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# Concurrent Second Meetings of Creditors

**BBY Nominees Pty Ltd  
BBY Protection Nominees Pty Ltd  
Options Research Pty Ltd  
Tilbia Nominees Pty Ltd**

**(All Administrators Appointed)**

**Stephen Vaughan and Ian Hall  
Joint and Several Administrators**

8 October 2015

# BBY Nominee Companies Second Meetings of Creditors

## Introductions

- Stephen Vaughan, Joint Administrator (Chair), KPMG
- Ian Hall, Joint Administrator, KPMG

This slide presentation **should be read in conjunction with our s439A report** to creditors, dated 29 September 2015.

In the event creditors resolve that any BBY entities be wound up, then the **Administrators become the Liquidators**.

**Questions** – we will provide opportunities at points during the meeting and at the end.

**Further information can be found** at [www.kpmg.com/AU/bby](http://www.kpmg.com/AU/bby)

# BBY Nominee Companies Second Meetings of Creditors

## Key issues for today

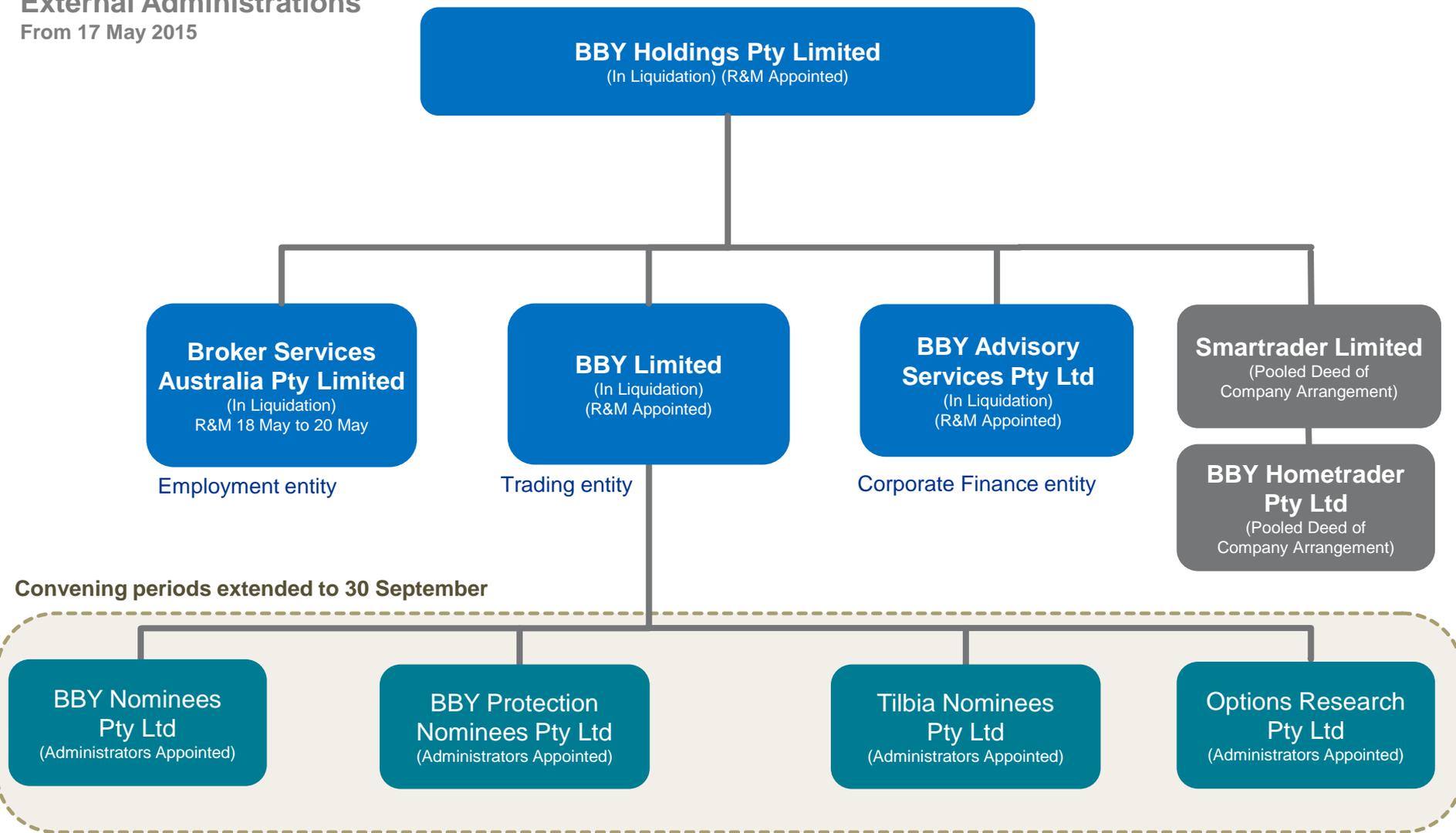


1. *What happened to BBY and why?*
2. *Where are we in this process and what has happened since the administrations?*
3. *What was the role of the 'nominee companies'?*
4. *What was the quality of the available records?*
5. *How will client entitlements to nominee assets be determined?*
6. *How much will it cost to terminate custodial arrangements and return assets to clients?*
7. *Are there other creditor claims?*
8. *Are there assets that can be realised to fund distributions to creditors?*
9. *How will we receive further information?*
10. *What are the next steps?*

# BBY Nominee Companies Second Meetings of Creditors

## External Administrations

From 17 May 2015



# BBY Nominee Companies Second Meetings of Creditors

## Introduction

- Voluntary Administrators – Stephen Vaughan & Ian Hall of KPMG
- Appointment date – 17 May 2015
- Voluntary Administration is a statutory procedure and moratorium period which normally runs for about 5 weeks and is essentially designed to allow companies in financial distress time to develop a restructuring plan or, if this is not possible, to allow for a more orderly liquidation.
- On 12 June 2015, the Administrators obtained an order from the Supreme Court of NSW for an extension of the convening period for the second meeting of creditors of the 4 BBY Nominee Companies, to 30 September 2015.
- Nature of these concurrent meetings (at the conclusion of the VA procedure)
  - Section 439A Corporations Act
  - Second meetings of creditors to decide the future of each of the companies

# BBY Nominee Companies Second Meetings of Creditors

## Agenda

- Purpose of the meeting
- Procedural matters
- Key issues
- Receipts and payments
- Estimated return to creditors in a Liquidation
- Resolutions
- Final questions
- Close

# BBY Nominee Companies Second Meetings of Creditors

## Purpose of the meetings

1. To receive a report by the Administrators (*refer to section 439A report to creditors, 29 September 2015*)
2. To consider the terms of a proposed Deed of Company Arrangement (no current proposal)
3. To consider, and if thought fit, approve the remuneration of the Administrators.
4. To resolve (on a company by company basis) that:
  - a) That the Companies should execute a Deed of Company Arrangement (where proposed); or
  - b) That the administrations should end; or
  - c) That the Companies be wound up; or
  - d) That the meetings be adjourned for a period of up to forty-five (45) business days.
5. If a Deed of Company Arrangement is approved, to fix the remuneration of the Deed Administrators.
6. If the Companies are wound up, to fix the remuneration of the Liquidators.
7. If the Companies are wound up, to consider appointing a Committee of Inspection.
8. Any other business relevant to the meeting.

# BBY Nominee Companies Second Meetings of Creditors

## Procedural matters

- Chairperson – Stephen Vaughan, Administrator
- Attendance register, Proxies and Proofs of Debt
- Quorums for each company
- Notice convening Meetings
- Declaration – time & place convenient
- DIRRI – Declaration of Independence, Relevant Relationships & Indemnities
- Entitlement to vote
- Voting on resolutions

## What happened to BBY Group and why?

- Large trading losses, cash flow difficulties, exacerbated due a large trade in mid 2014 (Aquila) and the loss of the Saxo related business in early 2015, restrictions imposed by the ASX on the Options clearing business and ultimately, in May, the requirement to close that business.
- Attempts to raise capital failed. The Directors determined the BBY Companies may become insolvent and appointed the Administrators on Sunday 17 May 2015.
- We concluded additional factors contributed to the failure of the business including:
  - poor governance, an inadequate risk management framework, inadequate capital, and
  - an inability of management to foreshadow and appropriately respond to a number of adverse events and margin calls.
- There is a shortfall in Client Monies Accounts held with BBY Limited and court proceedings in relation to client entitlements and distribution of those funds.
- We concluded that the BBY Companies may have been insolvent since June 2014.

# BBY Nominee Companies Second Meetings of Creditors

## What happened to BBY and why? (continued)

- Following the appointment of Administrators on 17 May 2015
  - **St George Bank** appointed Receivers & Managers from PPB Advisory on 18 May 2015 and took possession of the business and assets to recover its secured debt.
  - **ASX Clear**, the ASX clearing house for all shares, structured products, warrants and ASX Equity Derivatives, declared an event of default and BBY's participation in the ASX market, ASX Clear and Austraclear (the settlement facility used by BBY for cash settlements) was suspended.
  - The **Australian Securities and Investments Commission** suspended the Australian financial services licences (AFSLs) held by BBY, BAS and STL.
  - BBY effectively ceased trading shortly after the Receivers' appointment.
  - **ASX Clear** carried out a process to close out open derivatives positions and unsettled cash market transactions other than open derivatives positions transferred to another participant or which proceeded to expiry. In some cases ASX Clear liquidated clients' non-cash collateral to recover associated costs. ASX's web page refers former clients with losses to the National Guarantee Fund.
  - The **R&Ms** commenced attending to requests for transfers to other brokers of CHESSE sponsored holdings (HINs), in conjunction with settling of any client debts, as well as transferring any other remaining open positions.
  - **Other counterparties** have also chosen to close out positions in relation to futures and FX.

# BBY Nominee Companies Second Meetings of Creditors

## Where are we in this process and what has happened since the administrations?

- On 22 June 2015 at concurrently held creditors meetings:
  - Four of the BBY Companies, BBYH, BBYL, BBYAS and BSA were placed into liquidation.
  - Two companies SMT and BBYHT were placed into a pooled Deed of Company Arrangement.
- At the time of the BBY Nominee Companies' administrations, the records available to the Administrators were inadequate to determine the identity of clients and creditors, the extent of assets held and whether assets were owned or held on trust for others.
- On 12 June 2015, the Administrators obtained orders from the Supreme Court of New South Wales to extend to 30 September 2015 the convening period for a statutory second meeting of creditors to allow time to carry out further investigations into the assets and liabilities and to assess a proposal received for a Deed of Company Arrangement.
- After completing our inquiries we issued our report on 29 September 2015 and called this second meeting of creditors.

# BBY Nominee Companies Second Meetings of Creditors

## What was the role of the ‘nominee companies’?

- BBY Nominees Pty Limited
  - BBY Nominees apparently acted as a bare trustee and nominated custodian for approximately 600 clients of the BBY business providing nominee services in respect of securities and other financial products, both domestic and international.
  - Holdings included listed and unlisted shares and options in over 200 domestic and overseas companies.
  - It also holds securities on behalf of other group companies and possibly in its own right. Refer to Section 4 of our report for more details.
  
- BBY Protection Nominees Pty Ltd, Options Research Pty Ltd and Tilbia Nominees Pty Ltd
  - Each appear to have been dormant, with no assets, liabilities or client obligations.

## What was the quality of the available records?

- There were a number of deficiencies in the quality of records, as discussed in section 4 of our report, including for example:
  - Records maintained utilising spreadsheets with material reconciliation issues and missing data.
  - Supporting documentation not available or not yet been located.
  - Reconciliations not carried out for extended periods.
  - Some clients of acquired businesses not integrated causing identification issues.
  - Not obtaining regular and timely confirmations from counterparties regarding holdings.
  - In many cases there are limited or no contact details for clients.
  - Associated dividends paid into a separate account with BBY Limited and not reconciled to nominee client accounts.

# BBY Nominee Companies Second Meetings of Creditors

## Asset holdings and client entitlements

- The table below summarises the results of preliminary investigations to date into the asset holdings of BBY Nominees:

BBY Nominees asset holdings							
Category	Internal management	System	Product	Holdings		Related parties	Total number of clients
				Number of investee companies	Number of clients	Number of clients	
Domestic Custodian	Melbourne / Sydney	GBST	Listed shares	33	29	5	34
Domestic Custodian	Melbourne	Excel	OTC Options	25	NQ	1	1
International Custodian	Melbourne	Excel	Overseas listed shares (via c/parties)	160	538	-	538
International Custodian	Sydney	Excel	Overseas unlisted shares (via c/parties)	1	5	-	5
Private placements	Sydney	Excel	Listed shares (domestic & overseas)	2	5	2	7
Private placements	Sydney	Excel	Unlisted shares	3	13	2	15
<b>Total</b>				<b>224</b>	<b>590</b>	<b>10</b>	<b>600</b>

NQ: Not quantified

- International custodians includes approximately 380 clients holding shares in Linc Energy Limited via a sub-custodian arrangement through ABN AMRO Clearing Bank N.V. in Singapore.

# BBY Nominee Companies Second Meetings of Creditors

## How will client entitlements to nominee assets be determined?

- The available documentation is incomplete and a large amount of effort has been required to collate details in an orderly manner for processing.
- We have been progressively contacting former clients of BBY Nominees in order to confirm entitlements, terminate nominee arrangements and deal with assets identified to be held on their behalf.
- Given the large number of clients involved we have been drawing on experience of early client interactions to improve and streamline the review process.
- We have been writing to the wider client base to explain next steps in the process. In many cases we are seeking that clients provide responses to a short questionnaire and further substantiating documentation.
- In the case of the Linc Energy Ltd shareholders, given the profile and large numbers, we are exploring avenues with Linc to streamline processing and communications.
- Given the large number of holdings and clients with individual circumstances that need to be addressed we expect this process will take some months to complete.

# BBY Nominee Companies Second Meetings of Creditors

## How much will it cost to terminate custodial arrangements and return assets to clients?

There are currently no funds in the administrations to cover our costs of dealing with the holdings. We are offering clients the choice of:

### Commercial Facilitation

- a commercial resolution process including fee to cover our associated costs;
  - Varying according to the size and complexity of the holdings.
  - including work in reviewing records and documentation, taking legal advice where necessary, confirming entitlements and facilitating transfers or sales as required including any brokerage costs.

### Court

- Participating in a court directions process to deal with claims where holdings cannot be sufficiently substantiated or where clients choose not to pay a facilitation fee;
  - Will involve delay, uncertainty and cost which needs to be funded.
  - This process will be necessary in some cases due to an inability to identify and contact the client, substantiate an entitlement or resolve any disputes.

## Are there other creditor claims?

- There appear to be no trade creditors or statutory liabilities.
- Any claims will likely relate to any losses suffered by former BBY clients in relation to dealings with BBY Nominees after recovery of any assets held on trust.
- Given the uncertainty over asset holdings and client entitlements it is too soon to estimate whether there will be:
  - creditor claims.
  - assets available to fund distributions to creditors, other than the return of assets beneficially owned by clients.

# BBY Nominee Companies Second Meetings of Creditors

## Are there assets that can be realised to fund distributions to creditors?

- We have identified some possible related party holdings and house positions.
- We are still investigating the affairs of the wider group of BBY Companies and the nature of these holdings and beneficial interests.
- Any 'house' realisations would be first applied against costs of the administration / liquidation. Any surplus would be available for distributions to creditors to the extent there are claims, then to shareholders.
- We have not identified any other causes of action that may lead to recoveries on behalf of creditors however our investigations are continuing.
- There are no assets to cover our costs and any recovery actions would have to be funded.

# BBY Nominee Companies Second Meetings of Creditors

## How will we receive further information?

- We are dealing with a large volume of inquiries in relation to the nominee companies and other BBY companies.
- Future information will continue to be provided via:
  - KPMG’s dedicated BBY web page (found on the KPMG home page)  
[www.kpmg.com/AU/bby](http://www.kpmg.com/AU/bby)
  - Email circulars and or post
- Inquiries can be directed by email to [bby@kpmg.com.au](mailto:bby@kpmg.com.au).

# BBY Nominee Companies Second Meetings of Creditors

## What are the next steps?

- Dealing with the resolutions at this meeting, including voting on our fees and the future of the companies.
- If BBY Nominees and other companies are placed into liquidation, we intend as next steps to:
  - Continue with the process of transferring or dealing with trust assets in accordance with instructions from those beneficially entitled to them as quickly as the circumstances allow.
  - Conduct further investigations into related party holdings, possible house asset and any possible recovery opportunities on behalf of clients and creditors.
  - Wind up the affairs of the companies.

# BBY Nominee Companies Second Meetings of Creditors

## Receipts and Payments

Set out below is a summary of receipts and payments in BBY Nominees from 17 May 2015 to 29 September 2015:

- Sale of foreign shares pending payment to a client - \$639,055
- Facilitation fees – shares \$30,000
- Facilitation fees – options \$10,000

There have been no payments to date however we have incurred substantial expenses including our time costs and legal fees in the order of \$70,000.

Note: Other entities did not have cash balances and did not trade during the period

## Estimated outcomes from liquidation

- There appear to be no trade creditors or statutory liabilities.
- The only possible creditor claims will likely relate to any losses suffered by former BBY clients in relation to dealings with BBY Nominees after recovery of any assets held on trust.
- Given the uncertainty over asset holdings and client entitlements it is too soon to estimate whether there will be creditor claims and assets available to fund distributions to creditors, other than the return of assets beneficially owned by clients.
- Refer to section 8 of our report.

# BBY Nominee Companies Second Meetings of Creditors

## Administrators recommendations

- On 4 June 2015 **BBY Asia Pacific Group Holdings Pty Ltd (now called Asia Pacific Prudential Group Pty Ltd)**, submitted a proposal for a Deed of Company Arrangement in respect of the 4 companies to deal with client entitlements in the context of the purchase of various business assets.
- The proposal was unable to be progressed due to the lack of available information regarding the financial affairs of the BBY Nominee Companies. At the time of the administrations, the records available were inadequate to determine the identity of clients and creditors, the extent of assets held and whether assets were owned or held on trust for others.
- On 12 June 2015, the Administrators obtained Supreme Court orders to extend the convening period for a statutory second meeting of creditors to allow time to carry out further investigations into the assets and liabilities and then to assess the DOCA proposal.
- After further discussions with APPG and examination of subsequent information that become available, the **DOCA proposal was withdrawn**.
- There is **no alternate proposal** for a Deed of Company Arrangement so this is not an option.
- Pursuant to Section 439A(4)(b) of the Act, we provide creditors with a statement setting out our opinion, for each of the 3 companies, as to whether or not it is in creditors' interests for:
  - The company to execute a Deed of Company Arrangement, or
  - The Administration to end, or
  - The company to be placed into Liquidation and wound up.
- We consider that all existing custodian arrangements should be terminated and unwound as quickly as possible.
- We **recommend** creditors resolve that each company be placed into liquidation to facilitate an orderly winding up including dealing with client trust entitlements.

# BBY Nominee Companies Second Meetings of Creditors

## Resolution – 1

### Administrators' fees from 17 May 2015 to 25 September 2015

*“That the Administrators’ remuneration for the period 17 May 2015 to 25 September 2015 in respect of the voluntary administration of **RELEVANT COMPANY** be approved in the sum of **AMOUNT** plus GST and disbursements and that such fees are authorised for payment from the assets of the Company, or otherwise”*

#### Voluntary Administrators Remuneration

\$'000	17 May 2015 - 25 Sept 2015	26 Sept 2015 - 8 October 2015	Total – VA
<b>BBY company</b>			
BBY Nominees Pty Ltd	121.4	87.9	209.3
BBY Protection Nominees Pty Ltd	5.8	3.1	8.9
Options Research Pty Ltd	2.7	3.1	5.8
Tilbia Nominees Pty Ltd	2.4	3.1	5.5
<b>Total remuneration</b>	<b>132.3</b>	<b>97.3</b>	<b>229.5</b>

# BBY Nominee Companies Second Meetings of Creditors

## Resolution – 2

### Administrators' prospective fees from 26 September 2015 to 8 October 2015

*“That the Administrators’ remuneration for the period 26 September 2015 to 8 October 2015 in respect of the voluntary administration of **RELEVANT COMPANY** be approved in the sum of **AMOUNT** plus GST and disbursements and that such fees are authorised for payment from the assets of the Company, or otherwise”*

#### Voluntary Administrators Remuneration

\$'000	17 May 2015 - 25 Sept 2015	26 Sept 2015 - 8 October 2015	Total – VA
<b>BBY company</b>			
BBY Nominees Pty Ltd	121.4	87.9	209.3
BBY Protection Nominees Pty Ltd	5.8	3.1	8.9
Options Research Pty Ltd	2.7	3.1	5.8
Tilbia Nominees Pty Ltd	2.4	3.1	5.5
<b>Total remuneration</b>	<b>132.3</b>	<b>97.3</b>	<b>229.5</b>

# BBY Nominee Companies Second Meetings of Creditors

## Options available to creditors in respect of each company

- Creditors can determine either:
  - That the Company should execute a Deed of Company Arrangement; or
  - That the administration should end; or
  - That the Company be wound up; or
  - That the meeting be adjourned for a period of up to forty-five (45) business days.

## Resolution – 3

### Resolve to execute a Deed of Company Arrangement

- On 4 June 2015 Asia Pacific Prudential Group Pty Ltd submitted a proposal for a Deed of Company Arrangement which was subsequently withdrawn.

**There is no proposal to be considered by creditors.**

# BBY Nominee Companies Second Meetings of Creditors

## Resolution – 4

### Deed Administrators' estimated prospective remuneration

Not applicable

# BBY Nominee Companies Second Meetings of Creditors

## Resolution – 5

### Resolve to wind up

- Resolution for each company

*“THAT pursuant to Section 446A of the Corporations Act 2001 that the **RELEVANT COMPANY** be wound up and that Stephen Vaughan and Ian Hall be confirmed as Joint and Several Liquidators of the Company”.*

- BBY Nominees Pty Ltd
- BBY Protection Nominees Pty Ltd
- Tilbia Nominees Pty Ltd
- Options Research Pty Ltd

# BBY Nominee Companies Second Meetings of Creditors

## Resolution – 6

### Liquidators' prospective remuneration

- Resolution for each company

*“That the Liquidators’ remuneration in respect of **RELEVANT COMPANY** be approved in a sum equal to the cost of time spent by the Liquidators and their partners and staff, calculated at rates set under the KPMG Restructuring Services guide to hourly rates, of an amount up to **AMOUNT** plus GST and disbursements, and that such fees are authorised for payment from the assets of the Company, or otherwise.”*

■ BBY Nominees Pty Ltd	\$297,300
■ BBY Protection Nominees Pty Ltd	\$20,800
■ Tilbia Nominees Pty Ltd	\$20,800
■ Options Research Pty Ltd	\$20,800

# BBY Nominee Companies Second Meetings of Creditors

## Resolution - 7

### Appointment of a Committee of Inspection

- Resolution for each company

*“That no Committee of Inspection of the Companies be formed.”*

**OR**

*“That:*

*..... representing .....*

*..... representing .....*

*..... representing .....*

*be appointed to the Committee of Inspection of .....*

### What is the role of a committee of inspection?

A COI is not required however a liquidator may ask creditors if they wish to appoint a committee and, if so, who will be a member.

A committee of inspection assists the liquidator, can approve fees and, in limited circumstances, approves the use of some of the liquidator’s powers, on behalf of all the creditors.

A liquidator must consider any directions given by the committee, but is not bound to follow them.

Any person seeking on behalf of a corporate entity is required to provide written authority.

**Final questions?**

**Close**



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