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

Company Number: 977908

November 2020





IMPORTANT NOTE

- This report has been prepared in accordance with and for the purpose of Section 24 of the Receiverships Act 1993, for the sole purpose of reporting on the state of affairs with respect to the property in receivership and the conduct of the receivership for the six month period 15 March 2020 to 14 September 2020.
- All information contained in this report is provided in accordance with Sections 26 and 27 of the Receiverships Act 1993.
- This report is subject to the restrictions set out at Appendix A. In particular, in preparing this report we have relied upon and not independently verified or audited information or explanations provided to us.

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1. Introduction

Colin McCloy and Maurice Noone were appointed receivers of OPI Pacific Finance Limited (In Receivership and In Liquidation) (“PAC” or the “Company”) by Perpetual Trust Limited (“Perpetual”) on 15 September 2009. The Company had been subject to a moratorium arrangement that was approved by creditors on 19 May 2008. The receivership ended that moratorium arrangement.

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 PAC. The property in receivership comprises all of the assets, property and undertakings of PAC.

On 3 November 2011 Aaron Walsh and Andrew McKay of Corporate Finance Limited were appointed liquidators of PAC by the shareholders of PAC, OPI Pacific Limited (In Liquidation) (“OPL”). Justin Bosley replaced Aaron Walsh as liquidator on 6 July 2012. Andrew McKay is also the liquidator of OPL and other related New Zealand companies, along with his colleague John Cregten. Placing PAC into liquidation does not affect the operation of the receivership or the rights of secured debenture holders.

This report provides an update of the receivership, the potential of returns for PAC investors and the receivers’ investigations into the financial affairs of PAC in the period prior to receivership.

2. Events following appointment

As you are aware following our appointment as receivers we attended the offices of PAC to secure the books and records and we determined the most appropriate method of realisation of the assets. Our actions have included:

- Securing key assets;
- Contacting all borrowers and guarantors regarding the recovery of loans;
- Developing asset realisation strategies where applicable;
- Investigating potential claims in respect of the loan book and insurance policies;
- Providing updates and communicating with investors and Perpetual;
- Investigating the affairs of PAC;
- Crystallising PAC’s security in respect of its loan to OPI Pacific Investment Pty Limited (“PIC”); and
- Attending various meetings held by the liquidators of Octaviar Limited (Receivers and Managers appointed) (In Liquidation) (“Octaviar”) and Octaviar Administration Pty Limited (In Liquidation) (“OCVA”).

At the commencement of the receivership of PAC, Colin McCloy and Maurice Noone were appointed as joint and several receivers. However, Mr Noone subsequently resigned as receiver of PAC on 8 May 2014. John Fisk of PricewaterhouseCoopers was appointed receiver of PAC on 8 May 2014.

We have also written to investors on 26 November 2009, 4 May 2010, 23 July 2010, 22 December 2010, 8 June 2011, 18 February 2013, 17 December 2013, 23 December 2014, 9 October 2015, 20 December 2017 and 12 April 2018.

3. Particulars of assets and proposal for disposal of property in receivership

Loan assets

As discussed in our previous reports the recorded loan assets of PAC and PIC have been realised by the receivers. No further material loan related recoveries are expected.

Unsecured claims against Octaviar and OCVA

As previously reported, an unsecured claim of c.AUD372m was lodged and formally admitted in the liquidation of Octaviar, the ultimate parent entity of PAC's related parties. In November 2017 the liquidators of Octaviar announced an interim dividend process whereby PAC was expected to receive associated distributions in two tranches.

The first tranche (NZ\$2.9m) was received in January 2018. The second tranche (NZ\$1.0m) was received in late March 2018.

Further recoveries are anticipated from PAC's claims in the liquidations of OCVA and Octaviar once the liquidators complete their administration. We have recently received an update from the liquidators who advise that there are three significant outstanding matters in the liquidation process being:

- Settlement of a tax related matter;
- Adjudication of an intercompany creditor claim, for which a special purpose liquidator was appointed; and
- Adjudication of two substantial creditor claims, the outcome of which has been disputed by the claimants.

Tax and intercompany claim

These matters are related and we understand a resolution has been reached between the parties which requires judicial approval. A hearing took place in the Queensland Supreme Court on 13 October 2020, and the liquidators await the decision which they hope to receive prior to the end of 2020.

If Court approval is received, the agreed resolution will enable a further dividend to be paid to the creditors of OCVA and Octaviar, including PAC.

Disputed creditor claims

Following the receipt of judicial advice, the liquidators formally rejected the two claims. The claimants have appealed the decision with the Queensland Supreme Court and the liquidators are awaiting a hearing date. In the interim the liquidators will continue to seek a negotiated resolution. Funds relating to this matter have been held aside from previous distributions.

In addition to the above, the liquidators advise that two other avenues of recovery are expected to result in realisations and a potential surplus of funds held by the special purpose liquidator.

We note that, in addition to the claims submitted by PAC, both Octaviar and OCVA have debts outstanding to other creditors, and the assets in these companies appear to be insufficient to meet all liabilities in full.

We will continue to correspond with the liquidators to obtain updates on progress.

4. Particulars of debts and liabilities outstanding and requiring to be satisfied from the property in receivership

Secured debenture holders

At the date of the receivership, PAC's records indicated it owed NZ\$198.4m to secured debenture holders and NZ\$57.5m to unsecured note holders, predominately located in New Zealand and Australia.

During the receivership to 14 September 2020, interim distributions totalling \$27.9m had been made to secured debenture investors as follows:

- NZ\$4.35m on 22 December 2010;
- NZ\$4.05m on 18 February 2013
- NZ\$12.50m on 23 December 2014
- NZ\$3.10m on 9 October 2015; and
- NZ\$3.9m in April 2018.

Based on balances owing at the start of the Company's moratorium, this brings the total amount repaid to approximately 32.9 cents in the dollar.

In addition, we continue to arrange redistribution to investors with unclaimed monies from the interim distributions as and when they are located or make contact with our offices.

Whilst the timing and extent of further distributions to PAC from OCVA and Octaviar remain uncertain, the update provided by the liquidators indicates that an interim distribution may be possible towards the end of 2020 or in early 2021.

As soon as we are advised of the confirmed date and amount of a distribution from OCVA and/or OL we will write to PAC investors to indicate the associated timing of a distribution from the PAC receivership, which will be made as soon as practicable following receipt of funds.

Due to the reliance on the outcome of the OCVA and Octaviar liquidations, it is not possible to estimate the final return to secured debenture holders from the receivership of PAC. As noted, we expect further recoveries from Octaviar and OCVA, albeit we are unable to confirm the timing and extent of these at present.

Preferential and other unsecured creditors

We are not aware of any preferential claims. Given the estimated returns to secured investors, we have regretfully advised that there are unlikely to be any amounts available for payment to unsecured creditors.

5. Receipts and payments

The table below sets out the receipts and payments for the receivership of PAC to 14 September 2020.

OPI Pacific Finance Limited (In Receivership and In Liquidation)

Receipts and payments

For the Period from 15 September 2009 to 14 September 2020

NZ\$

Receipts	
Pre-Receivership	2,522,167
Trust Account	1,726,922
Net GST	771,174
Recoveries	27,632,826
Reimbursement of costs	182,934
Interest received	265,133
Other	5,800,757
Total Receipts	38,901,914
Payments	
Legal fees	3,147,124
Trustee fees	710,280
Receivers fees and disbursements	3,009,434
Taxation Fees	1,666
Computershare registry fees	643,344
Other professional & consulting fees	418,710
Reef Cove Loan	582,611
Bank fees	6,043
Interest expense	49
Insurance	10,529
Resident withholding tax	19,786
Other expenses	2,576,892
Foreign currency movements	60,199
Total Payments	11,186,663
Net funds prior to distributions	27,715,250
Distributions to secured debenture holders	27,703,293
Net funds	11,958

6. Other matters

We carried out an initial investigation into the activities of PAC, its directors and third parties and reported our findings to the relevant Government Authorities.

We also assisted the Financial Markets Authority (“FMA”) with its investigation into the affairs of PAC and directors, and provided assistance with other related cases that the FMA is investigating.

In November 2013 the FMA laid charges against four directors of PAC. All four directors entered guilty pleas on various dates August/September 2015 for charges in relation to the issuance of a prospectus containing untrue statements. They were sentenced to community service and ordered to pay reparations to PAC of A\$100k each. All of these amounts have been received.

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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John Fisk
Receiver

Appendix A

Restrictions

- 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, which was 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.