

AN APPRAISAL OF THE REPORT AS TO AFFAIRS

A report on a survey of official liquidators concerning the Report as to Affairs form required for insolvent companies and concerning associated compliance issues. The report also examines the history and purpose of the Report as to Affairs, laws which impose duties to submit the form, and ideas for change. The survey was conducted in November/December 2011.

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Introduction

This paper reports on my written survey of official liquidators about their experiences and attitudes in relation to the Report as to Affairs form ("RATA") and to associated compliance issues. The survey was carried out in November and December 2011.

The RATA is a form which is prepared for the purpose of showing the financial position of a company at commencement of its entry into liquidation, controllership or administration. There are eight provisions in the External Administration chapter of the Corporations Act 2001 under which an obligation to prepare such a report is imposed or may arise.¹ In most circumstances the report is to be prepared by company directors. Since late 2004 sole responsibility for design and content of the form has resided with the corporate regulator, the Australian Security and Investments Commission ("ASIC").²

Most of the results of the survey are shown in the body of this paper. However, some important information and documents that are discussed in the paper are attached to it:

Annexures	
1	Description of my methodology. Expanded statistical analysis of responses re role of RATA. Verbatim comments, criticisms and suggestions by liquidators concerning the Report as to Affairs.
2	Survey form sent to official liquidators.
3	Company Report as to Affairs (ASIC Form 507) (version 30-1-2012) that appears on the ASIC website.
4	Company Statement of Affairs under the Uniform Companies Acts of 1961.
5	ASIC "Guide: Report as to Affairs".
6	My reworking of the RATA, titled Overview of Report as to Affairs.
7	New Zealand's company statement of affairs in questionnaire style.

The survey focused on "official liquidators" – those registered liquidators who are permitted to act in Court-ordered liquidations. (It appears that about 75 to 80 per cent of registered liquidators are also registered as official liquidators.³) Official liquidators were selected for several reasons, but mainly because the RATA is really put to the test in the environment of compulsory liquidation rather than voluntary liquidation. In addition, official liquidators are far more likely to have witnessed first-hand the ASIC's enforcement work in this area.

At the time of the survey there were 523 official liquidators on the ASIC's database. Of these liquidators, 309 were selected randomly and asked to participate in the survey. Approximately one-third – 105 – of those selected chose to participate by returning a completed survey form.

Focal point

Of the many findings coming out of the survey there are two that stand out because they highlight a considerable disparity between what liquidators need and what they receive. The survey shows that liquidators rate receiving a properly prepared RATA – one with full particulars of the company's assets, liabilities and securities – as an important requirement for the efficient performance of their role in a court-ordered winding up. But they also rate the typical RATA that they receive as incomplete, inaccurate and unreliable.

The Report as to Affairs form

The main part of the RATA form is the part which serves as a summary of assets and liabilities and gives the estimated deficiency or surplus. The current summary page is reproduced in the following diagram (Figure 1). A complete copy of the form with schedules is provided as Annexure 3 to this paper.

Figure 1																																			
ASIC Form 507 (pages 3 and 4 only)																																			
REPORT AS TO AFFAIRS																																			
Current Version (dated 30/1/2012)																																			
2 Assets and liabilities																																			
2.1	Assets not specifically charged	<table border="1"> <thead> <tr> <th></th> <th>Valuation (for each entry show whether cost or net book amount)</th> <th>Estimated Realisable Value</th> </tr> <tr> <th></th> <th>\$</th> <th>\$</th> </tr> </thead> <tbody> <tr> <td>(a) interest in land as detailed in schedule A</td> <td></td> <td></td> </tr> <tr> <td>(b) sundry debtors as detailed in schedule B</td> <td></td> <td></td> </tr> <tr> <td>(c) cash on hand</td> <td></td> <td></td> </tr> <tr> <td>(d) cash at bank</td> <td></td> <td></td> </tr> <tr> <td>(e) stock as detailed in annexed inventory</td> <td></td> <td></td> </tr> <tr> <td>(f) work in progress as detailed in annexed inventory</td> <td></td> <td></td> </tr> <tr> <td>(g) plant and equipment as detailed in inventory</td> <td></td> <td></td> </tr> <tr> <td>(h) other assets as detailed in schedule C</td> <td></td> <td></td> </tr> <tr> <td>Sub Total</td> <td></td> <td></td> </tr> </tbody> </table>		Valuation (for each entry show whether cost or net book amount)	Estimated Realisable Value		\$	\$	(a) interest in land as detailed in schedule A			(b) sundry debtors as detailed in schedule B			(c) cash on hand			(d) cash at bank			(e) stock as detailed in annexed inventory			(f) work in progress as detailed in annexed inventory			(g) plant and equipment as detailed in inventory			(h) other assets as detailed in schedule C			Sub Total		
	Valuation (for each entry show whether cost or net book amount)	Estimated Realisable Value																																	
	\$	\$																																	
(a) interest in land as detailed in schedule A																																			
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(g) plant and equipment as detailed in inventory																																			
(h) other assets as detailed in schedule C																																			
Sub Total																																			
2.2	Assets subject to specific security interests, as specified in schedule D																																		
	Less amounts owing as detailed in schedule D																																		
	Total assets																																		
Total Estimated Realisable Values																																			
2.3	Less payable in advance of secured creditor(s)																																		
	Amounts owing for employee entitlements as detailed in schedule E																																		
2.4	Less amounts owing and secured by debenture or circular security interest over assets																																		

2.5	Less preferential claims ranking behind secured creditors as detailed in schedule F
2.6	Balances owing to partly secured creditors as detailed in schedule G
	Total claims (\$)
	Security Held (\$)
2.7	Creditors (unsecured) as detailed in schedule H
	Amount claimed (\$)
2.8	Contingent assets Estimated to produce as detailed in schedule I (\$)
2.9	Contingent liabilities Estimated to rank as detailed in schedule J (\$)
	<input type="checkbox"/> Estimated deficiency or <input type="checkbox"/> Estimated surplus
	<input type="checkbox"/> Subject to costs of administration or <input type="checkbox"/> Subject to costs of liquidation
	Share capital \$
	Issued \$
	Paid up \$

In all fundamental respects today's RATA form is the same as the Statement of Affairs was when the Uniform Companies Acts were passed in 1961. (For a copy see Annexure 4.)⁴ In fact, it appears that the form has remained almost the same since the 1890s.⁵

As did its predecessors, the current RATA form seeks to obtain details of a company's assets and liabilities and have them presented in a way that discloses:

- the cost or book value and estimated realisable value (assets) or the amount owing (liabilities);
- which assets are subject to specific or fixed charges as security for debts;
- which assets are not subject to specific or fixed charges;
- whether a floating charge over assets has been given and, if so, the amount owing under the floating charge;⁶
- the amount of any surplus that is expected to flow from realisation of assets that are subject to specific or fixed charges;
- the amount of any liability that is expected to arise due to a deficiency on realisation of assets that are subject to specific or fixed charges;
- whether there exists any unsecured liabilities that rank by law in priority to floating charge liabilities or in priority to other unsecured liabilities;
- whether there are any contingent assets or liabilities; and
- the "bottom line", that is, the estimated shortage/deficiency (or surplus) of funds resulting when liabilities are deducted from the amount that assets are estimated to produce.

Traditionally, one important aim of the RATA or Statement of Affairs has been to show the estimated amount available to meet the claims of unsecured creditors. But this feature has now disappeared from ASIC Form 507.⁷

There is no official guide to what the terms used in the RATA mean or how it should be completed.⁸ The onus of providing instructions to directors is placed by the Court on the liquidator.⁹ There are no official directions or principles as to what constitutes adequate instructions.¹⁰

Role and importance of the RATA

Liquidators were asked to indicate how much they agreed or disagreed with several statements relating to the role, importance and standing of the RATA /statement of assets and liabilities in an official liquidation.

The greatest degree of approval was given for one statement which played down the importance of directors correctly categorizing and portraying assets and liabilities, but affirmed the need for a RATA that contained full particulars of assets, liabilities and securities:

Statement: *“It does not matter that the assets and liabilities appearing in a RATA that I receive are correctly categorized and portrayed. What matters is that the RATA contains full particulars of the company’s assets, liabilities and securities, including locations, relevant dates, names and addresses.”*

Eighty-nine per cent of respondents said they agreed with this statement. Nine per cent said they neither agree or disagreed, while only 2 per cent said they disagreed.

	Per cent
Strongly agree	21.9
Agree	66.7
Neither agree nor disagree	9.5
Disagree	1.9
Strongly disagree	0.0

Other statements in a similar vein – stressing the importance of the RATA - received high levels of support. All other statements considered and responses given can be seen below (Figure 2):

Figure 2			
Statement	Agree	Neither agree nor disagree	Disagree
<i>"Failure to submit a RATA results in a liquidator expending additional time and expense in identifying the company's assets and liabilities."</i>	81.9%	14.3%	3.8%
<i>"When lodged with the ASIC the RATA should give creditors and the public visibility as to the position of the company at the date of winding up."</i>	75.2%	17.1%	7.7%
<i>"The lack of a properly prepared RATA from directors is a serious impediment to the efficient and satisfactory fulfilment of the official liquidator's function."</i>	71.4%	18.1%	10.5%
<i>"A RATA is required to ensure a proper preliminary examination of the affairs of the company."</i>	66.7%	22.9%	10.4%
<i>"A RATA is required in order that the liquidator may identify, collect, secure and protect the assets of the company."</i>	60.0%	24.8%	15.2%
<i>"A RATA is the most important information required by a liquidator to commence winding up the company's financial affairs."</i>	44.8%	37.1%	18.1%
Note: The "agree" responses shown here are an amalgamation of the "strongly agree" and "agree" responses. Similarly, the "disagree" responses are amalgamations of "disagree" and "strongly disagree". For a breakdown into all five grades of response, see Annexure 1, Table 3.			

Quality of RATAs received

Liquidators were asked to consider several statements to do with the inclusion, appropriate valuation and proper classification of assets and liabilities. The resultant data shows that liquidators rate the typical RATA that they receive as significantly defective.

The questions/statements put to liquidators referred only to those RATAs that had been completed by directors without any participation by the liquidator or his or her staff.¹¹

The highest rating in each outcome category could be given by a response of "always". From that level the rating fell, first to "often" then to "sometimes" then to "rarely" and then to "never". As will be seen below, the mid to low ratings of "sometimes" and "rarely" predominated.

On the broad question of whether the RATAs received were of a reasonable and acceptable standard, 59 per cent of respondents said "sometimes" and 33 per cent said "rarely". On another broad question of whether the RATAs provided all the

required information about assets and liabilities, 56 per cent said “rarely” and 26 per cent said “sometimes”.

It is also worth noting that the adverse rating of “rarely” was at its highest in questions about “proper classification”. Sixty-three per cent said the classification of liabilities was rarely correct, and 58 per cent said the classification of assets was rarely correct.

The statements (in the order in which they were put) and the results are shown in Figure 3:

Figure 3					
Statement	Always	Often	Sometimes	Rarely	Never
<i>“All assets that should be in the RATA are included.”</i>	1.9	25.7	52.4	20.0	0.0
<i>“All liabilities that should be in the RATA are included.”</i>	1.9	7.6	50.5	39.0	1.0
<i>“The classification of assets (1) is correct.”</i>	0.0	4.8	29.5	58.1	7.6
<i>“The classification of liabilities (2) is correct.”</i>	0.0	3.8	28.6	62.9	4.7
<i>“Assets are included in the RATA at appropriate values.”</i>	0.0	3.8	53.4	39.0	3.8
<i>“Liabilities are included in the RATA at appropriate values.”</i>	0.0	20.0	55.2	22.9	1.9
<i>“All the information required about assets and liabilities (3) is provided.”</i>	0.0	8.6	25.7	56.2	9.5
<i>“The RATA that is received is of a reasonable and acceptable standard.”</i>	0.0	6.7	59.0	33.3	1.0
Note: The following explanatory text was included in the relevant remark: (1) “e.g., assets not specifically charged, assets subject to specific charges, contingent”. (2) “e.g., preferential, secured, partly secured, ordinary unsecured, contingent”. (3) “e.g., location, names and addresses of debtors and creditors”.					

Explain, modify or switch?

Prior to conducting this survey, my own experience and discussions in insolvency circles suggested that RATAs prepared by directors were often materially defective, and that one reason for this was that the form being used was hard to understand. It was occasionally suggested that a better outcome would be achieved if the RATA was converted into a questionnaire.

Therefore the following questions were raised in the survey: is there something wrong with the RATA; would a questionnaire be better?

Replacement by a questionnaire?

When asked: *“Would you like to see the RATA changed from its present layout (i.e., as a financial statement) to that of a set of questions seeking information about the*

company's assets and liabilities?”, most liquidators (60 per cent) said “yes”. Of the others, 22 per cent said “no” and 18 per cent said they were undecided.

Several respondents (21) offered reasons for their views. Their comments have been reproduced in Annexure 1 at Table 4.

Most of those in favour of switching to a questionnaire regarded the existing RATA as difficult to complete. But one cautioned against a one-size-fits-all design approach which would see directors of small companies being asked questions relevant only in the case of large companies. On the other side, opponents considered that a questionnaire would be too cumbersome, or that existing questionnaires, designed and issued by liquidators, were adequate. Some who favour a questionnaire praised the one designed by the Insolvency Trustee Service Australia (ITSA) for use in personal bankruptcy.

In the personal bankruptcy regime – which is governed by the Bankruptcy Act 1966 and administered by the ITSA – the equivalent form, a Statement of Affairs (“SOA”) under section 54, was changed from a financial statement to a questionnaire over ten years ago.¹²

Improvements and changes to the RATA

When asked: *“What suggestions for improvements or changes to the RATA would you like to make (if any)?”*, 57 of the 105 liquidators (54 per cent) made suggestions and/or criticised the form. Their comments have been reproduced in Annexure 1 at Table 5.

The most common criticism was that the form is difficult for directors to understand, because of its layout (illogical, confusing), its complexity, and the lack of explanations and guidance. A frequent complaint was that directors are expected to know unfamiliar rules about the priority of employee and creditor claims and the difference between types of secured creditors.

Given these criticisms, it is no surprise that the most common suggestion was that the form should be made easier to understand, or more user-friendly. The need for detailed instructions in plain language rates very highly. But other specific suggestions included “walking” the director through the process, giving examples for different categories of assets and liabilities, removing the categories of assets and liabilities; and making specific reference to leases and hire purchase agreements. In several instances sections 2.2 to 2.6 of the summary page (see Figure 1) have been singled out for criticism.¹³

Belief in the need for a questionnaire was evident in many suggestions. Some said that the RATA should incorporate questions about asset disposals, payments to creditors, signs of insolvency, other persons involved in management, what records were kept, the location of records, personal guarantees, fixed and floating charges, and real property mortgages.

Other suggestions were that the RATA:

- require additional details of assets;
- require attachment of the most recent balance sheet;
- be made investigative in nature;
- be made more similar to a balance sheet;
- provide separate schedules for wages, leave entitlements and superannuation owing; and
- allow room for comments.

What happens to defective RATAs?

When a RATA is submitted to an official liquidator under section 475 of the Corporations Act 2001 the liquidator must file a copy of it with the Court and lodge a copy with the ASIC.¹⁴ In other forms of external administration lodging RATAs with the ASIC is also obligatory.¹⁵ In this way the information in the RATA become a matter of public record. The main idea behind this procedure is to give creditors, other interested parties and the public visibility as to the position of the company at the date of winding up.¹⁶ For a fee anyone may obtain a copy of a RATA from an ASIC information broker.

But what happens if the RATA submitted to the liquidator is defective? Does such a RATA go on the public record as a statement as to the position of the company at the date of winding up?¹⁷

What constitutes a defective RATA is, of course, a matter of opinion. In the survey I described a defective RATA as one which is “only partially completed or is otherwise not completed to an acceptable standard”. I asked liquidators:

“When a director submits a RATA to you under section 475 but the RATA is defective – i.e., only partially completed or is otherwise not completed to an acceptable standard – what do you do? (Select all that apply.)”

The options that I thought might be chosen, and the results of the survey, are shown in the table below (Figure 4).

Figure 4	
What do you do with a defective RATA?	Per cent
“Lodge a copy of the defective RATA with ASIC.”	61.9%
“Return the RATA to the director for rectification”	57.1%
“Offer assistance to the director to prepare the RATA to an acceptable standard.”	53.3%
“Make a report about the defective RATA to ASIC (section 533).”	23.8%
“Lodge a complaint about the defective RATA with ASIC (Liquidator Assistance Program).”	21.9%
“Other (Please describe).”	3.8%

As can be seen, the survey found that 62 per cent of liquidators lodge copies of defective RATAs with the ASIC.

On one view it is surprising that this figure is not 100 per cent, since the law does not appear to allow liquidators any choice in the matter.¹⁸ Also, liquidators would be eager to avoid the late lodgement penalty that is imposed automatically if a copy of the RATA is not lodged as stipulated.

Perhaps some liquidators consider that a RATA that is “only partially completed or is otherwise not completed to an acceptable standard” does not qualify as a RATA at all and, that being so, there is no obligation to lodge it.¹⁹

In the bankruptcy regime the Official Receiver has advised that he or she may refuse to accept a Statement of Affairs for filing if it is, inter alia, “incomplete”. The meaning of “incomplete” is described as: “If the debtor has not reasonably attempted to answer all the questions on the statement of affairs The Official Receiver will assess whether the unanswered question/s is critical to an understanding of the debtor's affairs and whether the information provided is sufficient, for example: An indication that the debtor owns assets without details of the location or estimated value would not constitute a reasonable attempt, and/or An indication by the debtor that they have creditors other than the petitioning creditor without identifying them would not constitute a reasonable attempt.”²⁰

There is at least one reported case – concerning the banning of a director – in which the ASIC has expressed a view about when a RATA fails to be of an acceptable standard. The ASIC spoke then of the absence of “full disclosure”.²¹ But it is doubtful that it would apply that view generally to issues arising under section 475.

The ASIC has the power to refuse to receive a document and request an amended, fresh or supplementary document where the document has, for example, not been duly completed because of an omission or misdescription. But without amendment this law is unlikely to be of any use in the case of an incomplete or defective RATA because it is aimed at the person attempting to lodge the document, who would be the liquidator, and not the author of the RATA, which is the director.²²

Compliance issues - Background

The requirement that directors make out and submit a RATA gives rise to several compliance issues which are central to the proper functioning of the Court-ordered liquidation system.

It has long been an offence for directors to refuse or fail to make out, verify and submit a RATA to the official liquidator.²³ The frequent breach of this law (and of other laws requiring directors to assist liquidators) led in 2002 to establishment by the ASIC of a specially funded Liquidator Assistance Program (LAP) to assist liquidators and the ASIC enforce these laws.²⁴

If a director breaches section 475 and the official liquidator lodges a complaint with the ASIC under the LAP, the ASIC will send the director a warning letter²⁵. If the director still fails to submit a RATA, the ASIC will initiate a summary prosecution, bringing the matter before a Local or Magistrates Court, where a conviction may be recorded and a fine imposed. Referring to this process the ASIC said in its submission to the 2010 Senate Inquiry²⁶ that “since July 2006 ASIC has prosecuted 1,955 officers in respect of 2,317 contraventions”.²⁷

The ASIC advised the Senate Inquiry that complaints of failure to provide a RATA or books and records to an external administrator ranked at the top of its list of the most common of all complaint issues raised during 2008-09.²⁸

Besides making a complaint to the ASIC under the LAP, liquidators and other external administrators must report all apparent offences by directors – including failing to prepare a RATA – to the ASIC.²⁹ Statistics published by the ASIC show that in the three years from July 2008 to June 2011 external administrators reported 3,033 alleged cases of “post-appointment criminal conduct” by directors failing to prepare a RATA.³⁰

It seemed appropriate to include questions in the survey concerning attitudes to the performance of the ASIC in pursuing directors for RATAs and concerning the amount of the fines that are imposed for breaches of section 475. It also seemed opportune to inquire into practices regarding the reporting of section 475 offences.

Reporting alleged offences

Liquidators were asked how they reported alleged offences under sections 475(1) or (2) to the ASIC. The precise question was:

“When a director fails to submit a RATA to you as required by section 475(1) or (2), HOW do you report the alleged offence to the ASIC?”

Three well-known methods were shown. More than one method could be selected. The responses are shown below (Figure 5):

Figure 5	
Ways Section 475 Offences are Reported	Per cent
“By lodging a complaint with ASIC (e.g., under its Liquidator Assistance Program).”	91.4%
“By making a report under section 533(1) (e.g. Regulatory Guide 16, Schedule B, Form EX01).”	60.0%
“By making a report under section 533(2) (e.g. Regulatory Guide 16, Schedule C).”	12.4%
“Other (Please describe).”	0%

It is interesting to note that 8.6 per cent of liquidators said they do not lodge a complaint with the ASIC under the LAP. This is odd, because not only does the

ASIC advocate use of the LAP,³¹ but that process appears to be the only way in which compliance and prosecution action concerning a RATA can be initiated.

Just as interesting is the fact that only 60 per cent of liquidators said that they reported the breach of section 475 to the ASIC in their initial section 533 report. This suggests that the ASIC's statistics on the number of alleged breaches of laws requiring preparation of a RATA may be significantly understated.³²

Getting a RATA after reporting an alleged offence

In an attempt to gauge how successful the LAP procedure is, liquidators were asked:

"At some stage after reporting a breach of section 475 to ASIC, do you receive a RATA?"

Five per cent of the liquidators chose the highest rating of "always". Thirty-seven per cent said "usually". However, 55 per cent said "sometimes", and 3 per cent said "never".

These ratings may be compared with figures published by the ASIC on its LAP activities. It has reported that in 2010/11 there were 406 "compliance outcomes" from 1,386 requests for assistance to obtain a RATA or delivery of books and records. "Compliance outcomes" are said to "generally involve activities (including court proceedings) that result in voluntary compliance by directors in submitting Reports as to Affairs and/or producing books and records to the RLs." Out of the 1,386 requests for assistance there were also 575 charges issued and 425 "successful individual prosecutions (761 offences)".³³ Unfortunately figures on the number of RATAs obtained are not given.

ASIC convictions and penalties imposed

Of the liquidators surveyed, 53 per cent (i.e., 56 liquidators) said they knew of at least one occasion when the ASIC had obtained a section 475 conviction against a director of a company to which they had been appointed.

The question put to liquidators was:

"In respect of any of the companies to which you have been appointed official liquidator, has ASIC obtained a conviction against a director for a breach of section 475?"

As mentioned 53 per cent replied in the affirmative. Of the remaining 47 per cent, 31 per cent said "No" and 15 per cent said "Don't know/can't say".

Under the Corporations Act the maximum penalty for an offence under section 475 is currently 25 penalty units (total \$2,750) or imprisonment for 6 months, or both.³⁴

The government recently proposed that the maximum penalty be doubled to bring it in line with the maximum prescribed under bankruptcy law.³⁵ Research carried out by me, independently of this study, shows that the average amount of fine imposed by magistrates for a section 475 offence prosecuted by the ASIC over the 5 calendar years 2006 to 2010 was \$875.³⁶

The 56 liquidators who were aware that a conviction had been obtained against a director of a company over which they had been appointed were asked to rate the penalty imposed by the court as either “very light”, “light”, “fitting/appropriate”, “heavy”, or “very heavy”. If they were unable to give an opinion because they didn’t know what penalty had been imposed, they could choose the further option of “don’t know: not informed of the penalty imposed”. (Some respondents changed this answer to “don’t know: can’t recall”.)

Forty-five of these 56 liquidators (i.e., 80.4 per cent of them) rated the penalty imposed as either “very light” or “light”. The results are depicted below in Figure 6:

Figure 6	
Question:	<i>“... how would you rate the penalty that was imposed by the court? (If you have had this experience more than once, rate the penalties generally.)”</i>
Responses:	
41.1%	Light
39.3%	Very light
8.9%	Don't know ...
7.1%	Fitting/appropriate
1.8%	Heavy
1.8%	Very heavy

In the section of the survey dealing with the role and importance of the RATA (discussed on pages 4 and 5 of this paper) liquidators were asked how much they agreed or disagreed with the following statement:

“Failure to submit a RATA without reasonable excuse should be treated as a contempt of court”.

Seventy-four per cent of the 105 respondents said they agreed with this statement. Nineteen per cent said they neither agree or disagreed, while 7 per cent said they disagreed.

Satisfaction with process

Liquidators were asked about their level of satisfaction with the process that follows after they report to ASIC that a director has breached section 475. They were asked to choose either “very satisfied”, “satisfied”, “neither satisfied nor dissatisfied”, “dissatisfied”, or “very dissatisfied”.

The majority (39 per cent) said they were “neither satisfied nor dissatisfied”, while slightly less (37 per cent) said they were “satisfied”. The results are depicted below in Figure 7.

Figure 7	
Question:	<i>"After reporting a breach of section 475, which one of the following best describes your usual level of satisfaction with the process that follows?"</i>
Responses:	
39.0%	Neither satisfied nor dissatisfied
37.1%	Satisfied
20.0%	Dissatisfied
2.9%	Very dissatisfied
1.0%	Very satisfied

Proposed changes to enforcement process

Late in 2011 the government proposed changes to the way in which the requirement to submit a RATA is enforced.³⁷ If adopted the new regime would see the ASIC "empowered to issue information gathering notices requiring the former directors or officers to complete the RATA within a stipulated timeframe". Failure by a director to comply with such a notice would, or could, result in a "notice of suspension" being issued and placed on a public record.³⁸ Such a suspension – which "(is) not full disqualification" – would ban the director from managing any company for a period. The duration of the ban would depend on several factors such as the period of non-compliance and the time it takes for the external administration to be completed.³⁹

Conclusion

A number of recommendations and additional observations can be made with respect to this survey of liquidators.

(a) Discontent with RATA form

Clearly our corporate doctors believe that the RATA needs urgent treatment. The survey has shown that there is considerable dissatisfaction with the inadequate information that they receive in many RATAs. There is a tendency to blame the form for this, and also to blame the form for the fact that many directors fail to prepare a RATA. There is also a strong desire to have the form made more user-friendly or to have it replaced by a questionnaire. Many liquidators feel that the requirement that directors classify assets and liabilities according to insolvency rules regarding priorities is not necessary and is a frequent cause of problems in getting a properly prepared RATA.

(b) To be or not to be a questionnaire

In this country the statement of affairs required in personal bankruptcy has been changed from a financial statement to a questionnaire.⁴⁰ In view of the vote for change expressed by many liquidators, and in the context of a broader desire for harmonisation of personal and corporate insolvency regulation, a move to a questionnaire-style RATA ought to be seriously considered. However, an inquiry into the pros and cons should look first into:

- whether the change of style that occurred in personal bankruptcy has, alone, led to a measurable improvement in the standard of information received and in greater compliance with the requirement to prepare a statement of affairs;
- whether bankruptcy trustees have found that, because of the change, they can administer the affairs of bankrupts more efficiently and effectively;
- whether bankrupts have appreciated the change; and
- whether creditors have appreciated the change.

In New Zealand the company statement of affairs is in the style of a questionnaire – see Annexure 7 for a copy of this form. But in England⁴¹ – and many other places – including Scotland,⁴² Ireland,⁴³ Hong Kong,⁴⁴ and India⁴⁵ – a form in the traditional style of a financial statement, very similar to our RATA, is used. An inquiry into whether Australia should move to a questionnaire-style RATA should take into account the thoughts and experiences of liquidators and regulators in New Zealand and in the countries that have not changed.

Input from company directors, especially those in small enterprises, should also be sought. A common criticism of the present RATA is that it is too complicated for the average company director to understand. If that is a valid point, then a central issue will be whether directors find it easier to prepare a RATA in questionnaire style than one in financial statement style.

(c) An improved form

Obviously it is desirable that the RATA form be user-friendly, whatever style it comes in.⁴⁶ But as the RATA is a multi-user form – for directors, liquidators, secured creditors, preferential creditors and general creditors – consideration must be given to the needs of all users.

There is a tendency to aim for a very simple form that almost anyone could complete. However, such a move may be counterproductive. The financial position of a company can be complex. Arguably it is better for liquidators, creditors and the public that directors be required to provide comprehensive information.

The present RATA form could be improved by making its course and objectives clear once again. In recent years petty or perhaps accidental changes made to the summary page – altering borders, columns and rows, and removing sub-total areas – have made the form more difficult to fathom. (For an example of what I mean by making its course and objectives clear, see “Overview of Report as to Affairs” at Annexure 6.) Reinstating borders, columns, rows, and sub-totals would not be a cure, but would be a simple, partial remedy.

(d) Greater official guidance, education and help

The standard of the average RATA submitted to external administrators would almost certainly improve if company directors were given a helping hand.

The ASIC ought to issue a detailed guide or information sheet about the RATA. This guide should be available free online from the ASIC website, and a copy should be sent to directors whenever a RATA is required. A telephone help service, provided

by the ASIC, should also be available. Such services are provided by other government regulatory agencies, the model probably being the Australian Taxation Office.

The ASIC says that it “regard(s) failure to provide a RATA or to disclose and deliver up books and records as a serious breach of the Act.”⁴⁷ But even though it rates the duty to prepare a RATA as important, the ASIC does not appear to do anything to help directors fulfil that duty as soon as it arises. On its website at present the ASIC has approximately 220 Regulatory Guides (RG) and 150 Information Sheets (INFO), for the purpose, inter alia, of “explaining how ASIC interprets the law”, “giving practical guidance” and “provid(ing) concise guidance on a specific process or compliance issue”.⁴⁸ Yet none of these guides or information sheets provides information about how to prepare a RATA.⁴⁹ It is surprising, to put it mildly, that a form like the present RATA – one which is unusual, complex and important – does not at least have an official guide to what its terms mean and how it should be completed.

(e) Enforcement

The proposed amendment to double the maximum penalty for failure to submit a RATA⁵⁰ would be supported by most liquidators, and may lead to improved compliance rates if the doubling is reproduced in the actual fines imposed by magistrates. But greater follow-up action by the ASIC after it accomplishes an initial prosecution success seems to be required.

If enacted the proposal to empower the ASIC to issue information gathering notices requiring directors to submit a RATA and suspend their right to manage companies if they fail to do so,⁵¹ should improve compliance with the duty to submit the form. But as long as there is no rule as to what constitutes a valid RATA, these measures – and those designed to increase fines – are not likely to remedy the principal complaint.

(e) Consultation with relevant parties

This survey of liquidators has brought to light substantial criticisms and concerns about the RATA and a desire for change. It coincides with moves towards harmonisation of personal and corporate insolvency regulation, and with the start of the Personal Property Securities Act, which makes significant changes to priority rules for secured parties as well as introducing a new vocabulary. All this suggests that it's time the RATA form was revisited and overhauled.

The ASIC should make the RATA the subject of an inquiry through a Consultative Paper, in the way it did in 2009/2010 in relation to insolvent trading.⁵² The ultimate aims of the consultation would be to produce a new or redesigned form, a Regulatory Guide to the form, and an information sheet for directors. The inquiry should consider, for example, what constitutes an acceptable standard for a RATA – i.e., when does a professed RATA qualify as a valid RATA – and how the receipt of a RATA that fails to meet that standard should be handled.

ENDNOTES

¹ A Report as to Affairs (ASIC Form 507) is required under sections 421A(1), 429(2)(b), 475(1), and 497(5) of the Corporations Act 2001. The Form 507 may also be used in relation to Sections 438B, 446C, 475(2) and 496(4).

² On 23 December 2004 regulations came into effect removing some insolvency forms – including the Report as to Affairs (Form 507) – from the list of forms prescribed by Corporations Regulations 2001. See Corporations Amendment Regulations 2004 (No.9). From then on the RATA ceased being a statutory form and became instead an ASIC Approved Form. In announcing this change the ASIC said: “The point of this change is so that ASIC can begin improving the forms over time to make them more user-friendly and facilitate their electronic lodgement, and to enable information to be collected more effectively. It would be difficult for ASIC to make these improvements if the forms continued to be prescribed under the regulations.”. See ASIC Information Sheet, “Insolvency forms removed from regulations: impact on external administrators”, 17 December 2004.

³ In its March 2010 submission to the Senate Economics References Committee (Inquiry into the Conduct of Insolvency Practitioners and ASIC’s Involvement) the ASIC advised that there were 662 registered liquidators – see page 4 of Submission 69.
http://www.apf.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=economics_ctte/liquidators_09/submissions.htm. In September 2011 I found that there were 523 official liquidators on the ASIC’s database.

⁴ Companies Act Regulations, Form 56. See, for example, Victoria Gazette, number 64, 22 June 1962, page 2181. The form was then called a Statement of Affairs. The name change occurred in 1981 (Companies and Securities Legislation (Miscellaneous Amendments) Act 1981).

⁵ Long before the Uniform Companies Acts of 1961, officers of companies entering liquidation had to supply the liquidator with a Statement of Affairs. It appears that laws requiring this were introduced in all States (then colonies) in the 1890s – see “The Law of Company Liquidation” by B H McPherson, first edition, 1968, pages 21 to 23, or third edition, 1987, pages 20 to 22. For an example of such legislation see section 131 of the Companies Act 1896 (Victoria), available at http://www.austlii.edu.au/au/legis/vic/hist_act/ca1896107/. The earliest illustration of a company Statement of Affairs that I have been able to trace is in “Advanced Accounting – Volume 1”, by Yorston, Smyth and Brown, Law Book Company, 1949, page 194. Although the layout in the 1949 Statement of Affairs is different than today’s RATA (with a “Deficiency Account” required as well), its concepts, its use of schedules and many of its phrases are very similar to the modern version. It is also worth noting, that the 1949 Statement of Affairs for a company follows closely the kind of Statement of Affairs that was being used twenty years earlier in bankruptcy law: see “Australian Bankruptcy Law and Practice”, by McDonald, Henry and Meek, Law Book Company, 1928, pages 544 to 551. So if the Statement of Affairs for bankrupts remained the same between 1890s and 1928, the Statement of Affairs for companies entering liquidation probably did too.

⁶ The phrase “floating charge” is becoming obsolete. Since the Personal Property Security Act 2009 commenced on 1 February 2012, the Corporations Act 2001 refers to a floating charge as a “circulating security interest”, or a security interest in a circulating asset. See, for example, sections 51C, 433 and 561 of the Corporations Act 2001. In the current on-line version of the ASIC’s RATA Form 507, dated 30/1/2012, (replacing the previous version dated 17/1/2011) the phrase “floating charge” has been replaced by “circular security interest”, the phrase “specific charges” has been replaced by “specific security interests”, and the word “charge” has been replaced by “security interest”.

⁷ This feature has also gone from the “Presentation of Summary of Affairs”, ASIC Form 509.

⁸ A so-called “Guide: Report as to affairs” is issued by the ASIC as part of Form 507. However, although it claims that it will “assist you in completing and lodging the Form 507”, it only refers to the lodgement period, late fees, and the manner in which additional information should be attached. (See Annexure 5 to this paper). At the beginning of the Form 507 there is a small section headed “Directions”; but it only refers to dates, verification and lodgement.

⁹ Under Court rules liquidators must give the person required under section 475 to submit a RATA “instructions for the preparation of the report”. See, for example, Federal Court (Corporations) Rules 2000, Div 7, rule 7.3(1).

¹⁰ The instructions given to directors vary from liquidator to liquidator. Those who subscribe to the precedent letters, forms and checklists available from specialist publishers – such as CORE Australia, MYOB Insolvency and CCH’s *Australian Insolvency Management Practice* – would probably use the RATA instructions form released by the publisher, or perhaps an edited version of that form. Others would, of course, use forms devised in-house. In the current edition of CCH’s *Australian Insolvency Management Practice* the RATA instructions have approximately 310 words. The RATA instructions document published by CORE Australia has approximately 720 words (or at least it did when I had access in 2007). In its February 2012 submission to the Treasury, insolvency practitioners PPB Advisory (NSW) said that “our instructions precedent is presently 9 pages long” (see http://www.treasury.gov.au/documents/2333/PDF/PPB_Advisory.pdf).

¹¹ Sometimes liquidators choose to become closely connected with the preparation of a RATA by directors. However, whether that practice is good policy – for the liquidator or for the director – is questionable. Furthermore, in *Re Reiter Brothers Exploratory Drilling Pty Ltd* (1994) 12 ACLC 430, Zeelman J said (in refusing to approve remuneration) that: “It was not part of the provisional liquidator’s functions or duties to prepare the report. The Law, s 475(1) imposed the duty of making out and verifying the statement of affairs upon the directors. In the present case, whilst the applicant referred to assisting the directors, in fact the reports were prepared by him. It is completely inappropriate for a liquidator or provisional liquidator to be involved in preparing the report. It is a report to him. In the case of a winding up he is to prepare a report under s 476 after receiving the directors’ statement and it may be assumed that he is to have regard to it. The inappropriateness of a liquidator or provisional liquidator preparing the report is recognised by s 475(8) which permits him to allow some amount to be paid out of the property of the Company in relation to costs incurred by a director in preparing the report.”

¹² The process of change to the bankruptcy SOA began in 1987 when the law was amended to give the Inspector-General in Bankruptcy the authority to revise and simplify the SOA with the intention of developing a SOA which would “give the trustee a reasonable initial overview of the debtor’s affairs, whilst being reasonably free from legal terms”: see Bankruptcy Amendment Bill 1987 – Explanatory Memorandum – pages 43, 44, 57 & 58. It was approaching a questionnaire style in 1997, as can be seen in Commonwealth Government Gazette GN 25, 25/6/1997, page 1610. It still had a Summary of Assets and Liabilities near the front, cross referenced to several schedules (similar to those that still appear in the company RATA), but they were followed by parts in which questions were asked about income, business activities, interests in companies, etc. The SOA seems to have completed its transformation to a questionnaire by about 1999. The current version does not contain a financial statement. The ITSA designed SOA in bankruptcy (Form 3) is often updated, and the latest change (version 7) was made in December 2010.

¹³ Personally, I consider it remarkable that the form does not request any details – other than the amount owing – in relation to the holders of floating charges (now called “circular security interests”), who are frequently present in corporations as predominant creditors.

¹⁴ Section 475(7) of the Corporations Act.

¹⁵ Managing Controllers and Controllers have obligations under sections 421A(2) and 429(2)(c) respectively. In a creditors’ voluntary liquidation, the legal position is complicated. Since 2007 – as a result of “an unintended anomaly introduced by the 2007 insolvency reforms” (see Options Paper, “A modernization and harmonisation of the regulatory framework applying to insolvency practitioners in Australia”, June 2011, paragraph 709) – there has been no specific requirement to lodge a RATA with the ASIC in the case of a creditors’ voluntary liquidation. However, if current reform proposals become law, the specific requirement will be reinstated (see Proposals Paper, “A modernization and harmonisation of the regulatory framework applying to insolvency practitioners in Australia”, December 2011, paragraph 301). Even so, there is a view (to which I subscribe) that where a RATA is tabled at the meeting of creditors (as usually occurs), it becomes, if the general law of meetings is followed, part of the minutes of the proceedings, and would, therefore, be lodged with the ASIC when the minutes are lodged in compliance with Corporations Regulation 5.6.27(3). In a creditors’ voluntary liquidation

section 497(2)(c) requires lodgement of a Presentation of Summary of Affairs (ASIC Form 509), which is essentially the same as the RATA's summary page.

¹⁶ In *Re: Harris Scarfe Ltd (In Liq) (no 2)* (2007) SASC 211, DeBelle J said: "The purpose and intent of s 475 is to equip the liquidator and the creditors with knowledge of the affairs of the company and thereby to assist the orderly and efficient administration of the winding up. Shortly put, its object is to provide information for the purpose of the winding up: re *New Pars Consol Ltd* [1898] 1 QB 573 at 576." In this regard His Honour also spoke about section 476, which requires the official liquidator to lodge a report with the ASIC as to the capital of the company, the estimated assets and liabilities of the company, the causes of failure, and whether further inquiry is desirable into certain matters. This report also becomes a matter of public record. His Honour said: "Section 476 provides the means by which the information gained by the liquidator is made available to the public. Section 475 and 476 ... are steps of a procedural nature intended to elicit information as to the affairs of the company and to provide that information to creditors and contributories." In another case - which concerns personal bankruptcy rather than corporate liquidation but is relevant nevertheless - his Honour, Hill, J said: "The obligation to file a statement of affairs in a public register is intended to make information concerning the bankrupt's affairs available to creditors and, for that matter, members of the public. The former may inspect without payment of a fee, the latter only on payment of a fee. But it is in the interests of the public in the encouragement of morality in trading that the financial situation of a bankrupt debtor be open to inspection. Because, ordinarily, the administration of the estate and ultimate distribution of dividends from the estate, will be dependent upon the trustee having full details of the trade dealings and debts of a debtor, the statement is to be made available as well to the trustee in bankruptcy." See *Nilant v Macchia* (2000) 104 FCR 238 at 245, 178 ALR 371 at 377. This statement is quoted approvingly by Collier, J in *Wangman v The Official Receiver* [2006] FCA 202 (see paragraph 49).

¹⁷ In bankruptcy law the Official Receiver may refuse to accept a Statement of Affairs and return it to the bankrupt on the basis that the statement had not been satisfactorily or properly completed. Following the judgment of Collier, J, in *Wangman v The Official Receiver* [2006] FCA 202, the Inspector-General in Bankruptcy issued a Practice Statement (number 14) in which he says: "Due to the operation of section 6A(2) of the Act, and further supported by *Wangman v The Official Receiver*, the Official Receiver has a discretionary power to either accept or not to accept a Statement of Affairs form as being a valid statement of the debtor's affairs. Should a Trustee receive a completed or partially completed Statement of Affairs form from a bankrupt, that document (or an original copy of it) should be forwarded to the Official Receiver for consideration as to whether or not it has been properly completed. It is not appropriate for Trustees to make a determination as to whether or not such a document is properly completed and therefore acceptable to the Official Receiver." See Inspector-General Practice Statement 14, Referring offences against the Bankruptcy Act 1966 to the Inspector-General, 2 February 2010. In the Official Receiver's Practice Statement 10 - Filing Of A Statement Of Affairs and Issue Of 77CA Notices by The Official Receiver - issued 1 December 2010, the word "incomplete" is used to describe a Statement of Affairs that may not be accepted.

¹⁸ Section 475(7) states: "The liquidator must, within 7 days after receiving a report under subsection (1) or (2), cause a copy of the report to be filed with the Court and a copy to be lodged".

¹⁹ In bankruptcy there is case law which states: "the defects in the 1998 Statement of Affairs were so significant that it could not be said that the document was a statement of affairs at all"; "very little of the document was genuinely attempted by the appellant (bankrupt)"; and "the 1998 Statement of Affairs was clearly defective because of: (a) the quantity of information which had either not been included or not appropriately address by the appellant (bankrupt)" - see *Wangman v The Official Receiver* [2006] FCA 202. His Honour, Collier, J supported the view of Federal Magistrate Jarrett, FM, that because the Statement of Affairs submitted was so defective as to not be a statement of the bankrupt's affairs, ITSA was under no obligation to accept it". These statements and findings may mean little in the liquidation arena. But they do suggest that for a report "as to the affairs of the company" - the phrase used in sections 475(1) and (2) to qualify as such, the report needs to fulfil some standard.

²⁰ Official Receiver's Practice Statement 10 - Filing Of A Statement Of Affairs and Issue Of 77CA Notices by The Official Receiver - Issued 1 December 2010.

²¹ These comments were made in a case concerning a decision by the ASIC to ban a director. One of the ASIC's many reasons for the ban was "failure to give full disclosure in a report as to affairs". The RATA did not disclose any assets (including debtors) or creditors of the company, although the director

knew there were assets and liabilities. The ASIC was of the view that "failure by the Applicant (director) to submit a RATA that fully disclosed the company's liabilities showed a reckless disregard of his obligations under the legislation and a reckless disregard for the interests of creditors." The ASIC "maintained that the attitude taken by the Applicant, he relying on the accountant as saying "it was accurate" that "being good enough for me" indicates want of a proper appreciation of directorial responsibility." The case came before the Administrative Appeals Tribunal in 2000. In concurring with the ASIC the Tribunal found that: "The RATA declared by the Applicant to be true to the best of his knowledge and belief was patently untrue and not consistent with the accounting records then maintained by the company. No qualification was made to the information contained in the RATA nor was mention made of this situation in the answers to the questionnaire, also certified by the Applicant. There is an obligation resting upon a person such as the Applicant to provide information to a Liquidator such as to enable the Liquidator to more properly conduct the affairs of the liquidation. The Applicant in this case clearly adopted a position of not personally examining records or, indeed, the document that he signed. A statement that there are "nil" sundry debtors and "?" creditors, clearly is at odds with appropriate responsibility." See Administrative Appeals Tribunal, James Warren Byrnes and Australian Securities & Investments Commission [2000] AATA 333 before Hon Mr R N J Purvis, QC, and Ms J A Shead. Decision 28 April 2000.

²² Section 1274(8) of the Corporations Act 2001.

²³ Section 475 of the Corporations Act 2001. Precursors: section 234 of the Uniform Companies Act 1981; section 131 of the Companies Act 1896 (Victoria).

²⁴ The ASIC had a group of staff carrying out liquidator assistance work before 2002, but it did not receive special funding until that year.

²⁵ The ASIC says that it issued 1,465 warning letters to company officers in 2008/09 under the LAP. (See the ASIC submission to the 2010 Senate Inquiry – submission number 69, March 2010, page 74, Table 16.) These figures appear to be the most recent that are publicly available.

²⁶ The Senate Economics References Committee Inquiry into the Conduct of Insolvency Practitioners and ASIC's Involvement.

²⁷ ASIC Submission number 69, March 2010, page 15, Table 1.

²⁸ ASIC Submission number 69, March 2010, page 57, Table 7. All published submissions are available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=economics_ctte/liquidators_09/submissions.htm

²⁹ Sections 533, 422 and 438D of the Corporations Act 2001 and ASIC Regulatory Guide 16, Section B.

³⁰ On its website the ASIC publishes annual reports titled "Insolvency Statistics – External administrators reports". The number of alleged breaches of RATA provisions in sections 429, 438B, 446C and 475 are given under the heading stream "Initial external administrators reports" > "Possible misconduct" > "Alleged criminal misconduct" > "Post-appointment criminal misconduct". See for example Report 263 of November 2011, page 26, table 21. URL is [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Rep263-published-22-November-2011.pdf/\\$file/Rep263-published-22-November-2011.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Rep263-published-22-November-2011.pdf/$file/Rep263-published-22-November-2011.pdf). In the two reports published – Report 225 (published 8/12/2010) and Report 263 – the number of reported instances shown in those reports total 3,033, comprising 1,240 in the year 2008/09, 948 in 2009/10 and 845 in 2010/11.

³¹ "As a liquidator or administrator you can ask us for help with RATA, s530A and s530B offences. We would prefer if you put in a complaint (separate from your S533 report) so we can deal with the matter quickly and efficiently." See <http://www.asic.gov.au/asic/asic.nsf/byheadline/Liquidator+assistance:+Books,+records+&+RATA+>. See also Table 1, page 15, of the ASIC's March 2010 submission to the 2010 Senate Inquiry.

³² Op cit note 30.

³³ These latest statistics on the ASIC's LAP activities appear in the October 2011 edition of "ASIC *Insolvency Update for Registered Liquidators*". See [http://www.asic.gov.au/asic/pdf/lib.nsf/LookupByFileName/ASIC-Insolvency-Update-October-2011.pdf/\\$file/ASIC-Insolvency-Update-October-2011.pdf](http://www.asic.gov.au/asic/pdf/lib.nsf/LookupByFileName/ASIC-Insolvency-Update-October-2011.pdf/$file/ASIC-Insolvency-Update-October-2011.pdf). Also, in its March 2010 submission to the 2010 Senate Inquiry into insolvency practices the ASIC said that under the LAP: "ASIC's initial response is a warning letter to directors, which achieves compliance in 55 per cent of cases." In earlier years the ASIC has spoken of receiving "compliance rates" under the LAP of 74 per cent and 67 per cent.

³⁴ Schedule 3 of the Corporations Act 2001. There have also been cases in which failure to submit a RATA to the liquidator has been a factor in the ASIC's decision to exercise its power under section 206F of the Corporations Act to disqualify or ban a person from acting as a director: see, for example, the case of Robert Doon, reported in ASIC Media Release 10-172AD of 12/8/2010, which can be found at <http://www.asic.gov.au/asic/asic.nsf/byheadline/10-172AD+ASIC+disqualifies+13+directors+of+failed+companies+from+managing+corporations?openDocument>.

³⁵ Paragraph 227 of The Treasury "*Proposals paper: A modernization and harmonisation of the regulatory framework applying to insolvency practitioners in Australia*", December 2011.

³⁶ In the five years the average fine under section 475 was \$1,099 (2006), \$1,001 (2007), \$818 (2008), \$640 (2009) and \$817 (2010). I obtained this data by conducting detailed analysis of periodic conviction reports published by the ASIC as media releases. My research paper is currently with the Australian Institute of Criminology undergoing a review process before its possible publication by that body.

³⁷ Paragraphs 227 to 236 of "*Proposals paper: A modernization and harmonisation of the regulatory framework applying to insolvency practitioners in Australia*", December 2011.

³⁸ The director would have the right to appeal to the AAT against the notice of suspension.

³⁹ The Government proposal seems to suggest that regardless of other factors the suspension period will expire "after three years of non-compliance".

⁴⁰ Op cit note 12.

⁴¹ Form 2.14B.

⁴² Form 2.13B (Scot).

⁴³ Form No.13.

⁴⁴ Form RC2.

⁴⁵ Form 57.

⁴⁶ The attributes of useable forms are described in a paper issued by the Australian National Audit Office in January 2006 – "User-Friendly Forms: Key Principles and Practices to Effectively Design and Communicate Australian Government Forms".

⁴⁷ ASIC Information Sheet 53 for directors – "*Providing assistance to external administrators: books, records and RATA*", dated November 2004. Available from <http://www.asic.gov.au/asic/asic.nsf/byheadline/Providing+assistance+to+external+administrators:+books,+records+and+RATA>.

⁴⁸ <http://www.asic.gov.au/asic/ASIC.NSF/byHeadline/New%20regulatory%20documents>.

⁴⁹ There are nine regulatory guides and eleven information sheets touching on other corporate insolvency matters.

⁵⁰ Op cit note 35.

⁵¹ Op cit note 37.

⁵² Consultation Paper 124, "Duty to prevent insolvent trading: Guide for directors", November 2009. From this process came Regulatory Guide 217 of the same name in July 2010.
[http://www.asic.gov.au/asic/pdf/lib.nsf/LookupByFileName/rg217-29July2010.pdf/\\$file/rg217-29July2010.pdf](http://www.asic.gov.au/asic/pdf/lib.nsf/LookupByFileName/rg217-29July2010.pdf/$file/rg217-29July2010.pdf).

Signed: Peter J Keenan

Date: 28 March 2012

AN APPRAISAL OF THE REPORT AS TO AFFAIRS

ANNEXURE 1

- A. METHODOLOGY FOR SURVEY (Tables 1 & 2)**

- B. EXPANDED STATISTICAL ANALYSIS OF RESPONSES REGARDING ROLE OF RATA (Table 3)**

- C. VERBATIM COMMENTS, CRITICISMS AND SUGGESTIONS BY OFFICIAL LIQUIDATORS CONCERNING THE REPORT AS TO AFFAIRS (Tables 4 & 5)**

By Peter J Keenan CA.
March 2012

A. Methodology for Survey

A list of the names and addresses of all official liquidators was, on the advice of the ASIC, extracted from the ASIC database by searching the public register of official liquidators. These searches were carried out on 23 September 2011. There were at that time a total of 523 official liquidators.

On advice from specialists about appropriate levels of accuracy, I determined to select 59% of these official liquidators to receive the survey form. The 309 liquidators that needed to be selected randomly were chosen using a software application known as “Random Generator for Excel” from Able Bits.

The state-by-state make up of those selected by using this method is shown in Table 1.

Table 1: Regions where official liquidators are located and the numbers selected randomly from each region for this research		
	Number of Official Liquidators	Number Selected
New South Wales	180	116
Victoria	128	74
Queensland	99	49
Western Australia	57	34
South Australia	40	24
Tasmania	6	5
Australian Capital Territory	8	4
Northern Territory	5	3
Total	523	309
Source: (Number of official liquidators) ASIC database at 23/9/2011		

A document package, comprising the survey form, a covering letter by me and a letter of endorsement by the IPA, was posted to all selectees between 20 November and 22 November 2011. The closing date for returns was set at 7 December, but returns were accepted up to 28 December 2011. I provided an email address, a fax number and a postal address for replies. Respondents names were set as confidential information unless they expressly authorized disclosure.

The survey form sent to official liquidators was designed by me.

A total of 105 completed survey forms were returned. (Three forms were returned by Australia Post as unclaimed mail.) The number of completed forms received are shown beside the official liquidator's principal place of practice in Table 2.

Table 2: Survey forms completed and the principal place of practice of participating official liquidators	
	Number
New South Wales	36
Victoria	29
Queensland	16
Western Australia	10

South Australia	11
Tasmania	3
Australian Capital Territory	0
Northern Territory	0
Total	105

Responses to questions were keyed into a special computer program. This program was used to analyze the data and produce relevant tables.

B. Expanded analysis: the role, importance and standing of the RATA in an official liquidation

An edited version of this information is included in the main part of the research paper at Figure 2.

Table 3: Responses by Official Liquidators to Subject 2					
“As a liquidator in a court-ordered winding up of an insolvent company, please indicate how much you agree or disagree with the following statements” (105 respondents)					
Statement Considered	Responses				
	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
“A RATA is the most important information required by a liquidator to commence winding-up the company financial affairs.”	11.4%	33.3%	37.2%	16.2%	1.9%
“It does not matter that the assets and liabilities appearing in a RATA that I receive are correctly categorized and portrayed. What matters is that the RATA contains full particulars of the company's assets, liabilities and securities, including locations, relevant dates, names and addresses.”	21.9%	66.7%	9.5%	1.9%	0.00%
“Failure to submit a RATA results in a liquidator expending additional time and expense in identifying the company's assets and liabilities.”	39.0%	42.9%	14.3%	3.8%	0.00%
“A RATA is required to ensure a proper preliminary examination of the affairs of the company.”	20.9%	45.7%	22.9%	10.5%	0.00%
“A RATA is required in order that the liquidator may identify, collect, secure and protect the assets of the company.”	16.2%	43.8%	24.8%	15.2%	0.00%
“When lodged with the ASIC the RATA should give creditors and the public visibility as to the position of the company at the date of winding up.”	19.1%	56.2%	17.1%	6.7%	0.9%
“The lack of a properly prepared RATA from directors is a serious impediment to the efficient and satisfactory fulfilment of the official liquidator's function.”	21.9%	49.5%	18.1%	9.5%	1.0%
“Failure to submit a RATA without reasonable excuse should be treated as a contempt of court.”	34.3%	40.0%	19.0%	5.7%	1.0%

C. Verbatim comments, criticisms and suggestions by official liquidators concerning the report as to affairs

C.1 Comments: Change RATA from a financial statement to a questionnaire?

Liquidators were asked: “Would you like to see the RATA changed from its present layout (i.e., as a financial statement) to that of a set of questions seeking information about the company’s assets and liabilities?” Twenty-one of the respondents chose to add comments to their replies. The answers and comments by those respondents are shown in Table 4.

Table 4: Responses by Official Liquidators to Subject 3		
“Would you like to see the RATA changed from its present layout (i.e., as a financial statement) to that of a set of questions seeking information about the company’s assets and liabilities?”		
Answer by Respondent		Comment by Respondent
1	No	“Most firms already use a standard questionnaire to cover this.”
2	Undecided	“The layout is poor and confusing, even for accountants, let alone directors . Questions about the company's assets and liabilities may improve the RATA.
3	Yes	“The questions need to be worded such that the true financial position of the company is covered. The risk is that the information required from a large company may not be relevant to a smaller company.”
4	Yes	“Larger detailed format required.”
5	Yes	“Copy ITSA.”
6	No	“An additional directors questionnaire already achieves this.”
7	No	“But simplified for use by directors who are not accountants.”
8	Yes	“Even a balance sheet, or questions designed to elicit such information.”
9	No	“The briefer the document the more likely it will be better presented and accurately completed. The liquidators generally have their own questions anyway, or they should.”
10	No	“However layout can be made more user-friendly with better explanations and referencing.”
11	Undecided	“It is possible and alternative format could assist -- often directors seem to find the layout a little daunting.”
12	Yes	“A combination of both would be preferred.”
13	Yes	“The RATA is very difficult to completed correctly, even when experienced, so it should be simplified to draw out the important information.”
14	Yes	“The current form is difficult for directors to understand. They would be more familiar with the financial statements and therefore better equipped to complete a RATA if it had the same format as financial statements.”
15	No	“I don't think the present format is easily understood by directors, but a questionnaire would be too cumbersome. A simpler financial format would be preferable.”
16	Yes	“A merging of the RATA and director questionnaire would be useful and more in line with the ITSA statement of affairs. The statement of affairs is far more useful in a bankruptcy than a RATA is in a liquidation, in my opinion.”
17	Undecided	“The RATA could do with a simplification or dumbing it down to a ‘101’ level.”
18	Yes	“Similar to what we do with the interview process.”
19	Undecided	“RATA and set of questions seeking information would assist.”
20	Yes	“In its current format most directors require professional assistance to understand and complete a RATA.”
21	Yes	“Needs updating of the format.”

C.2 Suggestions for improvements and changes to the RATA

Liquidators were asked: “What suggestions for improvement or changes to the RATA would you like to make (if any)?” Of the 105 respondents, 57 of them (54.9%) made suggestions. These suggestions are given in Table 5 .

Table 5: Responses by Official Liquidators to Subject 4	
“What suggestions for improvements or changes to the RATA would you like to make (if any)?”	
	Suggestions
1	“The layout should be prepared in conjunction with an insolvency practitioner”.
2	“Make the form more logical, less daunting (by walking the director through the process), clearer (e.g. specific spaces to complete where information required)”
3	“Requirement to attach a copy of the most recent balance sheet . Change layout to be more consistent with a balance sheet, for the overview, schedules (per existing RA TA) for assets and liabilities. Questions about cause of failure, and contingent assets and liabilities.”
4	“A simpler format with a one-page summary at front . Make it clear where to put secured creditors, employees and superannuation creditors . It is currently confusing as to where to put secured creditors, particularly floating charge assets.”
5	“Changing the format to reflect treatment of charged assets . Format more in the format of Excel spreadsheet.”
6	“Renaming certain sections. Example, questions 2.2 to 2.6 are confusing to unsophisticated directors who are not versed in financial terminology . The form could be simplified into mortgages (secured), employee claims, leases and ‘other securities’ for example. Further, the schedules are confusing and should be simplified.”
7	“Make the document more user-friendly, but with greater detail. A combination of financial statement and a series of questions.”
8	“Layout of assets and liabilities. Listing of creditors and assets details.”
9	“ITSA have produced a much better form.”
10	“Legislative enforcement that directors must produce financial statements at office of official liquidator and lodge all tax returns at their cost, and even if director declared bankrupt .”
11	“Make it simpler for director to understand and complete.”
12	“Sections 2.2 through to 2.6 cause confusion. Form could be improved by requiring schedule of outstanding wages, leave entitlements and superannuation as three separate schedules.”
13	“The RATA should prompt information. Many times in interviews asking questions jogs the memory.”
14	“Simplify summary pages and schedules, i.e. Schedule A. Few will have ‘land’. Few have schedule F, preferential creditors, or schedule G.”
15	“Needs to be simplified to basic assets and liabilities, not category of assets . The liquidator will make his own determinations in this regard . Most directors are not sophisticated individuals and completion of the form is often difficult, and for this reason not attempted, particularly in light of any real penalty for not doing so.”
16	“Terrible format, even for accountants, let alone a layman. A simple list of balance sheet items would be better . Let the insolvency practitioner put it in the correct order of priorities.”
17	“It be turned into a questionnaire as most small-to-medium-enterprise directors are financially weak and struggle to make sense of the questions/boxes and format.”
18	“Comments as to books and records maintained. Comments as to when reasonably aware of financial issues.”
19	“Better assistance for directors completing the details regarding secured creditor debt. A liability attached to a fixed and floating mortgage debenture is often presented in schedule D, when it should be in 2.4. Why schedule F.? It only confuses directors. Part 2.6 should refer to leases/HPs so directors can identify.”
20	“A simpler form, asking for information on the categories of assets and liabilities, would be easier. Details about the liabilities linked to specific assets could be indicated. General questions about assets and liabilities would be useful, such as “is there a fixed and floating charge over all the assets?” Or “are there any real property mortgages?”.
21	“Provide definitions or examples for different categories of assets and liabilities.”
22	“Simplify the form so that it's simply a list of assets and creditors (similar to a balance sheet) where printouts of current assets (that is, debtors) and creditors can be annexed.”

Table 5: Responses by Official Liquidators to Subject 4

“What suggestions for improvements or changes to the RATA would you like to make (if any)?”	
23	“The preferential creditors claims box at 2.5 (and schedule F) of the RATA is out of date since ATO lost its preferential status, and should be removed from the RATA.”
24	“The current layout of the RATA, particularly page 4, is extremely un-user friendly.” “A few more simple schedules of assets and liabilities as directors/companies are often not familiar with a particular terms (that is, contingent/unsecured). Combine page 3 and 4 in a simple format.”
25	“Perhaps room for comments.”
26	“Make it more like a statement of affairs in bankruptcy, as greater detail and deeper questioning would reveal and assist more. Also, when assisting in obtaining a statement of affairs type/version of a RATA, ASIC and the courts would cause the production of a more useful tool/account from directors.”
27	“I would like to see it become similar to the bankruptcy statement of affairs.”
28	“Simpler layout. More detailed instructions for completion. I believe that if you had five insolvency practitioners fill out a comprehensive RATA, there would be differences in the RATAs for each insolvency practitioner.”
29	“Keep the structure similar to a financial statement but also include questions as a ‘Part C’ or the like. These should be investigative in nature.”
30	“More detailed explanation of the questions will improve the quality of the answers. The form is confusing and overly complicated for the use intended (that is, by non-accountants).”
31	“It will need to factor in the interests of security holders under PPSA. I would also like to see directors be obliged to state which creditors have personal guarantees or collateral security.”
32	“More questions as to description of the assets. More user-friendly and plain English style questions, for example, what vehicles were used in the business? Make, model, registration number. Who used that vehicle? Where is that vehicle now (at date of liquidation)?”
33	“A carefully drafted question and answer that includes the usual questionnaire that the liquidator usually sends out with the blank RATA.”
34	“Changed to a plain English questionnaire. Put the summary at the end. Separate pages for each category with totals labelled to the summary (for example, ‘total page 5 goes here’). Include questions about records: description and location.”
35	“Potentially a question regarding the recent disposal of any assets, a question regarding possible preferences which may have been made, and when the company first had difficulty paying debts (similar to a statement of affairs in bankruptcy).”
36	“Have the layout more logical. Many directors do not understand assets subject to specific charges and creditors that have fixed and floating charges. Many directors do not understand that the schedules with details flow through to the front page with the totals.”
37	“Clearer presentation, more explanatory notes. Could be a question and answer document including a summary. The detail needed is listed in the RATA but is not read/understood by the typical company director. When a financially experienced person (for example, a bookkeeper or external company accountant) helps the director, compliance is much better.”
38	“Include a sub-total for secured/priority/preferential/partly secured creditors so as to arrive at an amount (surplus or deficiency) after accounting for realisable assets and non-unsecured creditors.”
39	“Make it simple or have them attach accounts and lists with relevant details. Only thing that is useful is that they sign the RATA as being true and accurate. Maybe they could sign a cover document and attach the above to get the same result.”
40	“Simpler format. Even accountants are confused with it.”
41	“Form revamp overdue. Simplified form and instructions would assist. Present layout of form is confusing to many.”
42	“Form to be updated to reflect priorities of creditors status.”
43	“Should be easier to complete.”
44	“Format of the summary pages at the start of the RATA appears to be confusing to directors.”
45	“Most directors do not understand insolvency terms (for example, preferential creditors etc). Leave it to the insolvency practitioner to work out priorities. Most important use of the RATA is that all assets and liabilities disclosed.”
46	“Many directors have difficulty understanding the form, and accordingly need assistance in completing it.”
47	“For assets subject to charges, the RATA needs to be remodelled. This area is confusing.”
48	“A more simple assets and liabilities list including names and addresses of debtors and creditors and location of assets. Details of other parties who have been involved in the management of the company in the preceding two years.”
49	“Amend the format for better disclosure, similar to a statement of affairs in a bankruptcy.”

Table 5: Responses by Official Liquidators to Subject 4

“What suggestions for improvements or changes to the RATA would you like to make (if any)?”	
50	See suggestion 22 above.
51	See suggestion 22 above.
52	“Explanations on document as to what constitutes (a) partly secured creditors, (b) assets subject to fixed charges, (c) priority creditors, and (d) contingent assets/liabilities.”
53	“Simplify layout.”
54	“The difficulties faced by liquidators have been ongoing for 40 years. I do not consider legislative changes will improve (a) accuracy or (b) timeliness.”
55	“Feedback from directors is that the RATA in its current form is difficult to complete without the assistance of an accountant. In particular, the section dealing with assets under finance is confusing and in most cases not understood (section 2.2). Directors have also stated that they are not aware of the priorities in a liquidation relating to schedules E, F & G.”
56	“Only have one section for signing, rather than two to three in current format.”
57	“1. Should comply with GAAP (Generally Accepted Accounting Principles) and standard chart of accounts for balance sheet. 2. Electronic lodgment which interfaces with major insolvency software.”

AN APPRAISAL OF THE REPORT AS TO AFFAIRS

ANNEXURE 2

SURVEY FORM SENT TO OFFICIAL LIQUIDATORS

By Peter J Keenan CA.
March 2012



Peter J Keenan

Liability limited by a scheme approved under Professional Standards Legislation

Chartered Accountant
Registered Company Liquidator

8 November 2011

261 Bluff Road, Sandringham, Vic., 3191
Telephone: (03) 9597 0522
Fax: (03) 9521 0368
Email (special): surveyrata@gmail.com
<http://insolvencyresources.com.au>

Dear Sir/Madam,

THE REPORT AS TO AFFAIRS UNDER CORPORATIONS LEGISLATION

With the aid of a scholarship awarded to me by the Insolvency Practitioners Association of Australia, I am conducting research into the Report as to Affairs (Form 507) and associated compliance issues.

Part of the project is a survey of Official Liquidators to identify their attitudes towards the these matters. To that end **I enclose a survey form, which I hope you will find time to complete and return to me by 30 November 2011.**

The results of this survey and a paper on my research will be published by the IPA.

Yours faithfully,

SURVEY OF OFFICIAL LIQUIDATORS ABOUT THE REPORT AS TO AFFAIRS (FORM 507) ("RATA")

This survey is being carried out with the aid of the Insolvency Practitioners Association of Australia (IPA) from its Terry Taylor Scholarship Fund.

You have been selected at random by me from a list of all Official Liquidators in Australia.

The questions in the survey are about the Report as to Affairs (RATA), with emphasis on its use under section 475 of the Corporations Act 2001.

Your answers will be collated with those of other Official Liquidators and the resultant analysis will be published in the IPA's *Australian Insolvency Journal*.

Your answers will help identify the attitudes and opinions of Official Liquidators towards the current form of the RATA, the level of disclosure, presentation and compliance by directors, and achievements by ASIC in the enforcement area. They will also lead to wider discussion of the subject and perhaps reform in some areas.

Please take a few moments to answer the following questions and return the completed form to me. To meet deadlines the **closing date for replies has been set at 30 November 2011.** Please send your survey form by mail, fax or email to:

Peter J Keenan
261 Bluff Road
SANDRINGHAM VIC 3191

Fax: 03 9521 0368
Email: surveyrata@gmail.com
Phone: 03 9597 0522

I am a Registered Liquidator, Chartered Accountant and Fellow of CPA Australia, working as a sole practitioner.

Thank you for your time.

PRELIMINARY INFORMATION

Date survey completed (dd/mm/yy):

Name of Official Liquidator:

(Confidential: This information will not be communicated or disseminated to any other party. However, you may expressly authorise its disclosure by ticking the box at the end of this form)

In which State or Territory is **your principal place of practice**? (Tick one circle.)

<input type="radio"/>	New South Wales	<input type="radio"/>	Victoria	<input type="radio"/>	Queensland
<input type="radio"/>	Western Australia	<input type="radio"/>	South Australia	<input type="radio"/>	Tasmania
<input type="radio"/>	Australian Capital Territory	<input type="radio"/>	Northern Territory		

QUESTIONS ABOUT THE REPORT AS TO AFFAIRS (RATA) FORM

1.	Where directors prepare a RATA under section 475(1) or 475(2) of the Corporations Act 2001 <u>without any participation by you or your staff</u>, how would you rate the outcome in the following areas: (Tick one circle in each row.)					
		Always	Often	Sometimes	Rarely	Never
a.	All assets that should be in the RATA are included.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b.	All liabilities that should be in the RATA are included.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c.	The classification of assets (e.g., assets not specifically charged, assets subject to specific charges, contingent) is correct.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d.	The classification of liabilities (e.g., secured, preferential, partly secured, ordinary unsecured, contingent) is correct.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e.	Assets are included in the RATA at appropriate values.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f.	Liabilities are included in the RATA at appropriate values.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
g.	All the information required about assets and liabilities (e.g., location, names and addresses of debtors and creditors) is provided.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
h.	The RATA that is received is of a reasonable and acceptable standard.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Additional comment (if any):						

2.		As a liquidator in a court-appointed winding up of an insolvent company, please indicate how much you agree or disagree with the following statements: (Tick one circle in each row.)				
		Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
a.	A properly prepared RATA is the most important information required by a liquidator to commence winding-up the company financial affairs.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b.	Failure to comply with the requirement to submit a RATA significantly frustrates the liquidator's ability to wind up the company expeditiously.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c.	Failure to submit a RATA results in a liquidator expending additional time and expense in identifying the company's assets and liabilities.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d.	A RATA is required to ensure a proper preliminary examination of the affairs of the company.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e.	A properly prepared RATA is required in order that the liquidator may identify, collect, secure and protect the assets of the company.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f.	When lodged with the ASIC the RATA should give creditors and the public visibility as to the position of the company at the date of winding up.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
g.	The lack of a properly prepared RATA from directors is a serious impediment to the efficient and satisfactory fulfilment of the official liquidator's function.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Additional comments (if any):						

3.	What suggestions for improvement or changes to the RATA would you like to make (if any)?

4.	Would you like to see the RATA changed from its present layout (as a type of balance sheet) to that of a questionnaire?	<input type="radio"/> YES	<input type="radio"/> NO	<input type="radio"/> Undecided
Additional comments (if any):				

QUESTIONS ABOUT COMPLIANCE WITH SECTION 475 AND ENFORCEMENT

5.	When a director fails to submit a RATA to you as required by section 475(1) or (2), HOW do you report the matter to the ASIC? (Tick <u>all</u> circles applicable.)			
	<input type="radio"/>	By making a report under section 533(1) (e.g., Regulatory Guide 16, Schedule B, Form EX01)		
	<input type="radio"/>	By making a report under section 533(2) (e.g., Regulatory Guide 16, Schedule C)		
	<input type="radio"/>	By lodging a complaint with ASIC (e.g., under its Liquidator Assistance Program)		
	<input type="radio"/>	Other (Please describe):		
Additional comments (if any):				

6.	At some stage after reporting a breach of section 475 to ASIC, do you receive a RATA? (Tick one circle.)	
	<input type="radio"/>	Always
	<input type="radio"/>	Usually
	<input type="radio"/>	Sometimes
	<input type="radio"/>	Never

7.	In respect of any of the companies to which you have been appointed official liquidator, has ASIC obtained a conviction against a director for a breach of section 475?	<input type="radio"/> YES	<input type="radio"/> NO	<input type="radio"/> Don't know/can't say
Additional comments (if any):				

8.	If your answer at question 7. is YES, how would you rate the penalty that was imposed by the court? (If you have had this experience more than once, rate the penalties generally.) (Tick one circle.)	
	<input type="radio"/>	Very light
	<input type="radio"/>	Light
	<input type="radio"/>	Fitting/appropriate
	<input type="radio"/>	Heavy
	<input type="radio"/>	Very heavy
	<input type="radio"/>	Don't know: not informed of the penalty imposed
Additional comments/explanations (if any):		

9.	After reporting a breach of section 475, which one of the following best describes your usual level of satisfaction with the process that follows? (Tick one circle.)	
	<input type="radio"/>	Very satisfied
	<input type="radio"/>	Satisfied
	<input type="radio"/>	Neither satisfied nor dissatisfied
	<input type="radio"/>	Dissatisfied
	<input type="radio"/>	Very dissatisfied
Additional comments (if any):		

10.	When a director submits a RATA to you under section 475 <u>but the RATA is defective</u> - only partially completed or is otherwise not completed to an acceptable standard - what do you do? (Tick all circles applicable.)	
	<input type="radio"/>	Return the RATA to the director for rectification
	<input type="radio"/>	Make a report to ASIC (section 533)
	<input type="radio"/>	Lodge a complaint with ASIC (Liquidator Assistance Program)
	<input type="radio"/>	Take no action
	<input type="radio"/>	Other (Please describe):
Additional comments (if any):		

Thank you for participating in this survey.

OPTIONAL INFORMATION

<p>If you are willing to allow your name to be disclosed to other parties, tick this box <input type="checkbox"/></p> <p style="text-align: center;"><u>FOR FOLLOW UP IF NECESSARY</u></p> <p>ADDRESS OF OFFICIAL LIQUIDATOR:</p> <p>EMAIL:</p> <p>DAYTIME PHONE:</p> <p>NAME OF CONTACT PERSON :</p>
--

OTHER COMMENTS:

AN APPRAISAL OF THE REPORT AS TO AFFAIRS

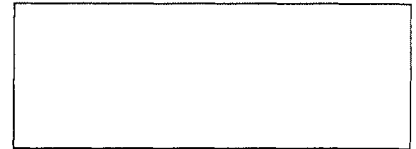
ANNEXURE 3

REPORT AS TO AFFAIRS ("RATA")

ASIC Form 507

Current Online Version, dated 30 January 2012.

By Peter J Keenan CA.
March 2012



Form 507

Corporations Act 2001

421A(1) & (2), 429(2)(b) & (c), 475(1) & (7), 497(5)

Report as to affairs

Related forms:

507A Statement verifying report under s475(1)

911 Verification or certification of a document

If there is insufficient space in any section of the form, you may photocopy the relevant page(s) and submit as part of this lodgement

Company details

Company name

ACN/ABN

Lodgement details

An image of this form will be available as part of the public register.

Who should ASIC contact if there is a query about this form?

ASIC registered agent number (if applicable)

Firm/organisation

Contact name/position description

Telephone number (during business hours)

Email address (optional)

Postal address

Suburb/City

State/Territory

Postcode

Directions

This report is to be made as at the following dates:

- (a) where prepared by the managing controller under s421A(1) — a day not later than 30 days before the day when it is prepared
- (b) where submitted to a controller under s429(2) — the control day, or
- (c) where submitted to a liquidator or to a provisional liquidator under s475(1) — the date of the winding-up order or, if the liquidator specifies an earlier date, that date.

This report is to be submitted by, and verified by a statement in writing made by, the following person, in accordance with Form 507A — where the statement is made out for the purposes of s475(1) — a person referred to in that subsection.

Regulation 5.2.01 requires the copy of this report that is lodged with the Australian Securities and Investments Commission to be certified in writing as a true copy of the original report:

- (a) for a copy lodged for the purposes of s429(2)(c) — by the controller of property of the corporation; or
- (b) for a copy lodged for the purposes of s475(7) — by the liquidator/provisional liquidator of the company.

NOTE: Form 911 is prescribed for this purpose.

1 Reason for report

To be completed by the external administrator
or person who must lodge this form with ASIC

☐ Managing controller of property—s421A(1)

ASIC internal
form code

If a receiver and manager

Date of appointment

/ /
[D] [D] [M] [M] [Y] [Y]

507G

If a person who is in possession, or has control of the property for the purpose of enforcing a security interest

Date when person took control

/ /
[D] [D] [M] [M] [Y] [Y]

507H

☐ Appointment of controller — s429(2)(b)

Under s429(2)(c)(i) a notice setting out any comments relating to the report, or a statement that no comment is made, should accompany the report. A **Form 911 Verification or certification of a document** should also be lodged.

Date of receipt of report

/ /
[D] [D] [M] [M] [Y] [Y]

507F

☐ Appointment of liquidator/provisional liquidator by the Court — s475(1)

A **Form 911 Verification or certification of a document** should also be lodged.

Date of receipt of report

/ /
[D] [D] [M] [M] [Y] [Y]

507C

☐ Appointment of liquidator — creditors' voluntary winding-up — s497(5)

Date report was received by liquidator

/ /
[D] [D] [M] [M] [Y] [Y]

507D

2 Assets and liabilities

Date specified under the relevant section as the date of report (see Directions on page 1)

/ /
[D] [D] [M] [M] [Y] [Y]

2.1 Assets not specifically charged

Valuation
(for each entry show whether cost or net book
amount)
\$

Estimated
Realisable Values
\$

(a) interest in land as detailed in schedule A		
(b) sundry debtors as detailed in schedule B		
(c) cash on hand		
(d) cash at bank		
(e) stock as detailed in annexed inventory		
(f) work in progress as detailed in annexed inventory		
(g) plant and equipment as detailed in inventory		
(h) other assets as detailed in schedule C		
Sub Total		

2 Continued... Assets and liabilities

	Valuation (for each entry show whether cost or net book amount) \$	Estimated Realisable Values \$
2.2 Assets subject to specific security interests, as specified in schedule D		
Less amounts owing as detailed in schedule D		
Total Assets		
Total Estimated Realisable Values		
2.3 Less payable in advance of secured creditor(s) Amounts owing for employee entitlements as detailed in schedule E		
2.4 Less amounts owing and secured by debenture or circular security interest over assets		
2.5 Less preferential claims ranking behind secured creditors as detailed in schedule F		
2.6 Balances owing to partly secured creditors as detailed in schedule G		
Total Claims	(\$)	
Security Held	(\$)	
2.7 Creditors (unsecured) as detailed in schedule H		
Amount claimed	(\$)	
2.8 Contingent assets Estimated to produce as detailed in schedule I	(\$)	
2.9 Contingent liabilities Estimated to rank as detailed in schedule J	(\$)	
<input type="checkbox"/> Estimated deficiency or		
<input type="checkbox"/> Estimated surplus		
<input type="checkbox"/> Subject to costs of administration or		
<input type="checkbox"/> Subject to costs of liquidation		
Share capital \$		
Issued \$		
Paid Up \$		

If this report is made for the purposes of subsection 497(5), Schedules A, B, C are to show the method and manner of arriving at the valuation of the assets.

Address and description of property	(1) Valuation	Estimated realisable value	Valuation for rating purposes	Particulars of tenancy	Where possession of deeds may be obtained	Short particulars of title
	\$	\$	\$			

Name and address of debtor	Amount owing	Amount realisable	Deficiency	Particulars of security (if any) held	Explanation of deficiency
	\$	\$	\$		

Description of deposit or investment	Amount	
	Cost	Realisable
Deposits	\$	\$
Investments		

2 Continued... **Assets and liabilities**

SCHEDULE G—PARTLY SECURED CREDITORS

Name and address of creditor	Particulars of security held	Name of security	Estimated value of security	Amount owing to creditor	Amount estimated to rank as unsecured
			\$	\$	\$

SCHEDULE H—UNSECURED CREDITORS

Name and address of creditor	Amount claimed by creditor	Amount admitted as owing	Reasons for difference between amount claimed and admitted (if any)
	\$	\$	

SCHEDULE I—CONTINGENT ASSETS

Description of asset	Gross asset	Estimated to produce
	\$	\$

SCHEDULE J—CONTINGENT LIABILITIES

Name and address of creditor	Nature of liability	Gross liability	Estimated rank for
		\$	\$

3 Annexure

For the purposes of the statement in Form 507A only.

*Strike out whichever is inapplicable

This is the annexure of pages marked "A" referred to in the Statement verifying report signed by me*/us* and dated as follows.

Date of the Statement verifying report

/ /
[D] [D] [M] [M] [Y] [Y]

Each signatory must complete and sign a copy of **Form 507A Statement verifying report under s475(1)** to be lodged with Form 507

Name

Signature

Name

Signature

Name

Signature

Certification

I certify that the particulars contained in the above report as to affairs are true to the best of my knowledge and belief.

Name

Capacity

Signature

Date signed

/ /
[D] [D] [M] [M] [Y] [Y]

Lodgement

Send completed and signed forms to:
Australian Securities and Investments Commission,
PO Box 4000, Gippsland Mail Centre VIC 3841.

Or lodge the form online by visiting the ASIC website
www.asic.gov.au

For more information

Web www.asic.gov.au

Need help? www.asic.gov.au/question

Telephone 1300 300 630

AN APPRAISAL OF THE REPORT AS TO AFFAIRS

ANNEXURE 4

**AN EARLIER VERSION OF THE RATA:
COMPANY "STATEMENT OF AFFAIRS"
UNDER THE UNIFORM COMPANIES ACT OF 1961
(FORM 56)**

No. 64.—June 22, 1962

SECOND SCHEDULE—continued.

FORM 56.

Companies Act 1961.

Sections 193 and 194, 200, 234; and 260 (4).

STATEMENT OF AFFAIRS.

LIMITED.

Statement of Assets and Liabilities as at the day of, 19.....

	Cost or Book Value.*	Estimated Realizable Value.
1. ASSETS NOT SPECIFICALLY CHARGED.	£	£
(a) Real estate as detailed in Schedule A †		
(b) Sundry debtors as detailed in Schedule B †		
(c) Cash on hand		
(d) Cash at bank		
(e) Stock as detailed in inventory		
(f) Plant and equipment as detailed in inventory		
(g) Other assets as detailed in Schedule C †		
2. ASSETS SUBJECT TO SPECIFIC CHARGES, LIENS, MORTGAGES, BILLS OF SALE OR HIRE-PURCHASE AGREEMENTS, as detailed in Schedule D †	£	
Less amounts owing as detailed in Schedule D		
TOTAL ASSETS		
TOTAL ESTIMATED REALIZABLE ASSETS		£
3. Less PREFERENTIAL CREDITORS ENTITLED TO PRIORITY OVER THE HOLDERS OF DEBENTURES UNDER ANY FLOATING CHARGE, as detailed in Schedule E		
4. Less AMOUNTS OWING AND SECURED BY DEBENTURE OR FLOATING CHARGE OVER COMPANY'S ASSETS TO		
5. Less PREFERENTIAL CREDITORS as detailed in Schedule F		
ESTIMATED AMOUNT AVAILABLE FOR UNSECURED CREDITORS		
6. CREDITORS (UNSECURED) as detailed in Schedule G.	£	
Amount claimed (£)		
7. BALANCES OWING TO PARTLY SECURED CREDITORS as detailed in Schedule H		
Total claims (£)		
Security held (£)		
8. CONTINGENT ASSETS £		
Estimated to produce £		
As detailed in Schedule I.		
9. CONTINGENT LIABILITIES £		
Estimated to rank for £		
As detailed in Schedule J.		
ESTIMATED ‡ DEFICIENCY/‡SURPLUS (Subject to costs of administration † liquidation)		

SHARE CAPITAL

Issued (£)
Paid up (£)

* Indicate in respect of each entry whether cost or book value.

† Where this statement of affairs is made for the purposes of sub-section (4) of section 260 of the Companies Act 1961, Schedules A, B, C and D are to show the method and manner in which the valuation of the assets were arrived at.

‡ Strike out whichever is inapplicable.

SCHEDULE A.

REAL ESTATE.

Address and Description of Property.	Cost Price or Book Value.	Estimated Realizable Value.	Valuation for Rating Purposes.	Particulars of Tenancy.	Where Possession of Deeds may be Obtained.	Short Particulars of Title.
	£	£	£			

SECOND SCHEDULE—continued.

FORM 56—continued.

SCHEDULE B.

SUNDRY DEBTORS (INCLUDING LOAN DEBTORS).

Name and Address of Debtor.	Amount Owed.	Amount Realizable.	Deficiency.	Particulars of Security (if any) Held.	Explanation of Deficiency.
	£	£	£		

SCHEDULE C.

OTHER ASSETS.

Description of Deposit or Investment.	Cost.	Amount Realizable.
	£	£
<i>Deposits—</i>		
<i>Investments—</i>		

SCHEDULE D.

ASSETS SUBJECT TO SPECIFIC CHARGES, LIENS, MORTGAGES, BILLS OF SALE OR HIRE PURCHASE AGREEMENTS.

Description of Asset.	Date Charge Given.	Description of Charge.	Holder of Charge.	Terms of Repayment.	Cost or Book Value.	Estimated Realizable Value.	Amount Owed under Charge.
					£	£	£

SCHEDULE E.

PREFERENTIAL CREDITORS ENTITLED TO PRIORITY OVER THE HOLDERS OF DEBENTURES UNDER ANY FLOATING CHARGE.

Employee's Name and Address.	Wages.	Holiday Pay.	Long Service Leave.	Estimated Liability.
	£	£	£	£

SECOND SCHEDULE—*continued.*FORM 56—*continued.*

SCHEDULE F.

PREFERENTIAL CREDITORS (OTHER THAN THOSE DETAILED IN SCHEDULE E).

Name and Address of Preferential Creditor.	Description of Amount Owng.	Amount Owng.
		£

SCHEDULE G.

UNSECURED CREDITORS.

Name and Address of Creditor.	Amount Claimed by Creditor.	Amount Admitted as Owng.	Reason for Disputed Amount (if any).
	£	£	

SCHEDULE H.

PARTLY SECURED CREDITORS.

Name and Address of Creditor.	Particulars of Security Held.	Nature of Security.	Estimated Value of Security Held.	Amount Owng to Creditor.	Amount Estimated to Rank as Unsecured.
			£	£	£

SCHEDULE I.

CONTINGENT ASSETS.

Description of Asset.	Gross Asset.	Estimated to Produce.
	£	£

SECOND SCHEDULE—continued.

FORM 56—continued.

SCHEDULE J.

CONTINGENT LIABILITIES.

Name and Address of Creditor.	Nature of Liability.	Gross Liability.	Estimated to Rank for—
		£	£

I hereby certify that the particulars contained in the above statement of affairs are true to the best of my knowledge and belief.

Dated this day of, 19.....

(Signature)

NOTES.

This statement of affairs is to be made as at the following dates:—

- (a) Where submitted to a receiver or manager under sections 193 and 194 of the *Companies Act 1961*—the date of the receiver's or manager's appointment;
 - (b) Where submitted to a meeting of creditors under section 200 of that Act—a date not earlier than thirty days before the date of the meeting;
 - (c) Where submitted to a liquidator under section 234 of that Act—the date of the winding up order.
- This statement of affairs is to be submitted by, and is to be verified by an affidavit in accordance with Form 57 sworn by the following persons:—
- (a) Where the statement is made out for the purposes of section 193 of the *Companies Act 1961*—a person referred to in section 194 (2) of that Act;
 - (b) Where the statement is made out for the purposes of section 234 of the *Companies Act 1961*—a person referred to in section 234 (2) of that Act.
- Regulation 16 of the Companies Regulations requires the copy of this statement of affairs that is lodged with the Registrar of Companies to be certified in writing to be a true copy of the original statement—
- (a) in the case of a copy lodged for the purposes of section 193 (3) (e) (i) of the *Companies Act 1961*—by the receiver or manager of the property of the company;
 - (b) in the case of a copy lodged for the purposes of section 201 (2) (a) of that Act—by a director or by the secretary of the company; and
 - (c) in the case of a copy lodged for the purposes of section 234 (3) of that Act—by the liquidator of the company.

FORM 57.

Companies Act 1961.
Companies Regulations.

Sections 194 (2) and 234 (1).
Regulation 9.

AFFIDAVIT VERIFYING STATEMENT OF AFFAIRS.

LIMITED

In the matter of the *Companies Act 1961*
and

In the matter of Limited.

I, of in the State of
being*
of Limited, make oath and say that the
particulars contained in the statement of affairs relating to Limited
dated the day of 19, and signed by me are
true to the best of my knowledge and belief.

Sworn at in
the State of
this day
of 19.....

Before me—

* Insert description sufficient to show that the person swearing the affidavit is a person referred to in section 194 (2) or section 234 (2) (as the case requires) of the *Companies Act 1961*.

FORM 58.

Companies Act 1961.

Section 195 (1).

ACCOUNT OF RECEIPTS AND PAYMENTS BY RECEIVER OR MANAGER.

LIMITED.

- The name and address of the *receiver/*manager/*receiver and manager/ are
- The date and description of the instrument (if any) containing the powers under which the *receiver/*manager/*receiver and manager/ is appointed are
- The date of the appointment under the powers contained in any instrument or the date of the Court order for the appointment is
- The period covered by the abstract is from the day of 19, to the day of 19.....

AN APPRAISAL OF THE REPORT AS TO AFFAIRS

ANNEXURE 5

ASIC "GUIDE: REPORT AS TO AFFAIRS"

Current Online Version, dated 1 July 2011.

By Peter J Keenan CA.
March 2012

Guide: Report as to affairs

This guide does not form part of the approved form. It is included by ASIC to assist you in completing and lodging the Form 507.

Related forms:

507A Statement verifying report under s475(1)

911 Verification or certification of a document

Lodgement period

Section under which report is lodged	Lodgement period
---	------------------

421A(2)	2 months after control day
429(2)(c)	1 month after receipt of report
475(7)	7 days after receipt of report
497(5)	Lodgement is optional

Late fees

The late fees are:

- \$69 for up to one month late
- \$287 for over one month late.

A form is not considered lodged until it is received and accepted by ASIC as being in compliance with s1274(8) of the Corporations Act 2001. A receipt will not be issued unless requested.

How to provide additional information

Photocopied Form 507 pages

If there is insufficient space in any section of the form, you may photocopy the relevant page(s) and submit as part of this lodgement.

Annexures

If there is insufficient space in any section of the form, you may alternately submit annexures as part of this lodgement.

To make any annexure conform to the regulations, you must

1. use A4 size paper of white or light pastel colour with a margin of at least 10mm on all sides
2. show the company name and ACN or ARBN
3. number the pages consecutively
4. print or type in BLOCK letters in dark blue or black ink so that the document is clearly legible when photocopied
5. mark the annexure with an identifying letter or symbol eg a,b,c or 1,2,3 etc.
6. endorse the annexure with the words:
This annexure (mark) of (number) pages referred to in form (form number and title)
7. sign and date the annexure

The annexure must be signed by the same person(s) who signed the form.

Lodgement

Send completed and signed forms to:
Australian Securities and Investments Commission,
PO Box 4000, Gippsland Mail Centre VIC 3841.

Or lodge the form online by visiting the ASIC website
www.asic.gov.au

For more information

Web www.asic.gov.au

Need help? www.asic.gov.au/question

Telephone 1300 300 630

AN APPRAISAL OF THE REPORT AS TO AFFAIRS

ANNEXURE 6

**OVERVIEW OF REPORT AS TO AFFAIRS:
A REDESIGNED SUMMARY PAGE TO CLARIFY
THE COURSE AND OBJECTIVES OF THE RATA**

OVERVIEW OF REPORT AS TO AFFAIRS

Item	Estimated Amount
1. Assets not specifically charged	\$
2. Surplus from assets specifically charged	\$ _____
3. Total assets (1. plus 2.)	\$
4. <i>Less:</i> Preferential creditors entitled to priority over the holders of a Floating Charge	\$ _____
5. <i>Sub-total</i> (3. minus 4.)	\$
6. <i>Less:</i> Amount owing under Floating Charge	\$ _____
7. <i>Sub-total</i> (5. minus 6.)	\$
8. <i>Less:</i> Other preferential creditors	\$ _____
9. <u>Estimated amount available for ordinary unsecured creditors</u> (7. minus 8.)	<u>\$ _____</u>
10. Ordinary unsecured creditors comprising:	
11. Deficiency from assets specifically charged (partly-secured creditors)	\$
12. Other unsecured creditors	\$ _____
13. Total ordinary unsecured creditors (11. plus 12.)	\$ _____
14. <u>Estimated deficiency/surplus before contingent amount</u> (9. minus 13.)	<u>\$ _____</u>
15. Contingent assets – estimated to produce	\$
16. Contingent liabilities/creditors – estimated to claim	\$ _____
17. Net contingent amount (15. minus 16.)	\$ _____
18. <u>Estimated deficiency/surplus (subject to costs of Liquidation, Administration)</u> (14. minus or plus 17.)	<u>\$ _____</u>
19. Share Capital Issued \$	
20. Share Capital Paid up \$	

AN APPRAISAL OF THE REPORT AS TO AFFAIRS

ANNEXURE 7

**NEW ZEALAND'S QUESTIONNAIRE-STYLE
COMPANY STATEMENT OF AFFAIRS**

REFERENCE NUMBER

STATEMENT OF AFFAIRS

In Liquidation
Companies Act 1993

Any personal information collected is for the purpose of administering the Liquidation in accordance with the Companies Act 1993. The information will be used and retained by the Official Assignee and will be released to other parties only with your authorisation or in compliance with statutory authorities. **You are obliged to provide this information under the Companies Act 1993.** You may have access to and request correction of any personal information included in this document.

Company Name

Trading Name

Has the company carried on business / traded in any other name?

☐ Yes

☐ No

Give details

PART A – CONTACT INFORMATION

1. NAME OF PERSON COMPLETING THIS FORM

Address

Telephone

Home

Work

Fax

Mobile

Email

Capacity in the Company

☐ Director

☐ Shareholder

☐ Manager

☐ Employee

☐ Accountant

☐ Solicitor

☐ Other

(Please give details)

2. COMPANY CONTACT DETAILS

Physical Address	Postal Address (if different)
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

Telephone	Mobile	Fax
<input type="text"/>	<input type="text"/>	<input type="text"/>

Email
<input type="text"/>

3. DIRECTORS CONTACT DETAILS

Director 1
Name

--

Physical Address	Postal Address (if different)

Telephone

Home	Work	Fax
------	------	-----

Mobile	Email
--------	-------

Director 2
Name

--

Physical Address	Postal Address (if different)

Telephone

Home	Work	Fax
------	------	-----

Mobile	Email
--------	-------

4. COMPANY ACCOUNTANT (IF ANY)

Firm Name

--

Address

--

Contact Person(s)

	Phone
--	-------

Previous Accountant

Firm Name

--

Address

--

Contact Person(s)

	Phone
--	-------

Date ceased acting

--

5. COMPANY SOLICITOR (IF ANY)

Firm Name

--

Address

--

Contact Person(s)

	Phone
--	-------

Previous Solicitor

Firm Name

--

Address

--

Contact Person(s)

	Phone
--	-------

Date ceased acting

--

PART B – BACKGROUND

6. Nature of company's business (give details)

Date started trading / / Date ceased trading / /

7a. Does / did the company rent / lease business premises?

☐ Yes ☐ No

b. Name of landlord / agent of business premises

Name	Address
Phone	

c. What date is the rent paid up to? / / What was the amount paid?

d. Is there a lease agreement? ☐ Yes ☐ No What is the term of the lease?

e. Who has the company's copy of the lease agreement?

f. Are there any subleases?

☐ Yes ☐ No Give details

g. Have any leases been assigned, surrendered or otherwise disposed of by the company before the date of liquidation?

☐ Yes ☐ No Give details

h. Are the premises protected by a security alarm?

☐ Yes ☐ No Give details

i. Who holds keys to the premises?

--

8. Are there ongoing contracts for which the company is receiving a service eg. security monitoring of premises?

☐ Yes ☐ No

Give details

Name of Provider	Nature of Service	Postal Address (if different)

9. Has the company ever been, or is it currently in receivership? Yes ☐ No ☐

Name of Receiver and contact details	
Appointed by	
Date appointed	
Date ceased	

10a.

Is there a debenture over the assets of the company?

☐ Yes

☐ No

Debenture
holder

b. Have steps been taken to realise security?

☐ Yes

☐ No

Give details

11. Has any person(s) involved in the management of this company been involved in another company that has been liquidated or placed in receivership?

☐ Yes

☐ No

Give details

12. Has any person(s) involved in the management of this company ever been made bankrupt?

☐ Yes

☐ No

Give details

13. Has any person involved in this company personally guaranteed any of the company's debts?

☐ Yes

☐ No

Give details

14. When do you believe the company first became unable to pay its debts as they fell due and what made you choose this date?

15. Were creditors informed of the company's position?

☐ Yes

☐ No

Give details

16. Has any of the company's property been seized in the last 6 months, eg by distress warrant or distraint?

☐ Yes

☐ No

Give details

17. Has the company given away any of its property in the last two years?

☐ Yes

☐ No

Give details

18. Has any person or other entity left any property or belongings in the company's care?

☐ Yes

☐ No

Give details

19. Does any person or other entity have any of the company's property?

☐ Yes

☐ No

Give details

20. Has the company sold any property to a director, shareholder, a relative of a director or shareholder or any entity (ie company or trust) associated with these people in the past two years?

☐ Yes

☐ No

Give details

Name of Purchaser	Item Sold	Date of Sale	Sale Price	Details of Payment

21. Is the company currently involved in any court case?

☐ Yes ☐ No

If yes, state the nature of the case, the name of the court, the name of the other party and the solicitor representing you.

22. Is the company a member of Bartercard or any similar organisation?

☐ Yes ☐ No

Give details

--

23. Does the company have in its possession any item that is subject to Retention of Title?

☐ Yes ☐ No

Give details

Item	Location of Item	Name of Creditor	Amount Owed	Value of Item

24. Has any creditor seized items within the last 6 months pursuant to a Retention of Title claim?

☐ Yes ☐ No

Give details

Item	Location of Item	Name of Creditor	Amount Owed	Value of Item

25a. Who was responsible for completing the company's day to day accounting records?

Name	Address
Phone	

b. Where are the accounting records located?

c. What was the date of the last annual financial statement?

d. Was the company registered for GST? ☐ Yes ☐ No If registered, please provide details:

Name Registered

--

GST
Number

--	--	--	--	--	--	--	--

Type of Registration:

☐ Invoice Basis

☐ Payment Basis

☐ Hybrid Basis

Period covered
by last return

--

Frequency of returns

☐ 1 month

☐ 2 months

☐ 6 months

e. Were the following records kept?	Not Sure	Yes	No	Are these records computerised?	Location of records
Cash book – Cash in / Cash out					
Cheque Butts – (since commencement period)					
Deposit Butts – of last prepared accounts					
Current Cheque and Deposit Books					
Bank Statements					
Receipt Books					
Creditors Invoices					
Debtors Ledgers & Current Invoices					
Ledgers					
Journals					
Copies of Annual Financial Statements					
Hire Purchase Agreements					
Contract Papers & Other Legal Documents					
Asset Register					
Stock Sheets					
GST Records					
Wage Records					
Employment Contracts					
Constitution					
Minute Book					
Register of Shareholders					
Register of Directors					
Director Certificates					
Interests Register					
Communications with Shareholders					
Correspondence					

f. Were any company records kept on a computer? ☐ Yes ☐ No

What accounting package is used?

Where is the computer located?

Who can access these records?

Is a full back-up available, including software?

☐ Yes

☐ No

Give details

26. CAUSE OF LIQUIDATION

What do you believe is the **PRIMARY** cause of the failure of the company? **Tick ONE box only.**

☐ 1. Inability to recover costs

☐ 11. Excessive drawings

☐ 2. Adverse legal action or lack of funds to finance legal action

☐ 12. Inability to collect debts due to disputes, faulty work or bad debts

☐ 3. Liabilities due to guarantees

☐ 13. Failure to keep proper books of account and costing records

☐ 4. Failure of another business organisation

☐ 14. Lack of sufficient working capital

☐ 5. Ill health or absence of health insurance records

☐ 15. Failure to provide for taxation

☐ 6. Domestic discord or relationship breakdowns including falling out of directors

☐ 16. Seasonal conditions including floods and drought

☐ 7. Withdrawal of credit facilities

☐ 17. None of the above. Give details

☐ 8. Economic conditions including external influences, competition, increases in costs and lack of sales

☐ 9. Lack of business ability including under quoting or failure to assess potential of business

☐ 10. Excessive overheads including interest payments

Which other numbers describe **CONTRIBUTING** causes to the failure of the company?

--	--	--	--	--	--	--

PART C – FINANCIAL CIRCUMSTANCES (Assets and Liabilities)

This information will be used to assess the company's financial position.

27. List any bank accounts (including building society, overseas funds, credit union, etc)

Name of Account	Bank and Branch	Account number	Account type (Cheque, savings etc)	Balance

28. Do any of the company's bank accounts contain monies held in trust for third parties and / or were deposited for a specific purpose?

☐ Yes ☐ No Give details

29. Does the company own any shares? (including Government inflation bonds, bonus bonds, unit trust investments, company shares etc)

Name of Company	How many	Location of Certificate (if applicable) or FIN number	Approximate Value

30. Does the company have any insurance policies?

☐ Yes ☐ No

Name of Policy Owner	Name of Insurance Company	Type of Policy	Date paid up to	Surrender Value

31. Does the company hold security over any property, eg mortgage, debenture or chattel security?

☐ Yes ☐ No If so, please state

Type of security	Name and Address of Property's owner
Value of security	

Description of property secured

--

32. REAL ESTATE *(Give details of any land or buildings that the company owns)*

Property 1

Address of property		
Nature of interest (joint tenant, tenant in common, absolute ownership)		
Name of Mortgagee or other Chargeholder		
Approx market value \$	Amount Owing \$	Approx Net Value \$

Is this property insured?

☐ Yes☐ No

Name of Insurance
Company

Expiry date

 / /

If this property is on the market please supply details including asking price, name of agent and how long it has been for sale.

Property 2

Address of property		
Nature of interest (joint tenant, tenant in common, absolute ownership)		
Name of Mortgagee or other Chargeholder		
Approx market value \$	Amount Owing \$	Approx Net Value \$

Is this property insured?

☐ Yes☐ No

Name of Insurance
Company

Expiry date

 / /

If this property is on the market please supply details including asking price, name of agent and how long it has been for sale.

Property 3

Address of property		
Nature of interest (joint tenant, tenant in common, absolute ownership)		
Name of Mortgagee or other Chargeholder		
Approx market value \$	Amount Owing \$	Approx Net Value \$

Is this property insured?

☐ Yes☐ No

Name of Insurance
Company

Expiry date

 / /

If this property is on the market please supply details including asking price, name of agent and how long it has been for sale.

33. MOTOR VEHICLES

(a) **Current Motor Vehicles** (This includes all cars, motorcycles, trailers, caravans, campervans, boats etc the company currently uses or owns)

Vehicle 1

Type of vehicle eg car, boat	Registration Number
Make, model, year	
Present location	Registered owner
Insurance company	Amount insured for \$
Current WOF (Yes / No) Condition	Odometer
Estimated resale value \$	
Less amount owed on HP or to secured creditor (if any) \$	Net Value \$
Name of security holder	
Address of security holder	

Vehicle 2

Type of vehicle eg car, boat	Registration Number
Make, model, year	
Present location	Registered owner
Insurance company	Amount insured for \$
Current WOF (Yes / No) Condition	Odometer
Estimated resale value \$	
Less amount owed on HP or to secured creditor (if any) \$	Net Value \$
Name of security holder	
Address of security holder	

Vehicle 3

Type of vehicle eg car, boat	Registration Number
Make, model, year	
Present location	Registered owner
Insurance company	Amount insured for \$
Current WOF (Yes / No) Condition	Odometer
Estimated resale value \$	
Less amount owed on HP or to secured creditor (if any) \$	Net Value \$
Name of security holder	
Address of security holder	

Vehicle 4

Type of vehicle eg car, boat		Registration Number
Make, model, year		
Present location		Registered owner
Insurance company		Amount insured for \$
Current WOF (Yes / No)	Condition	Odometer
Estimated resale value \$		
Less amount owed on HP or to secured creditor (if any) \$		Net Value \$
Name of security holder		
Address of security holder		

(b) **Previously Owned Motor Vehicles** *(Give particulars of any motor vehicles the company has sold over the last two years)*

Vehicle 1

Make, Model, Year	
Registration Number	
Sale Price \$	When sold & details of payment
Name, address and contact phone number of purchaser	

Vehicle 2

Make, Model, Year	
Registration Number	
Sale Price \$	When sold & details of payment
Name, address and contact phone number of purchaser	

Vehicle 3

Make, Model, Year	
Registration Number	
Sale Price \$	When sold & details of payment
Name, address and contact phone number of purchaser	

34. PLANT AND EQUIPMENT (including implements, fixtures and fittings but excluding motor vehicles which should be described in question 33).

Description of Item	Identifying numbers or characters	Type of Security (if any)	Security Holder	Value
				Estimated value \$
				Amount owed \$
				Net value \$
				Estimated value \$
				Amount owed \$
				Net value \$
				Estimated value \$
				Amount owed \$
				Net value \$
				Estimated value \$
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				Estimated value \$
				Amount owed \$
				Net value \$
				Estimated value \$
				Amount owed \$
				Net value \$

35. STOCK (including livestock and crops)

Description of Item	To whom secured	Value
		Estimated value \$
		Amount owed \$
		Net value \$
		Estimated value \$
		Amount owed \$
		Net value \$
		Estimated value \$
		Amount owed \$
		Net value \$
		Estimated value \$
		Amount owed \$
		Net value \$

36. BOOK DEBTS (Who owes the company money)

Name	Physical & Postal Address	Goods / Services provided	Date provided	Amount owed	Estimated \$ Recoverable

37. INCOMPLETE CONTRACTS

Job Description incl. contractor's contact details	Term of Contract	Work to be completed	Est. Cost to complete	Amount still to realise	Amount Paid to date

Goodwill

If the business can be sold as a going concern, what value would you estimate the goodwill to be – take into account the value of any lease key money paid, turnover figures etc.

\$

38. OTHER ASSETS (Please record any other assets and their values not already declared on this form)

Description of Item	Cost	Approximate Value

39. ASSET DISPOSALS

Has the company sold any assets including land and buildings since the last set of annual accounts? *(Do not include motor vehicles)*

☐ Yes ☐ No Give details

Description of asset	Net amount received	What did the company do with the money?	Name and address of agent / solicitor / broker

40. ARE ANY DOCUMENTS / ASSETS HELD IN SAFE CUSTODY?

☐ Yes ☐ No Give details

41. CURRENT ACCOUNTS

Provide details of all director / shareholder or other current accounts with the company.

Name	Address	Amount	"Owed to" or "owed by" company

42. CREDITORS

a. **Secured Creditors** – (Do not include securities over real estate and motor vehicles already described.)

Name and address of secured creditor	Type of security	Approx market value of items secured	Amount	Net Value

Have any creditors taken action to enforce their security?

☐ Yes

☐ No

Give details

--

b. **Preferential Creditors** – list Inland Revenue for GST, PAYE and also wages and holiday pay owing to employees.

Name of Creditors	Address	GST / PAYE / Holiday Pay / Wages	Period of claim	Amount owed

c. **Credit Cards** (Please give details relating to any credit store or fuel cards where the company has liability for the debt)

Card Holder	Card Type eg BNZ, Warehouse, Mobil	Amount owed
Total \$		

d. **Unsecured Creditors** – Use additional paper if necessary and attach to form

Name of Creditor	Postal address	Goods / Services Supplied	Amount owed \$

What you do now

Read this Statement of Affairs again. Be sure that everything you have written down is correct to the best of your knowledge. If you have written other details down on separate paper, pin them to this document. Read them again to make sure they are correct.

DECLARATION THAT THE CONTENTS OF THIS DOCUMENT ARE TRUE AND CORRECT

I, in my capacity as

to / of the company state that the particulars contained in this document are true and correct.

Signed Date

Please return in envelope provided to Private Bag 4751, Christchurch

OFFICES SITUATED AT:

NORTHERN REGION - AUCKLAND

Level 5
District Court Building
3 Kingston Street
Auckland
Phone: 0508 467 658
Fax: (09) 916-4540

POSTAL
Private Bag 92513
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MIDLAND REGION – HAMILTON

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Bayleys Building
678 Victoria Street
Hamilton
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Fax: (07) 957-5561

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Private Bag 3090

CENTRAL REGION – NAPIER

Level 2
Bower House
26-28 Bower Street
Napier
Phone: 0508 467 658
Fax: (06) 974-7588

POSTAL
Private Bag 6001

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