company's liquidation:-

- Continuing recovery efforts in relation to the unfair preference claims.
- Statutory lodgements with ASIC.
- Holding meetings of the Committee of Inspection and creditors.
- Preparation of further reports to creditors.
- Adjudicating on all creditor claims (if applicable).
- Payment of a dividend to unsecured creditors (if applicable).
- Convening a final meeting of creditors or application to ASIC for the Company's deregistration.

Should you have any queries in relation to this report, please do not hesitate to contact this office.

Dated this 17<sup>th</sup> day of June 2011



**Andrew Heard & Anthony Phillips**  
**Joint & Several Liquidators**

Contact: Carla Carbone  
Email: [ccarbone@heardphillips.com.au](mailto:ccarbone@heardphillips.com.au)

*Encl.*

**FORM 529**

Corporations Act 2001  
Sub-regulation 5.6.12

**NOTICE OF MEETING**

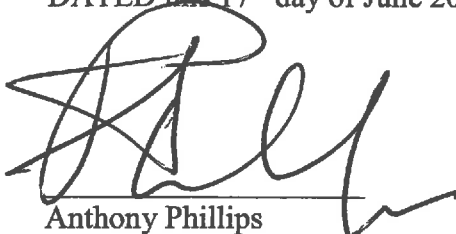
**The Colonial Wine Company Pty Ltd  
(Receivers and Managers Appointed) (In Liquidation)  
A.C.N. 098 772 279**

Notice is hereby given that a meeting of the creditors of the company convened pursuant to Section 508 of the *Corporations Act 2001* will be held at Heard Phillips Chartered Accountants, Level 5, 26 Flinders Street, Adelaide on 1 July 2011 at 11.00 am.

**AGENDA**

1. To consider a report from the Liquidator.
2. To consider any other business that may be lawfully brought forward.

DATED this 17<sup>th</sup> day of June 2011



**Anthony Phillips  
Joint & Several Liquidator**

Heard Phillips  
Chartered Accountants  
Ph: (08) 8212 3433  
[www.heardphillips.com.au](http://www.heardphillips.com.au)

**The Colonial Wine Company Pty Ltd (In Liquidation)**  
**Receipts and Payments Summary**  
**For the period ended 1 March 2011**

<b>RECEIPTS</b>	<b>GST</b>	<b>Total</b>
Accounts Receivable (Pre-Appointment)		106,726.94
BIL Infrastructure Levy	295.19	3,246.99
Cash at Bank		2,978.80
GST Control: GST Paid (Received)		6,610.00
Hire & Leasing		62.40
Incorrectly Received Income	457.27	5,030.00
Insurance Refund	1,064.94	16,058.65
Interest Income		9,734.64
Other Income		254.48
Plant and Equipment	1,818.18	19,999.99
Sale of Leased Plant & Equipment		178,348.61
Sale of Plant & Equipment	21,914.32	241,057.50
Sale of Trade Mark	3,000.00	33,000.00
Sale of Vineyard		1,350,000.00
Sale of Winery	55,000.00	605,000.00
Sale of Bulk wine	13,909.09	153,000.00
Sale of Grapes		40,180.00
Stock/Inventory on Hand	80,000.00	880,000.01
Suppliers Refund		30.32
<b>Total Receipts</b>	<b>177,458.99</b>	<b>3,651,319.33</b>

**PAYMENTS**

Advertising	(3,008.75)	(33,096.28)
Agent's Fees	(7,000.00)	(77,000.00)
Appointee Costs	(148.71)	(1,827.76)
Appointee Costs: Mail Redirection		(116.00)
Appointee Costs: Sundry Costs	(290.80)	(3,994.33)
Appointee Fees	(24,490.70)	(269,397.70)
ASIC fees		(67.00)
Auctioneer's Charges	(1,404.26)	(15,446.91)
Auctioneers' Labour & Advertising	(712.92)	(7,842.09)
Bank Charges		(242.71)
Bank Charges		19.78
Bank Charges		(95.00)
BIL Infrastructure Levy	(179.56)	(1,975.14)
Freight Outwards	(38.69)	(425.60)
Fuel & Oil	(41.54)	(456.94)
GST Control: GST Paid (Received)		(123,286.00)
Hire & Leasing	(131.18)	(1,443.02)
Insurance	(3,730.07)	(45,120.54)
Insurance	(80.02)	(880.24)
Lab Testing	(132.80)	(1,460.80)
Legal Fees	(5,147.62)	(57,016.90)
Legal Fees	(4,859.39)	(53,655.78)
Licences		(10.00)
LTO fees		(242.00)
Mail Redirection	(21.46)	(236.00)
Motor Vehicle Expenses	(287.68)	(3,898.01)
OH&S Review	(175.00)	(1,925.00)
PAYG Control (Trading): PAYG Paid (Received)		(13,008.00)
PAYG Control (Trading): PAYG Withheld		13,008.47
Phylloxera Levy	2.19	24.11
Phylloxera Levy		(392.15)
Refund of Amount Paid in Error	(457.27)	(5,030.00)
Rent & Rates	593.29	6,526.21
Rent & Rates		(16,497.62)
Rent & Rates: Emergency Services Levy		(618.85)
Repairs & Maintenance	(279.19)	(3,071.08)
Return to nab Asset Finance		(146,293.46)
Return to Secured Creditor		(2,445,000.00)
Security Alarm	(22.71)	(249.70)
Storage	(7,945.56)	(87,401.09)
Subscriptions	(83.40)	(917.40)
Superannuation		(5,319.32)
Telephone & Fax	(247.17)	(2,729.31)
Utilities	1.98	1,689.79
Utilities	(210.10)	(5,614.21)
Valuation Expenses	(1,123.55)	(12,359.00)
Wages & Salaries		(64,442.36)
Waste Removal	(122.49)	(1,347.39)
Wine Consulting	(357.08)	(3,927.88)
WorkCover Levy	(152.24)	(1,684.09)
<b>Total Payments</b>	<b>( 62,284.45)</b>	<b>(3,495,792.30)</b>
<b>Net Receipts (Payments)</b>	<b>115,174.54</b>	<b>155,527.03</b>

**Receipts and Payments Summary By Account: The Colonial Wine Company Pty Ltd  
(Receivers and Managers Appointed) (In Liquidation)**

<b>Type</b>	<b>Account</b>	<b>GST</b>	<b>Total</b>
<b>NON-TRADING RECEIPTS</b>			
	Cash Advanced from Heard Phillips		10.00
	GEERS Liability		22,855.35
		0.00	22,865.35
<b>NON-TRADING PAYMENTS</b>			
	Bank Charges		(3.85)
	GEERS Scheme Payment		(16,618.02)
	GEERS Scheme Payment		(4,061.23)
	PAYG Control (Non-Trading): PAYG Withheld (Preferred Dividend)		(2,176.00)
		0.00	(22,859.10)
	<b>Net Receipts (Payments)</b>	<b>0.00</b>	<b>6.25</b>

**FORM 535**

*Corporations Act (2001)*

**FORMAL PROOF OF DEBT OR CLAIM  
(GENERAL FORM)**

To the Liquidators of The Colonial Wine Company Pty Ltd (Receivers & Managers Appointed)(In Liquidation)

1. This is to state that the company was on 19 March 2010 and still is, justly and truly indebted to:

*(full name and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor)*  
for \$ \_\_\_\_\_ and \_\_\_\_\_ cents.

Date	Consideration (state how the Debt arose)	Amount \$ c	Remarks (include details of voucher substantiating payment)

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: *(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).*

Date	Drawer	Acceptor	Amount \$c	Due Date

- \*3. I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.
- \*3. I am the creditor's agent authorised in writing to make this statement in writing. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

.....  
Signature  
Occupation:  
Address

Dated

\*Do not complete if this proof is made by the creditor personally.

**The Colonial Wine Company Pty Ltd  
(Receivers & Managers Appointed)(In Liquidation)  
ACN: 098 772 279**

**APPOINTMENT OF PROXY**

I/We (1) \_\_\_\_\_ of

a creditor/member of **The Colonial Wine Company Pty Ltd (Receivers & Managers Appointed)(In Liquidation)**  
appoint

(2) \_\_\_\_\_ or in his/her absence

(3) \_\_\_\_\_ as my/our general/special proxy to vote at the **meeting** of  
creditors to be held on Friday, 1 July 2011 at 11:00 AM or at any adjournment of that meeting.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2011

(4) Signature \_\_\_\_\_

**CERTIFICATE OF WITNESS** - only complete if the person given the proxy is blind or incapable of writing.

I, \_\_\_\_\_ of \_\_\_\_\_

certify that the above instrument appointing a proxy was completed by me in the presence of and at the request of the  
person appointing the proxy and read to him before he attached his signature or mark to the instrument.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2011

Signature of witness \_\_\_\_\_

Description \_\_\_\_\_

Place of residence \_\_\_\_\_

**Notes:**

- (1) If a firm strike out "I" and set out the full name of the firm.
- (2) Insert the name of the person appointed.
- (3) If a special proxy, "add the words 'to vote for' or the words 'to vote against' and specify the particular resolution".
- (4) If the creditor is a sole trader, sign in accordance with the following example: "A.B., proprietor".  
If the creditor is a partnership, sign in accordance with the following example: "A.B., a partner of the said firm."  
If the creditor is a company, then the form of proxy must be under its Common Seal or under the hand of some officer duly authorised in that capacity, and the fact that the officer is so authorised must be stated in accordance with the following example: "for the company, A.B." (duly authorised under the Seal of the Company).

**Proxy forms should have been completed and returned by no later than 5:00 PM on Thursday, 30 June 2011 to be eligible to vote at the meeting.**

RETURN TO: **The Colonial Wine Company Pty Ltd (Receivers & Managers Appointed) (In Liquidation)**  
of care of **Heard Phillips**  
Address: **PO Box 3432, Rundle Mall SA 5000**  
Phone: **08 8212 3433**  
Fax: **08 8212 3144**