

Minutes of the Meeting of Creditors for Decmil Construction NZ Limited (In Liquidation), held by postal ballot at 4:00PM on Wednesday, 24 June 2020

1. Present

Pursuant to COVID-19 restrictions, the meeting was conducted by postal ballot with a register of votes. Physical attendance at the meeting was not required nor possible.

2. Chairperson

Dermott McVeigh as the Liquidator took the Chair pursuant to Section 243 of the Companies Act 1993 (**the Act**) and clause 1c, Schedule 5 of the Act.

3. Time and place

The Chairperson declared as per Court order obtained, that the meeting was held by postal ballot at 4.00PM (NZT) on Wednesday, 24 June 2020.

4. Notice of Meeting

The Chairperson stated that the notice was emailed and / or posted to all known creditors of the Company on 11 June 2020.

5. Admission of Proxies and Creditor Claim Forms

The Chairperson, being the liquidator, tabled the voting register and proxies for the meeting. He also advised that he was required to consider and either admit or reject the claims and the proxies submitted for the purposes of voting at the meeting.

The Chairperson reviewed the creditor claim forms submitted in relation to the meeting and determined that adjustments were appropriate in a number of instances for voting purposes. The Chairperson also reviewed the proxies and disallowed a number of the proxies in accordance with standard practice. These adjustments are generally described below:

- 21 proxy forms were submitted for creditors that did not lodge a claim. Those proxy forms were therefore set aside and not counted for voting as they were non-compliant with Regulation 19 of the Companies Act 1993 Liquidation Regulations 1994.
- 14 claims related to invoices or payment claims submitted immediately before or after the corresponding contract's termination and the Liquidator could find no evidence that the works had been assessed. I am therefore unable to ascertain with certainty the claim's value. In light of that uncertainty, I have admitted these claims for the amounts for \$1 for the purposes of voting. The total of these adjustments was \$3,876,074.93
- 14 claims included amounts that I rejected following my enquiries, discussions with management and review of Company books and records. I rejected those amounts because of counter claims by the Company due to poor workmanship. These claims are disputed by the Company, either because it believes it has a claim against the subcontractor for an amount exceeding the claim, or, the Department of Corrections has already levied a claim against the Company for defective works. The total amount rejected for voting purposes was \$6,594,727.54.

- 5 claims included amounts relating to unapproved variations which are disputed by the Company. I have rejected those amounts for voting purposes. The total amount rejected was \$1,389,827.18.
- 3 claims were admitted for \$1 for voting purposes because of insufficient documentation or substantiation, or, they were the subject of a damages claim / set-off. These adjustments totalled \$69,999,101.02.

6. Quorum

The Chairperson determined that the meeting had quorum, pursuant to Schedule 5 of the Companies Act 1993, as at least three creditors who are entitled to vote casted postal votes.

7. Purpose and Conduct of Meeting

The purpose of the meeting of the creditors by postal ballot was to:

1. Confirm the appointment of the liquidator or to appoint another liquidator in place of the liquidator so appointed in accordance with section 243(1)(a) of the Act; and
2. To agree the establishment of a liquidation committee and if so, who the committee members will be.

8. Motions, Resolutions and Casting Vote

As set out in the notice of meeting and the creditors' voting forms, the Chairperson explained that motions will be resolved on count and value of votes submitted by postal ballot.

A resolution is passed if both:

- a) more than 50% of the votes cast vote in favour; and
- b) the admitted value of the votes cast in favour of the resolution represent more than 50% of the total value of claims admitted.

If neither a) nor b) above are satisfied, the resolution fails.

If a) occurs but not b), or if b) occurs but not a), the Chairperson has a casting vote, however, the Chairperson is unable to use the casting vote in a resolution that he has a personal interest in.

9. Resolutions

The Chairperson put forward the following resolutions to creditors:

Resolution 1

“That the appointment of Dermott McVeigh as liquidator of Decmil Construction NZ Limited (in Liquidation) is confirmed and continues.”

The results of Resolution 1 are as follows:

Total number of voting papers marked: 100

Total debt value: \$45,535,430.28

Percentage for (number): 28%

Percentage against (number): 70.0%

Abstain (number): 2%

Percentage for (value): 85.8%

Percentage against (value): 14.2%

Abstain (value): 0.0%

For		Against		Abstain	
Number	Value	Number	Value	Number	Value
28	\$39,049,380.47	70 ¹	\$6,479,156.40	2	\$6,893.41

Resolution 1 failed because it did not achieve the requisite majority vote in respect of value as required under section 5(1) of Schedule 5 of the Companies Act 1993.

The outcome of the resolution would not have been affected by discounting the related party debt of \$25,278,644.00.

Resolution 2

The Chairperson put forward the following resolution to creditors:

“In the event that the liquidator is not confirmed, I vote to appoint Andrew Bethell of BDO Auckland Ltd and Iain Shephard of BDO Wellington Ltd as replacement liquidators.”

The results of Resolution 2 are as follows:

Total number of voting papers marked: 100

Total debt value: \$45,535,430.28

Percentage for (number): 79%

Percentage against (number): 17%

Abstain (number): 4%

Percentage for (value): 14.6%

Percentage against (value): 85.1%

Abstain (value): 0.3%

For		Against		Abstain	
Number	Value	Number	Value	Number	Value
79 ¹	\$6,652,498.28	17	\$38,764,434.46	4	\$118,497.54

Resolution 2, appointing Andrew Bethell and Iain Shephard of BDO as alternative liquidators failed because it did not achieve the requisite majority vote in respect of value as required under section 5(1) of Schedule 5 of the Companies Act 1993.

The outcome of the resolution would not have been affected by discounting the related party debt of \$25,278,644.00.

¹ This number includes 16 claims by subcontractors of the Company who assigned their claims to the Department of Corrections. The Liquidator objects to these claims and reserves his position on this issue but has allowed the claims in for voting purposes.

Resolution 3

The Chairperson put forward the following resolution to creditors:

“That a Liquidation Committee be appointed to act with the appointed liquidator.”

The results of Resolution 3 are as follows:

Total number of voting papers marked: 93

Total debt value: \$45,249,762.44

Percentage for (number): 75.3%

Percentage against (number): 6.5%

Abstain (number): 18.2%

Percentage for (value): 88.7%

Percentage against (value): 0.3%

Abstain (value): 11.0%

For		Against		Abstain	
Number	Value	Number	Value	Number	Value
70 ²	\$40,141,237.43	6	\$141,176.82	17	\$4,967,348.19

The resolution to have a liquidation committee passed.

10. Closure

There being no other business the Chairperson declared the meeting closed at 4.00pm.

Signed as a correct record.

DATED this 7 July 2020



Chairperson

² This number includes 16 claims by subcontractors of the Company who assigned their claims to the Department of Corrections. The Liquidator objects to these claims and reserves his position on this issue but has allowed the claims in for voting purposes.

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CERTIFICATE PER SECTION 7, SCHEDULE 5, COMPANIES ACT 1993

As the person authorised to receive and count the postal votes in relation to the above meeting, I hereby confirm that:

1. I have collected all postal votes received by me; and
2. In relation to each resolution, I have:
 - a. counted the number of creditors voting in favour of the resolution and determined the total amount of the debts owed by the company to those creditors;
 - b. counted the number of creditors voting against the resolution and determined the total amount of the debts owed by the company to those creditors; and
 - c. stated the results of the counts and determinations set out at 2(a) and (b) above.

I have carried out my duties as per Schedule 5 of the Companies Act 1993.

DATED this 7 July 2020



Chairperson