

OPI Pacific Finance Limited (In Receivership)

Receivers' First Report on the State of Affairs of OPI Pacific Finance Limited (In Receivership)

Pursuant to Section 23 of the Receiverships Act 1993

Company Number 977908

November 2009

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1. Introduction

We, Colin Thomas McCloy and Maurice George Noone, were appointed receivers of OPI Pacific Finance NZ Limited ("PAC" or "the Company") by Perpetual Trust Limited ("Perpetual") on 15 September 2009. We were appointed under the terms of a security agreement giving the secured party a security interest over all of the assets and undertakings of the Company. The property in receivership comprises all of the assets, property and undertakings of the Company.

This report has been prepared in accordance with and for the purpose of Section 23 of the Receiverships Act 1993. 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.

The report is subject to the restrictions set out at Appendix I. In particular, all information contained in this report is provided in accordance with Sections 26 and 27 of the Receiverships Act 1993. Furthermore, in preparing this report we have relied upon and have not independently verified or audited information or explanations provided to us.

2. Events leading to our appointment

In January 2008 PAC's Directors' froze investor redemptions, announcing that they would prepare a moratorium proposal to be put to investors. A moratorium proposal was passed by investors in May 2008, which was subsequently varied in September 2008.

A material portion of the expected returns to PAC's investors put forward in the moratorium proposal was dependent on the ability of PAC's ultimate parent company, Octaviar Limited ("Octaviar"), to meet obligations under a put option that would see PAC compensated for any losses incurred from its loans and other assets.

Certain provisions were included in the moratorium so that in the event Octaviar was put into liquidation, an Event of Review would arise and Perpetual could appoint receivers.

As a result of the appointment of liquidators to Octaviar, Perpetual concluded that the investors' interests would be best served if receivers were appointed to PAC.

Accordingly, on 15 September 2009, Perpetual appointed Colin McCloy and Maurice Noone receivers of PAC.

3. Events Following our Appointment

Following our appointment as receivers we attended the offices of PAC to secure the books and records, pending determination of the most appropriate method of realisation of the assets. Our actions have included:

- Communication with investors and Perpetual;
- Undertaking an initial investigation of the affairs of the Company;
- Developing an asset realisation strategy;
- Commencing the asset realisation processes.

We have continued to receive the full cooperation of the remaining director Jason Maywald and management of the Company.

4. Particulars of Assets and Liabilities comprising the property in receivership

Presented in the table below is a summary of management's unaudited balance sheet as at 31 August 2009. Total actual recoveries from the assets are expected to be significantly less than book value.

OPI Pacific Finance Limited (In Receivership)		As as 31 August 2009
Draft Management Unaudited Balance Sheet	Note	(NZD'000)
Assets		
Cash assets	A	2,630
Funds held in trust	B	1,388
Secured loans	C	270,632
Provision for loans	C	(237,354)
Contribution under Put Option	D	(24,600)
OPI Pacific Investment Loan	E	184,418
Provision for OPI Pacific Investment Loan	E	(163,566)
Miscellaneous assets	F	541
Total Assets		34,089
Liabilities		
Funding - Debentures NZD	G	143,412
Funding - Debentures AUD	G	55,014
Funding - Unsecured Notes NZD	G	19,689
Funding - Unsecured Notes AUD	G	37,838
Accrued Interest	H	45,632
Loan - PIF/MYF	I	150,279
Total Liabilities		451,864
NET ASSETS		(417,775)

Source: Management Information

PAC's balance sheet has been prepared from the Company's accounting records and information supplied to us by both the Company and its director. Please note that we have not audited the balance sheet and it is subject to the restrictions at Appendix I.

A Cash assets

Cash held by the Company at the date of our appointment has been transferred into receivership bank accounts.

B Funds held in trust

At the date of our appointment, NZD1.4m was being held in a solicitor trust account pending the resolution of a dispute with a third party. We are seeking legal advice regarding recovery of these funds.

C Secured loans

The Company's largest asset is the loan book comprising loans to New Zealand, Australian and offshore borrowers. The majority of loans are in respect of development properties in various stages of completion or for property sold prior to the receivership. Interest continues to be accrued on all outstanding loan balances.

The majority of loans are secured by second ranking mortgages on land and buildings. At the date of the receivership, 19 of the 35 borrowers were in some form of insolvency or had been struck off. First ranking mortgagees had exercised their rights and/or taken possession of the remaining 11 properties, with the exception of one loan that is being managed by the first mortgagee, at the date of receivership.

We have written to all borrowers seeking repayment of the debts due at the date of receivership. Each loan will be assessed on a case by case basis. However, given the insolvency position of many of the borrowers and the anticipated shortfall to the first registered mortgagees, it is likely there will be a significant shortfall from recovery from the loan book.

We are investigating potential claims the Company may have in respect of valuations obtained for lending purposes, various insurance policies held by the Company and claims against guarantors of loans.

D Contribution under Put Option

The Company entered into a put option with Octaviar Limited (In Liquidation) ("Octaviar") dated 24 July 2006. In May 2008, the Company received part payment of AUD20m (NZD24.6m) from Octaviar in respect of its put option liability to the Company. These funds were distributed to secured debenture holders following the approval of the moratorium.

We have lodged a claim in the liquidation of Octaviar for AUD418m in relation to the put option. We have reserved our right to amend the claim should further amounts become claimable. We are waiting to receive a formal response from the liquidators regarding the claim and any likely distribution from the liquidation of Octaviar.

A claim has also been lodged against Octaviar Administration Pty Limited (In Liquidation) ("OCVA"), a subsidiary of Octaviar responsible for the management of both the PAC and PIC loans. We are also waiting to receive a formal response from the liquidators regarding the claim and any likely distribution from the liquidation of OCVA.

The balance sheet does not include the claims against Octaviar and OCVA as recovery of any funds from the liquidations remains uncertain at this stage.

E Loan to OPI Pacific Investment Pty Limited ("PIC")

In December 2006, various loans were assigned by PAC to PIC with PAC retaining an interest in the mortgages. As at 31 August 2009, the balance owing to PAC in respect of the assignment and subsequent intercompany lending transactions totalled NZD184.4m. PAC entered a

provision of NZD163.5m, based on management's estimate of the realisable value of PIC's remaining assets. This results in a net reported balance at 31 August 2009 of NZD20.9m.

PAC holds first ranking security over PIC in respect of PIC's loans to third parties, PIC's only material assets. We have crystallised the charge PAC holds over PIC and no action can be taken in respect of the loans without the written consent of the receivers of PAC. We note of the 20 loans, 18 borrowers are in some form of insolvency or have been struck off and first ranking mortgagees exercised their rights and/or taken possession of the remaining seven properties at the date of receivership.

We are examining options regarding recovery of these loans, which will be assessed on a case by case basis as per the PAC loan book.

F Miscellaneous Assets

Miscellaneous assets at 31 August 2009 are set out in the table below:

Miscellaneous assets	August 2009 (NZD'000)
Professional fees prepaid	451
Investments	75
GST Receivable	15
Total	541

Source: management information

At 31 August 2009, PAC had made prepayments to professional advisors totalling NZD451k. At the date of receivership funds held by professional advisors totalled approximately NZD350k. Since our appointment, deductions have been made from funds held in respect of fees incurred. To date we have collected NZD212k and we are in the process of reconciling these accounts.

The investments of \$75k are in respect of shares held in a company in liquidation. There will be no recovery from this asset.

The GST receivable of \$15k has since been received.

G Funding – Debentures and Unsecured Notes

At the date of the receivership, the Company's records indicated it had the following amounts outstanding to investors:

Investor category	Number of investors	(NZD'm)
NZD Debenture Stock	7,361	143.4
AUD Debenture Stock	2,514	55.0
NZD Unsecured Notes	821	19.7
AUD Unsecured Notes	173	37.8
Total	10,869	255.9

Source: management information

In summary, PAC owes NZD198.4m to secured debenture holders and NZD57.5m to unsecured note holders, who are predominately located in New Zealand and Australia.

Pursuant to a Trust Deed entered into between the Company and the Trustee dated 12 November 1999, the secured debenture stockholders have a first ranking security (subject to preferential claims) over all of the assets and undertakings of the Company.

The receivers have been appointed in the interests of secured debenture stockholders to realise the Company's assets and distribute the proceeds of the realisations pro rata to secured debenture stockholders.

We wrote to all investors on 1 October 2009 confirming their investment totals.

H Accrued Interest

This balance includes interest accrued on secured debentures and unsecured notes to 31 August 2009.

I Loan PIF/MYF

The Company entered into Loan Participation Agreements with Premium Income Fund (“PIF”) and Maximum Yield Fund (“MYF”) (together “the Participants”) in December 2007. The agreements entitled PIF and MYF to participate in existing loans and, at their discretion, to participate in future loans. The amount owed to the Participants is unsecured and ranks behind funds due to secured debenture holders.

5. Amounts owing to creditors with preferential claims

The Company had no employees at the date of our appointment and accordingly there are no preferential claims with regards to employee entitlements.

We have written to the IRD requesting written confirmation of any preferential claims and they have verbally confirmed it has no preferential claim against PAC.

We are not aware of any other preferential claims.

6. Amount and timing of dividend to investors

As previously advised, the effect of the receivership is that it ends the moratorium arrangement in place at the time of the receivership of PAC. Therefore, the timing of distributions anticipated to be made to secured note holders under the moratorium is no longer in place.

The recovery to investors is dependent on a number of uncertain factors.

Due to the uncertainty regarding recovery from the loan book and the complexity regarding potential valuer and insurance claims and claims against guarantors of loans, we are not in a position to estimate a return, or timing, to secured debenture holders. Furthermore, at this stage, we are not in a position to make a payment before Christmas due to insufficient funds being available to make a significant dividend. However, if material funds become available and it becomes possible to distribute a dividend before the end of the year, we will advise investors as soon as possible.

Given the realistic assessment of the position and that there will be a significant shortfall to the Company from the loan book and recovery of the PIC loan, unfortunately there will not be funds available for unsecured note holders.

7. Amounts likely to be available for other creditors

Given the financial position of the Company it is expected there will be a significant shortfall to secured debenture investors. Accordingly, we do not expect any funds to be available to distribute to unsecured creditors, unsecured noteholders or shareholders.

8. Other Matters

A thorough investigation will be undertaken in respect of the activities of the Company, its directors and various other parties prior to the receivership. As a result of the investigation, if any breaches of legislation are discovered we will report these to the appropriate Government Authorities. We will also determine if there are any other avenues of recovery and commence action if we consider it may materially benefit the outcome of the investigations and/or receivership.

We also understand that various Government Authorities are investigating the affairs of the Company and the Octaviar Group. We will support and assist such authorities as appropriate.

Should stakeholders have any queries arising from this report, please contact us via our website, telephone, facsimile, or private bag address, as follows:

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Dated: November 2009



Colin McCloy
Receiver

Appendix I

Restrictions

This report has been prepared in accordance with and for the purpose of Section 23 of the Receiverships Act 1993, reporting on the state of affairs with respect to the property in receivership and the conduct of the receivership. All information contained in this report is provided in accordance with Sections 26 and 27 of the Receiverships Act 1993.

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.

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.

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, in existence on the date of this report was not brought to our attention, or subsequently comes to light.

We have relied on forecasts and assumptions prepared by the Company about future events which, by their nature, are not able to be independently verified. Inevitably, some assumptions may not materialise and unanticipated events and circumstances are likely to occur. Therefore, actual results in the future will vary from the forecasts upon which we have relied. These variations may be material.

In addition the following should be noted:

- Certain numbers included in tables throughout this report have been rounded and therefore do not add exactly.
- Unless otherwise stated all amounts are stated in New Zealand Dollars.