



Ross Group Distribution – Summary of Application

The Liquidators of the Ross Group wish to make a distribution to investors and creditors in the Ross Group of companies. They have filed an application with the High Court in Wellington seeking directions from the Court relating to how the distribution should be paid out (the **Application**). This will likely be the largest distribution which will be made in the liquidations.

The key parts of the Application will most likely be determined by the Court in the second quarter of 2018. However, the Court has granted some of the procedural directions sought already, as detailed below.

What directions are being sought?

The Liquidators are seeking the following directions:

- **Pooling Orders**
 - Most of the assets held by the Ross Group are held by Ross Asset Management Limited (in liquidation); **RAM**. However, Dagger Nominees Limited (in liquidation) (**Dagger**) holds cash of approximately \$1 million. Dagger has no creditors of its own.
 - The Liquidators are seeking a direction that the assets of RAM and Dagger be pooled together and the liquidations of the two companies proceed as if they are one company.
 - The effect of these directions is that there will be an additional \$1 million available for distribution to RAM's creditors and investors. The Liquidators do not consider there is any downside to these directions for RAM investors.
- **One common pool of assets for both general unsecured creditors and investors in RAM**
 - There are two possible approaches to distribution:
 - Maintain two pools of assets: one pool being assets which can be proved to have been derived as a result of the misapplication of investors' funds which should have been held on trust; and one pool with all other assets realised by the Liquidators. On this approach, only the RAM investors (**Investors**) would have a claim to the trust assets pool; while both the Investors and general unsecured creditors (i.e. non-investor trade creditors) of RAM (**Creditors**) would have a claim to the "other assets" pool.
 - Maintain one common pool of assets for both Creditors and Investors.
 - The Liquidators seek a direction that they only maintain one common pool of assets. They do not expect this direction to be contentious: it would be uneconomic to undertake the legal and accounting work necessary to maintain two pools. This is because:
 - there are a number of legal and practical issues to overcome in order to maintain two pools of assets, including the legal and factual difficulties in establishing into which pool a particular asset falls;
 - the potential claims for general unsecured creditors of RAM total less than \$70,000; and
 - the actual payment to them from this distribution would be less than \$20,000.

Therefore, the associated costs (legal and Liquidators') of maintaining two pools would exceed the likely distribution to general unsecured creditors thereby reducing the overall funds available for distribution.

- **As to which distribution model to apply: The Net Contributions Model, the Alternative Model or some other model**
 - The Liquidators have proposed two alternative models for distribution. They have very different impacts for investors. The Liquidators expect this will be the main focus of submissions on the Application. They have also left open the possibility for another model to be used.
 - The following parameters are common to both models put forward by the Liquidators:
 - there would be no tracing of particular investor assets due to the significant costs and practical difficulties associated with such an exercise. That is, the Liquidators will not attempt to determine whether the payments made by a specific Investor to RAM can be linked to specific assets held by RAM or Dagger at the date of liquidation;
 - for the purposes of calculating Investors' claims in the distribution, Investors' payments from and contributions to RAM would be inflation adjusted using the Consumer Price Index (CPI); and
 - only investors who paid RAM more than they received from RAM (with both deposits and payments adjusted for CPI (**Shortfall Investors**) would be eligible for distribution payments. Investors who received from RAM more than they contributed would not be eligible for a distribution. This is an important point. It means that some Investors who may otherwise have a claim against RAM (for example in relation to the lost opportunity to earn real investment returns) would not be entitled to a distribution because they have already received back from RAM at least the amount of their original payments to it (on a CPI adjusted basis).
 - The key difference between the two distribution models is how pre-liquidation payments by RAM to an Investor are treated. The Alternative Distribution Model seeks to take these payments into account in determining the applicable distribution for an Investor to a greater extent than the Net Contributions Model. Paragraphs 9.13 to 9.20 of the affidavit of John Fisk explain the Net Contributions Model. Paragraphs 9.21 to 9.28 of the affidavit of John Fisk explain the Alternative Distribution Model. Paragraphs 9.29 to 9.37 of the affidavit of John Fisk compare the outcomes between the two Models. These paragraphs can be located on pages 29 to 38 of John Fisk's affidavit.
 - The impact of each Model on some Investors is significant – particularly for Shortfall Investors who received significant payments from RAM prior to its liquidation. By way of illustration if the outcome of this Application is that the Court orders that the Alternative Distributions Model be applied, instead of the Net Contributions Model:
 - 387 Shortfall Investors will be eligible for an (increased) distribution in the liquidation, compared with the Net Contributions Model.
 - However, 221 Shortfall Investors who would receive a distribution under the Net Contributions Model, will no longer be eligible for a distribution.

- **As to treatment of inter-portfolio transfers**

- One complicated aspect of the liquidations is that RAM frequently allowed investment portfolios to be transferred to, or divided amongst, other Investors.
- The Liquidators have asked the Court to confirm their treatment of transfers or purported transfers of value between different RAM portfolios for the purpose of the distributions. These directions are not expected to be contentious.
- The order sought would limit the value of any inter-portfolio transfer to the net contributions balance of the transferring portfolio at the time of the transfer.

- **Appointment of counsel assisting the Court**

- The Liquidators have sought, and obtained, an order that Mr Paul Chisnall, an experienced insolvency barrister, is appointed as counsel assisting the court. This order was sought as a preliminary order and was granted by the Court on **[date]**.
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- The role of Mr Chisnall will be to provide submissions to the Court on the Application – and in particular the two distribution models proposed – independent from the Liquidators. The Court has instructed Mr Chisnall to focus on the benefits of the Alternative Model, while acknowledging the merits of the Net Contributions Model. The Liquidators have instructed their counsel to take the opposite approach – focusing on the merits of the Net Contributions Model while acknowledging the merits of the Alternative Model.

- **Ancillary Orders**

The Court has already granted the following orders:

- orders enabling service of this Application on Investors and Creditors by way of publishing the documents on this website, emailing Investors and Creditors where an email address is held or posting a letter advising of this Application where no email address is held. Without such orders, the Liquidators would be required to personally serve the court documents on all persons with an interest in the Liquidation (almost 880 persons). This would be costly and time consuming.
- orders as to confidentiality as to pages 112 to 135 of the affidavit of John Fisk filed in support of the Application. These pages comprise one month of bank statements for the primary RAM trading account. They have been produced to illustrate to the Court the volume of transactions on the account. These pages will unnecessarily identify individual RAM investors who either made payments into that account or received payments from that account. Accordingly, those pages have been removed from the version of the affidavit made available to you.

The Liquidators are also seeking the following ancillary directions:

- an alternative procedure to the standard claims procedure, to make it easier for Investors to submit an accurate claim form; and
- that the Liquidators' costs be deducted from the common pool of assets (if so ordered).

We do not expect these orders to be contentious.

How can an Investor or Creditor feedback their views on the Application?

Mr Chisnall intends to consult with the Ross Group Liquidation Committee on the views of investors on the Application. Accordingly, if you wish to feedback your views on the Application, we suggest you contact any member of the Liquidation Committee. Any correspondence in this regard which is received by the Liquidators will be passed to the Liquidation Committee

Can an Investor or Creditor oppose the application?

If you wish to oppose the application, we recommend you seek legal advice.

Appeal Rights

The Liquidators do not intend to appeal any decision of the Court as to which distribution model is to be applied in the Ross Group liquidations, absent extraordinary reasons. (For example, if the model ordered by the Court is not one which the Liquidators can, in practical terms, implement.) They are conscious that any appeal will delay a distribution being made to investors and would incur additional costs.

As the counsel assisting the court is not a party to the proceeding, Mr Chisnall has no right to appeal the decision of the Court.

If any person wishes to preserve their right to appeal any decision on the Application, they ought to seek legal advice on this.

The Liquidators will however be raising the general issue of appeal rights with the Court. They will update Investors further on this issue.

Have the Liquidations finished?

The liquidations of the Ross Group companies have not finished. The Liquidators are continuing to pursue avenues of recovery of RAM's assets – including clawback claims against Investors who received payments of "fictitious profits" from RAM - which they expect will enable them to make a further distribution to Investors and Creditors at some point. However, given that they have funds available now, they did not wish to defer any distribution until the conclusion of the liquidations.