

*Receivers' Six Monthly Report on the State of
Affairs of*

***Ebert Construction Limited
Retentions Fund (in
Receivership)***

Pursuant to Section 24 of the Receiverships Act 1993

July 2019

Company Number: 986366

pwc

Registrar of Companies

Companies Office
Private Bag 92061
Auckland Mail Centre



Contact Details

188 Quay Street
Private Bag 92162
Auckland 1142
New Zealand

Webpage: www.pwc.co.nz/ebert
Email: restructuring@nz.pwc.com
Telephone: +64 (9) 355 8317

15 July 2019

Ebert Construction Limited Retentions Fund (in Receivership)

Please find attached our six monthly report in relation to the receivership of the Ebert Construction Limited Retentions Fund (the **Fund** or the **Retentions Account**), for the period 12 November 2018 to 11 May 2019, pursuant to Section 24 of the Receiverships Act 1993 (the **Act**).

This report is subject to the restrictions set out in Appendix 1. In particular, all information contained in this report is provided in accordance with Sections 26 and 27 of the Act. In preparing this report we have relied upon and not independently verified or audited information or explanations provided to us.

In accordance with the requirements of section 24 of the Act, we report on:

- Property disposed of in the period covered by this report;
- Amounts owing as at the date of this report to any person under whose interests the receiver was appointed;
- Details of the creditors with interests in the property in receivership; and
- Such other information that we consider to be of relevance to readers of this report.

Should you or any reader of this report have any queries, please contact us via the details set out opposite.

Yours faithfully

Ebert Construction Limited Retentions Fund (in Receivership)

A handwritten signature in black ink, appearing to read 'Lara Bennett'.

Lara Bennett
Receiver

A handwritten signature in black ink, appearing to read 'John Fisk'.

John Fisk
Receiver

A handwritten signature in blue ink, appearing to read 'Richard Longman'.

Richard Longman
Receiver

Contents

| | | |
|---|--------------------------------------|---|
| 1 | Events leading to our appointment | 4 |
| 2 | Particulars of debts and liabilities | 5 |
| 3 | Work undertaken to date | 6 |
| 4 | Receipts and Payments | 7 |
| 5 | Other matters | 8 |
| 6 | Appendix 1 - Restrictions | 9 |

Events leading to our appointment and particulars of assets

Receivership of the Company - 31 July 2018

We, Lara Bennett, John Fisk, and Richard Longman, all Chartered Accountants Australia and New Zealand Accredited Insolvency Practitioners (NZ), of PwC, were appointed receivers of Ebert Construction Limited (**Ebert** or the **Company**) on the evening of 31 July 2018.

For further information in relation to the Receivership of the Company please refer to the First Six Monthly Receivers Report dated March 2019.

Receivership of the Fund - 12 November 2018

At the date of the Company's receivership, it held a separate bank account containing funds relating to certain subcontractor retentions. These funds were held aside by the Company in accordance with the requirements of Subpart 2A of the Construction Contracts Act 2002 (**CCA**) in respect of retentions owing on subcontracts entered into on or after 31 March 2017.

We were advised that the Company had been placing funds in the separate bank account with an adjustment made on a monthly basis once subcontractor claims for the prior period had been finalised, buyer created tax invoices (**BCTIs**) issued, and a reconciliation of the resulting obligations completed.

As at the date of the Company's receivership the balance of the separate account was \$3.68m (exclusive of GST) (the **Fund** or the **Retentions Account**), with the last adjustment taking place at the end of June 2018, in respect of Ebert's records of applicable retentions held up to the end of May 2018.

BCTIs for June claims had been processed but the adjusting transfer had not yet been made. The majority of July claims were yet to be processed. Accordingly, the balance of the Fund did not represent all retentions recorded as held for subcontracts entered into on or after 31 March 2017.

Following our appointment as receivers of the Company we determined that the provisions of the CCA did not provide sufficient clarity or guidance in respect of the basis for confirming entitlements or the methods by which such amounts could be distributed. In addition, there are no specific provisions for funding the cost of those activities in an insolvency scenario.

Due to the complexities in relation to eligibility to the Fund, ability to distribute and associated cost, we, as receivers of the Company, submitted an application for directions from the Court including a request for a separate receivership appointment over the Fund.

A hearing was held on 8 November 2018 and we, Lara Bennett, John Fisk, and Richard Longman, were appointed joint and several receivers and managers to the Fund by Court Order on 12 November 2018. The property in receivership comprises all funds held in the Retentions Account.

This report has been prepared by us in accordance with and for the purpose of Section 24 of the Act. It is prepared for the sole purpose of reporting on the state of affairs with respect to the property in receivership and the conduct of the receivership.

Particulars of debts and liabilities

Court Judgment

In addition to the appointment of the receivers, the Court judgment of 12 November 2018 included the following:

- Entitlement to the Fund is limited to those subcontractors with Reconciled and Transferred retention balances, being the specific amounts for individual subcontracts reconciled by Ebert to the Retentions Account up to 22 June 2018, primarily relating to work up to the end of May 2018.
- Those with retention movements relating to claims for work which were processed after the last transfer to the Retention Account was made and those for which no monies were transferred to the Retention Account due to incorrect contractual dates being recorded in Ebert's accounting system (**Wrongly Classified Subcontracts**) do not have an entitlement to the monies contained in the Fund.
- The receivers are granted the ability to make interim payments of entitlements that are due and payable on the basis of a 75% entitlement or such other percentage they consider prudent to enable the receivers to distribute a portion of the fund before resolving associated GST and cost issues and distributing any balance.
- The associated fees, costs and expenses of the Court application were to be deducted from the Fund on an indemnity basis.
- The fees, costs and expenses associated with administration of the Fund are to be deducted from the Fund with a requirement for the receivers to obtain Court approval for those costs, including notification to subcontractors affected by the proceeding. Those affected subcontractors will then have an opportunity to make submissions if they wish to.

- Leave was granted to return to the Court for further directions if required.

In accordance with the judgment the debts and liabilities to be satisfied from the Fund comprise amounts owing to those subcontractors with Reconciled and Transferred retentions balances (being \$3.68m), and associated costs and expenses.

The issue of claims to interest accruing on the Fund has not yet been resolved. The Receivers have given an undertaking to the Court that the balance of the Retention Account will not fall below the level of interest earned on the Fund from time to time, pending determination of how that interest should be distributed.

Creditors with an interest in the property in receivership

A reconciliation of the Company's records established that 130 subcontractors have an entitlement to the Retentions Account, arising from 182 subcontracts. There are no other creditors with preferential claims to the Fund.

There are no creditors with security interests registered against the Fund. However, as noted above, the issue of claims to interest accruing on the Fund has not yet been determined.

The Court issued initial procedural orders dated 26 October 2018 which included granting an application to redact creditor names and addresses from the publicly available Court documents in order to protect the commercial interests of the creditors affected. Consistent with this order we have also excluded those details from this report.

Work undertaken to date

Following the Court judgment and reconciliation of the Company's records it was established that 130 subcontractors have a claim against the Retentions Account and these claims arise from 182 subcontracts.

As previously reported, we wrote to each individual subcontractor (and associated contract principals) on 20 November 2018 setting out their calculated entitlement and the receivers' proposed treatment with respect to each relevant subcontract, seeking their agreement/ confirmation.

Proposed treatment of claims

The proposals sent to each subcontractor were made subject to consideration of any known defects or outstanding documentation or other obligations in respect of the specific subcontract works.

To ensure consistency and minimise the costs of administering the Fund, a principles based approach was applied for the proposed treatment of claims, taking into account the level of completion of both the individual subcontract works and the wider project as at the date of the Company's receivership.

To date we have reached agreement with 126 subcontractors with regard to the proposed treatment of their claims and are awaiting confirmation or have ongoing discussions with the remaining four.

Based on the principles applied it was established that \$2.05m (exclusive of GST) of entitlements were eligible for an interim distribution prior to Christmas 2018, subject to any outstanding defects or other obligations. Further entitlements of \$0.3m (exclusive of GST) became eligible for distribution during the period covered by this report as the relevant defects periods on the associated subcontracts expired.

Defects

We have continued to progress discussions with subcontractors and principals in relation to outstanding defect and obligation issues.

At the date of this report, discussions are ongoing with respect to 13 subcontracts with total entitlements of \$86k (exclusive of GST) in order to understand and resolve outstanding issues and reach an acceptable position for all relevant parties.

GST

As detailed in our previous report, the amounts held in the Retentions Account were exclusive of GST. To facilitate recovery of the applicable GST and enable it to be passed on to the subcontractors, BCTIs were issued for the amounts with the GST component included in a GST return filed by the Company. As a result a further \$0.55m has been received and is available for the creditors of the Fund.

Distributions

As at 11 May 2019, interim distributions totalling \$2.31m had been made, representing **90 cents in dollar** of entitlements agreed by both the subcontractor and the contract principal (including GST). Further distributions continue to be made as relevant defects periods expire.

Receipts and Payments

The table opposite sets out the receipts and payments for the Fund for the period 12 November 2018 to 11 May 2019.

As detailed in our report, we have made interim distributions of **90 cents in dollar** (plus GST) for all eligible Initial and Secondary Entitlements where amounts and treatment is agreed. These distributions were made as follows:

- NZ\$1.54m in December 2018
- NZ\$0.67m in February 2019
- NZ\$0.05m in March 2019
- NZ\$0.04m in April 2019

This brings distributions in the Receivership to date to total \$2.31m.

Ebert Construction Limited - Retentions Fund (In Receivership) Receipts & Payments for the period 12 November 2018 to 11 May 2019

| | \$ |
|---|------------------|
| Receipts | |
| Retention funds on hand at appointment | 3,678,833 |
| GST receivable | 551,825 |
| Interest on hand at appointment | 27,067 |
| Interest received | 15,282 |
| Total receipts | 4,273,006 |
| Payments | |
| Distributions to creditors | 2,309,061 |
| Application costs (in accordance with Court Orders) | 79,210 |
| RWT on interest | 4,279 |
| Total payments | 2,392,550 |
| Net funds on hand | 1,880,456 |

Other matters**Information provided by the Company**

As we are also receivers of the Company, we have had full access to Ebert's available financial records and associated information required to complete this report.

Communication

This is an extremely difficult situation for the many people and businesses impacted by the Receivership and we are conscious that most subcontractors are likely to experience a significant shortfall in their wider claims for unpaid works and/or retentions not held in the Fund. Recognising that the Fund may be the only recovery for many subcontractors we aim to progress its distribution as cost and time efficiently as possible.

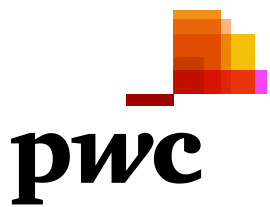
We would like to thank all parties for their ongoing patience and support as we work through the administration of the Fund and seek resolution of outstanding matters.

Material updates will be communicated either in writing to relevant parties or via our webpage. In the interim, should subcontractors or other stakeholders have any queries arising from this report, please contact us as follows:

Ebert Construction Limited Retentions Fund
(In Receivership)
c/- PwC
Private Bag 92162
Auckland 1142
Webpage: www.pwc.co.nz/ebert
Email: restructuring@nz.pwc.com
Telephone: +64 (9) 355 8317

Appendix 1 - Restrictions

| Area | Detail |
|------------------------------|--|
| Statutory | All information contained in this report is provided in accordance with Sections 26 and 27 of the Receiverships Act 1993. |
| Basis of reporting | The statements and opinions expressed herein have been made in good faith, and on the basis that all information relied upon is true and accurate in all material respects, and not misleading by reason of omission or otherwise. |
| Information available | <p>We have not independently verified the accuracy of information provided to us, and have not conducted any form of audit in respect of the Company. Accordingly, we express no opinion on the reliability, accuracy, or completeness of the information provided to us and upon which we have relied. Whilst all care and attention has been taken in compiling this report, we do not accept any liability whatsoever arising from this report.</p> <p>The statements and opinions expressed in this report are based on information available as at the date of the report. We reserve the right, but will be under no obligation, to review or amend our Report, if any additional information, which was in existence on the date of this Report was not brought to our attention, or subsequently comes to light.</p> |
| Other | <p>Certain numbers throughout this report have been rounded and therefore may not add up exactly.</p> <p>Unless where otherwise stated all amounts are in New Zealand dollars.</p> |



© 2019 PricewaterhouseCoopers. All rights reserved. PwC refers to the PricewaterhouseCoopers (New Zealand) member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see <http://www.pwc.com/structure> for further details.