

RECEIVERS' FIRST REPORT ON THE STATE OF AFFAIRS OF  
VIADUCT CAPITAL LIMITED (IN RECEIVERSHIP)  
"The Company"

**PARTNERS**

Boris van Delden BCom, CA (PP)  
Peri Finnigan BBS, Dip.Bus, CA (PP)  
Roy Horrocks CA (PP)  
Iain McLennan BCom  
Tony Maginness Dip.Bus

**DIRECTOR**

Kevin Bromwich NZ Dip.Bus

**ASSOCIATES**

Jonathan Barrett BA, BCom, CA  
Jared Booth BMS, MMS

**CONSULTANTS**

John L Vague JR, FCA, ACIS, AFNZIM  
Dennis Wood MBA Grad.Dip.Bus Admin, DipPol  
Garry Whimp ACA

**1. INTRODUCTION**

Boris van Delden and Iain McLennan, Insolvency Practitioners of Auckland, were appointed jointly and severally as receivers and managers of Viaduct Capital Limited on 13 May 2010. They were appointed under the powers contained within a Debt Security Trust Deed dated 6 October 2006 in favour of Prince & Partners Trustee Company Limited. The address of the secured creditor is Auckland. The Receivers set out below their first report on the state of affairs of the above named company as required by section 23 of the Receiverships Act 1993.

**2. EVENTS LEADING UP TO OUR APPOINTMENT**

The appointment arose following a request from the directors to the Trustee to have the company placed into receivership. The directors had assessed that a default under the Trust Deed was about to occur.

**3. STEPS TAKEN SINCE APPOINTMENT**

Since our appointment we confirm that we have:

- Attended to appointment formalities;
- Written to all depositors, creditors and debtors;
- Liaised and supplied Treasury with depositor information;
- Validated depositors' data/information;
- Validated deposit book;
- Discontinued company's interest in various management agreements;
- Reviewed the financial records;
- Reviewed the loan book;
- Confirmed loan securities in place;
- Collected bank account;
- Sought legal and independent appraisal advice on realisation of assets and validity of security arrangements;
- Commenced realisation process on loans;
- Commenced an investigation into the affairs of the company.

#### 4. AMOUNTS OWING BY THE COMPANY

Creditors outstanding at the date of receivership were as follows:

##### Secured Creditors

The secured creditor is Prince & Partners Trustee Company Limited, Level 9, 50 Anzac Ave, Auckland, secured by way of a Trust Deed dated 6 October 2006 and a GSA dated 15 August 2005. The Trustee by the Trust Deed represents the interests of all of the depositors of the Company.

There are 110 secured depositors who have advanced funds secured totalling \$7,835,501.30 as follows:

Pre 20 April 2009	94	\$7,320,046
Post 20 April 2009	16	\$515,455
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Total Secured		\$7,835,501

These amounts include any accrued capitalised interest.

Prior to 20 April 2009, the company had been included in the Crown Retail Deposit Guarantee Scheme ("Guarantee"). Under the Guarantee payment of all eligible deposits prior to 20 April 2009 are guaranteed. Treasury administers the payment to eligible depositors on behalf of the Crown. We have validated the depositor register and supplied Treasury with information regarding deposits made before 20 April 2009. The process of assisting Treasury with information to assist the claims process has taken considerable time.

The pre 20 April 2009 depositors should have started to receive correspondence direct from Treasury to assess their eligibility.

The Post 20 April 2009 depositors will have funds repaid to them as realisations of loans occur.

##### Preferential Creditors

As at the date of receivership preferential creditors for the following:

Resident Withholding Tax (RWT)	\$1,280
Non Resident Withholding Tax (RWT)	\$50
Employee Deductions	\$184
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Total Preferential Creditors	\$1,514

As at the date of our appointment, the company had no employees, and had claimed a GST refund in its last filed GST return.

### **Unsecured Creditors**

As at the date of this report the receivers have received 14 confirmations of amount owing totalling \$44,282.

The company records show that as at the date of our appointment \$79,500 was owed to unsecured creditors.

In addition, there is an unsecured capital note holder owed \$5,000.

Based on current information it is not expected that any dividend will be available to unsecured creditors.

## **5. ASSETS**

### **Bank Accounts**

We have frozen the company's old bank accounts, and bank account balances totalling \$57,526 has been collected.

### **Pre-Paid Rent**

The company had paid rent in advance for the month of May 2009 which has been part refunded for the period from 13 May 2010.

### **GST Refund**

As at the date of appointment the company had filed a GST return refund of \$102,055. The refund is currently subject to audit by the IRD.

### **Income Tax**

The company earned interest on funds held in bank accounts from which the bank deducted RWT. We will try to recover these funds by filing income tax returns. As we have not yet completed the tax calculations it is too early to estimate how much will be recovered.

### **Lending Book**

We have reviewed the company loan book. Many of the loans are exposed to security sharing deeds ("SSD") that have been given by the company in return for funds received. We have verified that the funds have been paid to the company.

The impact of the SSDs is that the company priority in the security over which the lending was made has been replaced by the new funds provider.

For example, where the company initially had a second ranking charge, after the SSD the company now has a third ranking charge. This has had a large potential impact on the realisable value of the securities. We have sought legal advice on the validity of the SSDs and on the priority issues that have arisen as a result.

The further impact on possible recoveries has been the receivership of Mutual Finance Limited ("Mutual"). This company was the recipient of some but not all of the SSDs given by the company, and had at the time of our appointment expressed interest in providing further funds to securities in which the company and Mutual were involved, in order to maximise returns to the company and Mutual.

As there is now no hope of that further funding, some securities have gone from our initial assessment of potentially providing some funds to the company, to having no chance of recovery for the company.

The company has indemnities from a number of parties. Our estimate of likely recoveries does not include any estimate of return from the indemnifiers.

### **Debtors**

The company records show a very high level of trade debtors. The debtors' amounts arose from the company charging fees to clients for finance broking activity. We expect that where the debtor is also a secured borrower we have assumed the main areas of recovery will be under the security held.

We have written to all debtors seeking recovery. Some debtors dispute the amounts payable and we continue to correspond with those debtors.

Our estimate of recovery is possibly at the low end.

Preferential creditors will be entitled to debtor recoveries ahead of secured creditors.

### **Fixed Assets**

The company financial records show that fixed assets were sold prior to receivership. The company received payment for the fixed assets.

## **6. STATUTORY REPORTING OBLIGATIONS**

We advise that the receivers have an obligation to identify and refer any potential breaches of legislation and the Trust Deed to the appropriate authorities.

## 7. ESTIMATED STATEMENT OF FINANCIAL POSITION

We summarise below the company's position at appointment together with an estimate of likely realisations.

	VALUE	ESTIMATE OF RECOVERY
Bank Account	57,526	57,526
Debtors	449,648	30,000
Prepayments	4,645	4,645
GST	102,055	102,055
Loan recoveries	8,202,797	2,380,000
<b>Total</b>	<b>8,816,671</b>	<b>2,574,226</b>
<b>Less Preferential Creditors</b>		
Per Detail above		1,514
<b>Potential Recoveries Prior to Costs</b>		<b>2,572,712</b>
<b>Secured Borrowings – Investors</b>		<b>7,835,501</b>

The above estimates exclude the costs of the receivership.

### Disclaimer of Liability

The Estimated Statement of Financial Position above has been prepared for the purpose of the receivership based on information and assessments currently available. Estimates may change over time as the factors affecting the recoverability of the assets change. No reliance should be placed on the above estimates. Neither the receivers or their staff or advisers accept any responsibility on any ground whatsoever, including liability in negligence, to any other person.

## 8. LIKELY RETURN TO DEPOSITORS

Once the Crown has paid eligible investors under the guarantee the Crown stands in the shoes of each of those individual paid investors. Therefore, the recovery amount needs to be paid across all secured depositors.

Accordingly, based on information currently available we estimate that the secured depositors may likely receive in the range of 28 to 33 cents in the dollar.

**9. INFORMATION SUPPLIED TO THE COMPANY**

The directors of the company have co-operated fully in providing all information required by the receivers.

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Iain McLennan  
Receiver

DATED  August 2010