

ADMINISTRATORS FIRST REPORT TO CREDITORS

BIONIC VISION TECHNOLOGIES PTY LTD

ACN 124 162 634

ABN 96 124 162 634

(Administrators Appointed)

We, Gideon Rathner and Matthew Sweeny of Lowe Lippmann, Chartered Accountants, 616 St. Kilda Road, Melbourne VIC 3004 were appointed Joint & Several Administrators to the above Company on 7 April 2020.

We hereby submit the following report and opinions as required by Section 439A of the Corporations Act 2001 and section 75-225 of the Insolvency Practice Rules (Corporations) 2016.

The purpose of this report is to provide creditors with sufficient information for them to make an informed decision about the future of the Company including:

- background information about the Company;
- the result of our investigations;
- the estimated returns to creditors;
- details of the Deed of Company Arrangement proposed by the Chairman;
- the options available to creditors and our opinion on each of these options.

At a meeting of creditors to be held on 20 May 2020 creditors will be asked to make a decision by passing a resolution in respect of the options available to them.

We refer to our Declaration of Independence, Relevant Relationship and Indemnities enclosed within the circular to creditors dated 8 April 2020 and confirm that there has been no change.

1. Statutory Details

At the date of our appointment as Administrators, the statutory details of the Company were as follows:

1.1 Officers

Director	Representative Of	Date Appointed	Date Resigned
James Robert Henderson	Founder representative	11 August 2015	
Ergad Gold (Chairman)	Independent	10 November 2016	
Chung Ho Alastair Lam	State Path Capital Limited	5 April 2017	
Tek Sian Kwan (Alan)	State Path Capital Limited	5 April 2017	
Haiqing Sun (Sabrina)	China Huarong International Holdings Limited	21 May 2019	
Ashraf Attia (Chief Executive Officer)	Ex Officio	22 July 2019	
Julie Anne Quinn		1 May 2017	21 July 2019
Robert John Klupacs		1 January 2015	28 June 2019

Ergad Gold was originally appointed on 10 November 2016 as a Founder representative. In April 2017 he was appointed Chairman and in that role is an Independent director.

<i>Alternate Director</i>	<i>Date Appointed</i>	<i>Date Resigned</i>
Tamara Leigh Enid Brawn	13 December 2017	30 June 2019

<i>Secretary</i>	<i>Date Appointed</i>	<i>Date Resigned</i>
Brendan Thomas Case	20 August 2019	
Julie Anne Quinn	5 October 2018	20 August 2019

1.2 Shareholder Paid Up Share

Newsouth Innovations Pty Limited	9,014 BVT Founder shareholder
The Bionics Institute of Australia	4,675 BVT Founder shareholder
Centre For Eye Research Australia Limited	4,237 BVT Founder shareholder
Nicta IPR Pty Limited	5,316 BVT Founder shareholder
UM Commercialisation Pty Ltd	5,358 BVT Founder shareholder
Royal Victorian Eye and Ear Hospital	900
Australian College of Optometry	250
Western Sydney University	250
State Path Capital Ltd BVI	<u>65,450</u>
Total	95,450

1.3 Secured Creditor

A search in the Personal Property Securities Register (“PPSR”) was conducted at the time of our appointment and it reflects that there are no security interests registered against the Company.

1.4 Outstanding Winding Up Applications

As at 7 April 2020, there were no outstanding winding up applications.

1.5 Commencement Date

The Company was incorporated on 27 February 2007. An ABN search discloses that the Company’s ABN became active from 10 December 2014. The Directors confirmed the Company commenced on 10 December 2014. This appears consistent to our review of the Company’s accounting records which reflect transactions being recorded from July 2015.

2. Background and Circumstances Leading to the Appointment of the Administrators

The Company is involved with developing retinal prosthesis for patients with inherited retinal diseases. The Company describes its activities as follows:

Capitalization & Funding Overview:

- BVT is a privately held Australian company with offices in Sydney, Melbourne and in California (In Progress)
- Originally funded by a grant from the Australian government
- Additional private funding (US\$18M) followed in 2017
- Seeking to raise US \$20 Million in equity funding to manufacture clinical units and conduct Australian, US and EU clinical trials.

BVT Management Group:

- Ergad Gold PhD, Chairman
- Ash Attia, CEO
- Brian Gordon, CTO
- Adrian Oates PhD, COO

Collaborators:

- Bionics Institute
Melbourne, Australia
- Centre for Eye Research Australia
Melbourne, Australia
- CSIRO's Data61
Canberra, Australia
- The University of Melbourne
Melbourne, Australia

Bionic Vision Technologies

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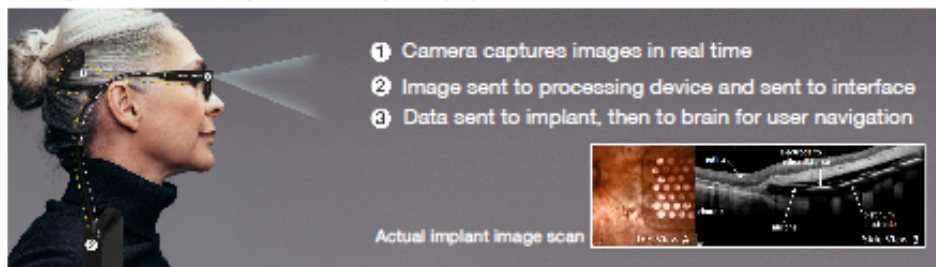
http://www.bionicvis.com

BIONIC VISION TECHNOLOGIES



OVERVIEW: Bionic Vision Technologies (BVT: <http://www.bionicvis.com>) has developed a *Bionic Eye Visual Prosthesis System* to restore functional vision to the blind suffering from inherited retinal diseases. The Company has completed initial human testing in seven patients to demonstrate safety and initial efficacy with positive outcomes in patient mobility and device stability/durability.

This unique system offers several advantages to competitive products, including: 1) a safer and faster implantation procedure that can be completed in two to three hours; 2) the implant does not make direct contact with the retina, thereby expected to preserve remaining vision and; 3) the system's software and hardware components can be safely and easily upgraded. BVT has also created and acquired significant Intellectual Property covering surgical techniques and advanced vision processing algorithms. In addition, the Company has recruited an experienced medical device management team with proven development, operational and commercialization successes.



The System improves patient navigation & object detection providing improved freedom of movement and real world engagement.

MARKET: The global incidence of Inherited Retinal Disease (IRD) is one-in-2,000 people and the incidence for Retinitis Pigmentosa (RP) is one-in-4,000 (of which 80% are projected to become legally blind). Assuming a global population of approximately 7.8 billion, the market for RP-impacted patients is about 1.6 million of the estimated 3.9 million IRD patients. The projected revenue from the first five years of sales could be as high as \$1.3 billion. BVT has elected to pursue initial regulatory approval in the well-defined RP market, with subsequent expansion in its scope of treatment following US/EU approval.

THE SYSTEM: BVT's Bionic Eye System consists of a wearable device and a visual implant similar in concept and design to that used by cochlear hearing implants. It operates by translating images from a camera mounted on an eyeglass frame into electrical signals which stimulate the nerves via electrodes placed behind the patient's eye to deliver visual information to the brain. Implanting the electrodes in the suprachoroidal space (between the choroid and the sclera), as opposed to sub-retinal or epi-retinal implantation, avoids damage to an already compromised retina. Because the implant is placed behind the retina and does not make contact with the retina, patients may still be able to participate in gene, stem cell or other future therapies.

Two months after surgery, the BVT Bionic Eye is turned on and patients begin training in the use of the system. The BVT System enables the patient to see a series of white light dots and the combined image represents the surrounding objects. With this system, a patient can both detect objects and avoid obstacles. Patients feedback has been positive and all components of the system have remained intact and durable over the course of the study.

REGULATORY: The Company's regulatory strategy is aligned to that of a Class III implantable medical device with safety and efficacy data to be submitted to the FDA for approval.

COMMERCIALIZATION: The Company is expected to start generating revenues from the RP market and will also expand into other disease states such as additional IRD's, Diabetic Retinopathy and Age-related Macular Degeneration-related vision loss.

We have reviewed minutes of Board meetings, including the meeting held on 2 April 2020 in which the Board stated that:

- the Company’s cash flow forecasts provide that current funding will meet expenses until around September 2020 and hence the Company risks becoming insolvent before too long;
- the Huarong Convertible Note continues to prevent the Company from raising further capital from other potential investors;
- discussions with and among the parties to the Convertible Note have to date failed to renegotiate terms or appropriately deal with the Convertible Note to prevent it from being a major impediment to the Company’s fundraising efforts; and
- the early appointment of an Administrator by the Company is very important in order to allow sufficient time for an optimum outcome to be achieved for all stakeholders via the administration process.

Our investigations to date have not identified anything inconsistent with the statements recorded in the minutes of the Board Meeting held on 2 April 2020.

At the meeting of creditors held on 20 April 2020 one of the Company’s directors, Ergad Gold, who is also the Chairman of the Board of Directors (“the Chairman”), presented the following statement:

“On the 7th April 2020, the Directors of Bionic Vision Technologies (BVT) placed the Company into Voluntary Administration. On the face of it, this may appear to be an unusual step to take for a Company with approx. \$6.4 million cash in the bank and only around \$250,000 of Current Liabilities. I welcome this opportunity to explain the Board’s rationale to our Creditors and our Stakeholders generally.

By way of background, you would be well aware that BVT is poised to commercialise its unique bionic eye technology thus helping to improve the lives of thousands of sufferers from inherited retinal disease. Where other attempts to commercialise retinal implants have failed, BVT’s technology is proving successful in its current clinical trial and, taken together with the Company’s highly experienced management team and world class research partners, suppliers and advisors, suggests that BVT has most of the key ingredients for the commercial launch and success of its technology.

However, to progress further, BVT must gear up for volume manufacture, pivotal trials and regulatory approval with the Company’s plans estimated to require US\$20 million, ie around AU\$30 million to cover its operations over the next two years. BVT has already engaged with several potential investors, both in Australia and overseas, and is hopeful of securing the funding it requires.

However most potential investors have immediately cited BVT’s Convertible Note as a roadblock to investment. It should also be noted in passing that the fact that BVT’s shareholders, and particularly its largest shareholder, State Path Capital Limited (SPC) are unlikely to invest is also of concern to potential investors.

You would recall that BVT’s current funding was raised in March 2017 by way of an US\$18 million Convertible Note providing by China Huarong International Holdings Limited (Huarong) with security provided by SPC as Corporate Guarantor and Alastair Lam as Personal Guarantor. Unusually, the Convertible Note does not include debt-to-equity conversion triggers when further investment funds are raised and only converts

on the achievement of CE Mark regulatory approval and an IPO which values BVT at at least \$150 million. These conditions can only begin to be satisfied following successful pivotal trials and hence are at least 3-4 years away.

The Company's Board and management have been attempting to have the parties to the Convertible Note Deed address this impediment to the raising of additional capital and have suggested various approaches over several months without success.

BVT's current funds are currently projected to run out in around September 2020 and, in the absence of additional capital being raised, the Company will become insolvent at around that time.

Since the Convertible Note seems to be an insurmountable barrier to capital being raised, BVT seemed to be headed for insolvency unless precipitate action was taken to head off this inevitability. Accordingly, the Board has placed the Company into Voluntary Administration in the hope that this may act as a circuit breaker and that, if a Deed of Company Arrangement (DOCA) can be successfully concluded, BVT might then have a few months to conclude a capital raising free of the current impediment presented by the Convertible Note.

Ergad Gold
Chairman
Bionic Vision Technologies Pty Ltd"

Our investigations to date have not identified anything inconsistent with the statement of the Chairman. We have not in our investigations been able to verify all information and have not undertaken an investigation or report on the technology and intellectual property of the Company.

3. Continuation of Business

As stated in the minutes of the Directors meeting and Chairman's statement to creditors, the Company held approximately \$6.4 million at the date of our appointment. We have received the Company's cash flow forecasts which indicate, based upon the business plan, that the Company should have sufficient funds to continue its usual activities in the ordinary course until at least September 2020. As a result we have maintained the Company's business activities.

The Company operates in both New South Wales and Victoria from the following premises:

- Collins Square, Tower 5, Level 23/727 Collins Street, Docklands Vic 3008
- Suite 1, Level 23, Tower 1, 495 Victoria Avenue, Chatswood NSW 2067

Both of these premises are serviced offices. The Company therefore has no long term lease or leases giving rise to long-term lease liabilities.

The business of the Company is currently continuing in its usual manner, subject to the outcome of the meeting of creditors to be held on 20 May 2020.

4. Trading History

A review of the Company’s records for the last four years and year to date discloses the following trading performance:

4.1 Balance Sheet

	Audited Financial Statements	Audited Financial Statements	Audited Financial Statements	Audited Financial Statements	Management accounts
	30/06/2016	30/06/2017	30/06/2018	30/06/2019	07/04/2020
Current Assets					
Cash	\$ 674	\$ 19,815,962	\$ 15,128,832	\$ 9,111,463	\$ 6,441,179
Trade	\$ 1,415	\$ 269,304	\$ 209,388	\$ 1,093,986	\$ 2,600
	\$ 2,089	\$ 20,085,266	\$ 15,338,220	\$ 10,205,449	\$ 6,443,779
Non Current Assets					
Plant and Equipment			\$ 96,185	\$ 48,092	\$ 76,645
Other		\$ 1,014,339	\$ 739,089	\$ 463,838	\$ 257,400
		\$ 1,014,339	\$ 835,274	\$ 511,930	\$ 334,044
Current Liabilities					
Current Tax liabilities	\$ 567	\$ 567			
Trade and other payable		\$ 183,790	\$ 423,210	\$ 667,626	\$ 605,003
Provisions			\$ 21,441	\$ 41,183	
Accrued interest					\$ 586,118
	\$ 567	\$ 184,357	\$ 444,651	\$ 708,809	\$ 1,191,121
Non Current Liabilities					
Borrowings		\$ 22,385,276	\$ 23,334,197	\$ 24,549,918	\$ 29,826,014
Provisions		\$ 10,304	\$ 10,155	\$ 566	\$ 66,739
		\$ 22,395,580	\$ 23,344,352	\$ 24,550,484	\$ 29,892,753
Net Assets	\$ 1,522	-\$ 1,480,332	-\$ 7,615,509	-\$ 14,541,914	-\$ 24,306,051

Funds from China Huarong International Holdings Limited (“Huarong”) relating to the Convertible Note Deed were received on 15 March 2017 (US\$18 Million). The liability is reflected as a non current liability commencing in the financial year ending 30 June 2017. At the time of our appointment, the liability is estimated at approximately A\$30 million based upon an exchange rate of US\$1 = A\$1.651 as at 7 April 2020. Accrued Interest of A\$586,118 was also outstanding at the time of our appointment.

As reflected above, the Company’s net working capital position was positive at the time of our appointment. Its current assets, mainly cash, are sufficient to pay its current liabilities. However, unless the Company can raise fresh capital it is expected that the Company will become insolvent as it has no revenue. According to the Board of Directors and the business plan this is expected to occur in about September 2020.

4.2 Profit & Loss

	Audited Financial Statements	Audited Financial Statements	Audited Financial Statements	Audited Financial Statements	Management accounts
	<u>30/06/2016</u>	<u>30/06/2017</u>	<u>30/06/2018</u>	<u>30/06/2019</u>	<u>07/04/2020</u>
Revenue/Income earned	\$ 427,500	\$ 71,056	\$ 224,711	\$ 1,211,692	\$ 1,485,349
Foreign exchange gain/loss		\$ 1,124,029	-\$ 663,182	-\$ 921,560	-\$ 4,676,360
Expenses	-\$ 425,611	-\$ 2,676,939	-\$ 5,696,706	-\$ 7,233,053	-\$ 6,596,880
Profit/Loss before tax	\$ 1,889	-\$ 1,481,854	-\$ 6,135,177	-\$ 6,942,921	-\$ 9,787,891

The Convertible Note debt is denominated in US dollars and the Company holds a US dollar bank account. Accordingly, when financial statements are prepared the US dollars are converted into Australian dollars. The loan and interest are repayable in US dollars, hence an exchange gain or loss is recorded.

The Company is still in its research and development phase and has no revenue and will not have any revenue until completion of the next phases in its development aligning with its business plan and proposed next two capital raisings:

- Capital Raising 1 → 2020/2021 A\$30 million - clinical trials and regulatory approvals
- Capital Raising 2 → 2023 A\$10 million – for commercialisation

The Company's Xero reports reflects that the Company does not generate sales, that its income is mostly derived from interest earned from funds on deposit (which is less than the interest payable to Huarong on the Convertible Note), that it received research and tax credits for the financial year 30 June 2019 and that the major expenses of the Company include consulting costs, research costs, payroll and interest expenses (arising from the Convertible Note Deed).

Except for the Convertible Note interest accrued between 1 January 2020 and 6 April 2020, which remains unpaid, the Xero reflects the following interest that was paid on the Convertible Note for each financial year:

	<u>Financial Year ending 30/06/2017</u>	<u>Financial Year ending 30/06/2018</u>	<u>Financial Year ending 30/06/2019</u>	<u>6 months ending 31/12/2019</u>	<u>Accrued 1/1/20 to 6/4/20</u>
Paid Convertible Note Interest	\$ 572,940	\$ 1,779,239	\$ 1,920,323	\$ 1,012,619	\$ 586,118 (outstanding)

5. Report On Company Activities and Property

Following our appointment as Administrators, we issued demands upon each Director of the Company to provide us with a Report On Company Activities and Property ("ROCAP") as at 7 April 2020.

At the time of this report, we have received responses from all of the Directors except Sabrina Sun (the appointee of Huarong). A review of the financial information of each ROCAP is identical.

The ROCAP reflects the following:

5.1 Assets

5.1.1 Cash at Bank - A\$3,472,199 and US\$1,776,692 (as at 7 April 2020 A\$2,933,318)

The ROCAP records the following cash deposits held. We also provide an update in relation to the recovery of the funds:

	ROCAP	Recovered Amount
Account number 1	\$9,161	\$9,162
Account number 2	\$3,463,037	\$3,463,037
USD FX Account	US\$1,776,692	Recovery underway

At the time of this report the administrators currently hold funds of A\$3,199,627.55.

5.1.2 Debtors - \$2,000

The ROCAP records a debtor, Bionics Institute of Australia, owing \$2,000.

The Company’s Xero accounts reflect this amount dates back to June 2018. We note that this debtor is also a creditor of the Company for \$165,000. It is likely that the Bionic Institute of Australia will set off the amount of \$2,000 against any amounts owing to them.

The Company’s Xero accounts also reflect a sundry debtor of \$599 which relates to credits due to the Company for WorkCover. The administrators have liaised with their insurance broker and the relevant WorkCover authority. We have been informed that as the Company had reduced its staff numbers in 2019 a credit refund of about \$3,000 is due.

The Company’s balance sheet discloses an amount of \$25,000 is being held in the trust account of the Company’s legal advisors. The Company’s Xero accounts reflect that this was paid on 10 January 2020. We have communicated with the Company’s legal advisors and after deducting outstanding amounts owing to them \$17,602.50 has been refunded to the Company.

5.1.3 Plant and Equipment - \$ 76,643

The ROCAP reflects plant and equipment consisting of:

- computer equipment
- office equipment
- research equipment
- software

The Xero accounts reflect the estimated written down value for the research equipment is \$66,034 and the balance is spread across the other plant and equipment items.

At this time we have not obtained an independent valuation of the plant and equipment for the following reasons:

- It is our experience that these assets have minimal used value and given the level of creditors claims will have minimal difference on the estimated dividend in a winding up.

- If the business is sold these assets will be included within the sale price,
- If the Company continues via the proposed DOCA the assets are retained.

5.2 Liabilities

5.2.1 Secured Creditor - \$Nil

According to a Personal Property Securities Register (“PPSR”) search at the date of our appointment, there are no security interests registered against the Company.

5.2.2 Employees Claims - \$46,998

The Company employs 6 employees on full time contracts, one casual and one contractor.

The priority entitlements of the employees can be summarised as follows:

Wages	\$nil
Annual leave	\$45,427
Superannuation	<u>\$ 1,571</u>
Total	<u>\$46,998</u>

Superannuation of \$1,571 relates to the wages paid for the period of 1 to 3 April 2020.

Employees of an employer who is under the control of an Administrator, or is subject to a Deed of Company Arrangement, are not eligible for Fair Entitlements Guarantee (“FEG”) assistance from the Department of Education, Employment and Workplace Relations unless their employer enters liquidation.

5.2.2.1 Excluded Employee

Pursuant to section 556(1A) of the Corporations Act 2001, the maximum amount payable to an excluded employee of the Company under section 556(1)(e) in respect of wages and superannuation contributions must be such that so much (if any) of it as is attributable to non-priority days does not exceed \$2,000.

Pursuant to section 556(1B) of the Corporations Act 2001, the maximum amount payable to an excluded employee of the Company under section 556(1)(g) in respect of leave of absence must be such that so much (if any) of it as is attributable to non-priority days does not exceed \$1,500.

Annual leave of \$13,912 is owing to one of the Directors. Accordingly, only \$1,500 of annual leave retains priority and the balance ranks as unsecured.

5.2.3 Unsecured Creditors - \$1,159,724

The ROCAP reflects the following unsecured creditors:

Australian Taxation Office	\$ nil
Trade suppliers & Consultants	\$ 571,404
Legal fees	\$ 2,203
Convertible Note Holder – interest	<u>\$ 586,118</u>
Total	<u>\$1,159,725</u>

The Australian Taxation Office has informed us that it currently has no claim against the Company subject to the 1-6 April 2020 business activity statement being submitted. We are arranging for this to be completed.

Since receiving the ROCAP a further schedule of creditors has been received comprising:

- Unsecured creditors (trade suppliers, consultants and legal fees)	\$ 594,824
- convertible note holder interest	<u>\$ 586,118</u>
- Total	\$1,180,942

Included within the unsecured creditors, are claims by related parties and shareholders of \$530,750 comprising of the following:

- Bionics Institute of Australia	\$165,000
- Centre for Eye Research Australia	\$357,500
- Tech to Market Pty Ltd	<u>\$ 8,250</u>
- Total	\$530,750

We are satisfied the claims of these parties are substantiated.

In addition to the above creditors, there is also the claim of Huarong under the Convertible Note Deed of US\$18 million (excluding interest). At the date of our appointment, this equates to A\$29,718,000 (excluding interest).

There may be further claims by the Bionics Institute of Australia (\$402,715) and CSIRO (\$515,625) pursuant to future obligations under project agreements.

In summary, the current total of all amounts due to unsecured creditors is \$2,099,282.

5.3 Estimated Deficiency

The total estimated deficiency, subject to costs and expenses, is \$25 million.

6. Critical Documents

We have undertaken a review and sought advice in relation to the following documents of the Company:

- 6.1 Shareholder Agreement dated 22 December 2016 (“Shareholder Agreement”);
- 6.2 Convertible Note Deed dated 7 March 2017 (“CND”);
- 6.3 Restated IP Licence and Commercialisation Agreement (“IPC Agreement”); and
- 6.4 Bionic Vision Technology Pty Ltd (“BVT”) Constitution.

A summary of the main terms relevant to this report are as follows:

6.1 Restated Shareholder Agreement

- i. BVT and the current shareholders are parties to the Shareholder Agreement.

- ii. The Shareholder Agreement gives the BVT Founding Shareholders (who hold a minority interest) and SPC (the majority shareholder who received shares in consideration of Huarong providing funding under the CND and SPC providing the corporate guarantees under the CND), greater rights than they would have pursuant to the Constitution or Corporations Act.
- iii. The Shareholder Agreement contains drag along and tag along rights which are typically used to ensure that the Company has the ability to participate in any potential exit event in the future eg. trade sale, IPO.
- iv. The Shareholders Agreement makes compliance with the terms of all the Transaction Documents an obligation (clause 25.10). This includes: the CND, State Path Capital Ltd Subscription Agreement and any other agreement the parties agree is a Transaction Document. We are advised by the Chairman there are no other agreements comprising Transaction Documents.
- v. The CND has been worked into the Shareholder Agreement. The Company 'shall not' issue any new equity securities at a valuation below AUS\$80M prior to conversion of the Convertible Notes, '*without the prior written consent of Huarong and SPC*' (clause 12.1(a)). We understand that this has been an obstacle to the Company completing its next round of fundraising. It is unclear how this clause would be interpreted against the Company.
- vi. Currently there are 6 Directors (which is the minimum - schedule 1 clause 2.1), with SPC having the right to appoint 3 non executive directors (one of which is appointed by Huarong as part of SPC's corporate undertakings in the CND); the BVT Founders having the right to appoint two non-executive directors; and SPC and the Founders jointly appointing an independent director (which we understand is the Chairman) There is currently a vacancy in the appointment of a Founder director. The CEO is a director ex officio. If the Shareholder Agreement remains unchanged:
 - 1. These rights would continue and dominate how the Board operates; and
 - 2. It is likely a new investor will require their own additional appointment rights.
- viii. Quorum requirements (clause 4 of schedule 1) require at least one SPC Director, one BVT Founder Director and the Independent Chair. This creates a significant hurdle if there is dispute, discontent or disinterest by any of the Directors. That is, either of the BVT Founder Directors or the SPC Directors can choose not to attend a meeting, with the result that a quorum is not achieved under the Shareholder Agreement, preventing any director resolution being passed in compliance with the Shareholder Agreement.
- ix. Decision making is based upon the required proportion of directors in total, not in attendance and voting. This is unusual and means that a Special Director Approval requires 5 out of 6 directors, irrespective of whether only 4 attend, and/or vote at the meeting in question. This applies under the terms of the Shareholder Agreement, even if the directors are unable to vote because of a conflict of interest.
- x. Clause 5.1 and Schedule 2 give the Shareholders, by Special Approval (70% or 75% depending upon the decision) the control of many issues.

- xi. Shareholders have pre-emptive rights (clause 12.3-12.9).
- xii. Some provisions are outdated. An example includes clause 15.8 which references an IPO occurring by December 2018 - this did not occur.

The Chairman has advised that it is anticipated that any incoming investor will require special rights and that this will likely require amendment to the shareholder agreement.

The terms of the Shareholder Agreement, appear to place the Company at a risk of deadlock and/or an inability to proceed with its business plan. As a result, we authorised the Chairman to pursue the development of a Second Revised Shareholder Agreement – refer below at 6.5.

6.2 Convertible Note Deed

- i. Huarong provided US\$18M to the Company pursuant to the terms of the CND in March 2017. SPC (“Corporate Guarantor”) and Chung Ho Alastair Lam (Personal Guarantor) guaranteed the obligations of BVT. SPC was granted a majority shareholding in BVT prior to the CND on the basis of an agreement that it would arrange for the CND to be entered into.
- ii. The Company has through the CND granted Huarong the following rights which may impact the ability of the Company to operate in the ordinary course: to require that it is a signatory to the Company bank account *‘for the purposes of facilitating Restricted Withdrawals’* (over \$200,000) (clause 9.2(1)).
- iii. By notice received 5 May 2020 Huarong issued a notice that a Default Event had occurred in that pursuant to paragraph 12(7) of Schedule 1 of the CND, a Default Event occurs if the Synergy Shares have not been transferred into an account with Huarong International Financial Holdings (993:HK) (“HIFH”) within 6 months of the signing of the CND, entitling Huarong to demand redemption of the convertible notes at any time, (clause 8.2 of Schedule 1).
- iv. No conversion right can arise unless, if required, there is a *‘No Objection Notification’* given pursuant to the FATA. In our view, prior to our appointment, a conversion on the terms of the CND would not have required a *“No Objection Notification”*, as the relevant time for assessing this was the date of the CND and at that time, it is reasonable to assess that the value of the Company was less than the monetary threshold set down by the FATA.
- v. In any event, Huarong has not purported to exercise any right to conversion and the Company had no right to require conversion of the debt pursuant to the terms of the CND, prior to our appointment.
- vi. The current interest rate payable is 10% per annum which is likely to increase to 11% per annum in March 2021. But for the administration, the Company is unlikely to: (a) be able to redeem the notes or (b) have satisfied the conditions which enable the Company to require conversion.
- vii. If the Company issues additional shares as part of a capital raising, at less than ‘Current Market Value’, Huarong have anti-dilution rights (clause 7.4 of Schedule 1). To determine ‘Current Market Value’, in the absence of agreement with

Huarong, requires the appointment of an 'Expert' pursuant to clause 15 of Schedule 1. The ability to determine a 'Current Market Value' in the current circumstances of the Company and the Covid-19 crisis is anticipated to be difficult and may result in an extremely low 'Current Market Value'. The Chairman has advised that a low formal valuation of the Company at the present time (being the relevant time for the purposes of the CND) may be detrimental to the ability of the Company to raise additional capital in the future. If the Company is forced to seek a 'Current Market Value' under these provisions and it returns a low value, this may impact the value which future investors are prepared to apply to the Company in determining future fundraising.

6.3 IP Agreement

- i. The IPC Agreement is liable to be terminated at any time by the Licensors acting jointly, as a result of our appointment as Administrators (refer clauses 9.1 and 9.2(d)).
- ii. To date, none of the Licensors have indicated any intention to terminate the IPC Agreement. We have received written confirmation from 2 of the IP holders that they are in support of a DOCA providing for the Huarong debt to equity conversion.
- iii. We have had indications from some of the Licensors, that if a DOCA on the terms set out in this report are not adopted, they reserve their rights to take steps to terminate the IPC Agreement.
- iv. The IPC Agreement includes a list of patents, which the Licensors have made available to the Company under the IPC Agreement. We have undertaken a search of any patents registered in the name of the Company in Australia and USA. None have been identified.
- v. The IP Agreement (at clause 21.9), links in the Shareholder Agreement (*"This agreement and the Shareholders Agreement constitute the entire agreement between the...."*). This is the only reference to the Shareholder Agreement. Clause 21.11 allows a clause to be severed from the IP Agreement.

We have formed the view that in the absence of approval of the proposed DOCA, it is likely that the Licensors pursuant to the IPC Agreement will seek to terminate the Company's rights pursuant to the IPC Agreement. The Directors have advised that in the absence of the rights granted to the Company pursuant to the IPC Agreement, the Company does not have any intellectual property which it could continue to develop and commercialise. As a result, it is anticipated that the value of the Company would be limited to its cash at hand and plant and equipment, less liabilities.

6.4 BVT Constitution

The BVT Constitution is considered inadequate for the needs of the Company, in the absence of a Shareholders Agreement. Some examples include:

- i. The Company 'will not' recognize a person as holding shares on trust.

- ii. Quorum is two shareholders, with no minimum ownership proportion. This is not satisfactory given the potential for any two shareholders to fail to be representative of the collective.
- iii. Shareholder decisions are by majority vote unless a Special Resolution is required by the Corporations Act. Other than appointment/removal of directors (below), shareholder decisions are as per the Corporations Act.
- iv. Quorum is 3 wherever the total number of directors is 3 or more (article 63.8) – this should be revised.

As a result of the critical documents and in the context of the need for capital raising to enable the Company to implement its business plan, it is our opinion that action needs to be taken to resolve these agreements.

6.5 New Shareholder Agreement

While the negotiation and implementation of a new shareholder agreement is not typically a task for the Administrators, in this instance the commercial imperatives to encourage agreement and to place the Company in a position to operate effectively post the proposed DOCA, in our view make it advisable that a new shareholders agreement be executed prior to the proposed DOCA.

We have authorised the Chairman to pursue agreement amongst the Shareholders and understand that the terms of an Second Revised Shareholder Agreement have been agreed between all but 2 of the minor existing Shareholders, which are intended to grant the Board increased flexibility and reduce the risk of any one shareholder being in a position to block (or hinder) the Company implementing its business plan.

Enclosed at Annexure A is the proposed Second Revised Shareholder Agreement, which is currently with the shareholders for execution. We will update creditors on the status of this at the creditors meeting.

7. Related Entity Loans

Pursuant to the Transaction Documents, Huarong became a related entity as it, through the terms of the Corporate Guarantee, appointed a Director to the Board.

8. Convertible Note Holder – Huarong US\$18 million

This paragraph should be read in conjunction with the paragraphs mentioned under “Critical Documents”.

Convertible Note Holder – Deed balance (AUD) \$29,718,000

The Company entered into the CNL with Huarong, as the Subscriber. The CNL was executed on 7 March 2017. The Company’s Xero accounts reflect that the principal sum of US\$18 million was received on 15 March 2017.

For the purposes of calculating Huarong’s claim in the administration, we have adopted Section 554C of the Corporation Act 2001 which provides the conversion of foreign currency into Australian dollars as at the date of our appointment. The

exchange rate at the time of our appointment on 7 April 2020 was US\$1 equals to AUD\$1.651. This translates Huarong’s claim of US\$18 million to A\$29,718,000.

The CND also sets out that interest is payable every 6 months on 30 June and 31 December.

Interest is calculated at 10% per annum. At the time of our appointment, the accrued interest totaled \$586,118 for the period 1 January 2020 to 6 April 2020.

The redemption date is March 2021. At this time, the Company does not anticipate being able to pay the outstanding balance.

The CND also provides for the appointment of a Director to the Board, pursuant to the Corporate Guarantee. Sabrina Sun is the nominated representative of Huarong on the Company’s Board.

9. Sale of Business

In order to assess whether the proposed DOCA would be in the best interest of the Company and its creditors, expressions of interest were sought for the Company’s business.

In consultation with the Chairman, it was determined that advertisements be placed in the Australian Financial Review and the South China Morning Post (Hong Kong) to seek any offers from interested parties regarding the sale of the business. The decision to advertise in Australia and Hong Kong was based upon a review of the Company’s creditors and shareholders.

The advertisements appeared as follows:

Australian Financial Review	23 and 27 April 2020
South China Morning Post (Hong Kong)	23 and 24 April 2020

Responses received to date: 4

Confidentiality Agreement signed: 1

Non binding offers were due by 8 May 2020. No indicative offers have been received.

10. Independent Valuation

To enable us to assess that the proposed DOCA was in the interests of the creditors and the Company, we instructed Nero Capital Pty Ltd to undertake an independent valuation (“the valuation”) based upon the proposed DOCA being approved by creditors and the Company implementing its business plan.

The Executive Summary to the independent valuation is enclosed in Appendix B. Subject to execution of a Confidentiality Deed, the full valuation may be available.

Nero Capital Pty Ltd has taken the view that a value for the Company in 2025 of approximately \$706.5 million is not unreasonable.

However, that view is based upon a number of assumptions coming to fruition including that the Company will, in the future, be able to raise additional capital of A\$40 million and, if so able to be raised, the otherwise successful implementation of the Company’s business plan on the assumptions therein contained.

The valuation is therefore highly speculative, such that no assurance or warranty can be given that such realisable value, or any realisable value, will ever eventuate.

As stated above, we have not in our investigations been able to verify all information and have, save for commissioning the independent valuation, not undertaken or commissioned an investigation or report on the technology and intellectual property of the Company or the validity of the Company’s business plan, including the assumptions therein contained, or the Company’s prospects if the proposed DOCA is implemented.

No warranty of accuracy or reliability is given in respect of the valuation, or its conclusions, or the content and achievability of the Company’s business plan. Nor is it warranted that any future capital will be able to be raised by the Company.

The valuation is based upon a multiple of forecast revenue in 2025 and, as stated, future capital raisings being achieved in the times and sums of money set out in the business plan.

This valuation methodology is not applicable in valuing the Company today as the Company has no revenue. Therefore, the value today is represented by the value of the Company’s assets plus any premium a potential buyer may pay for the opportunity to complete development and commercialisation. We anticipate, that any premium will be dependent upon the buyer being able to negotiate with the Licensors under the IPC Agreement, an agreement to use and commercialise the patents. The Company is not the registered owner of any patents in Australia and USA.

No indicative offers were received from the advertising for the expressions of interest for the business.

Nor have any other proposals for a restructure of the Company’s affairs been received including other proposed deeds of company arrangement.

11. Investigation into Financial Transactions Conducted by the Company

Administrators are required to report to ASIC if it appears that any past or present officer, employee or member of the Company may be guilty of an offence in relation to the Company or may have inappropriately dealt with money or property of the Company or may have been guilty of negligence, default, breach of duty or trust in relation to the Company.

ASIC may then take such proceedings as it sees fit. Any action by ASIC would be separate from any action by the Administrator or Liquidator to recover money for the benefit of creditors.

Administrators are required to specify whether there are any transactions that appear to the Administrators to be voidable transactions in respect of which money, property or other benefits may be recoverable by a Liquidator under part 5.7B of the Corporations Act 2001.

This issue is relevant to creditors if they are being asked to choose between a Deed of Company Arrangement or a Liquidation, because voidable transactions are only able to be challenged if a liquidation occurs.

For general information about offences, recoverable transactions and insolvent trading, please refer to the enclosed Creditor Information Sheet prepared by the Australian Restructuring, Insolvency and Turnaround Association.

11.1 Offences

We have undertaken an investigation of the affairs of the Company to identify any offences that may require to be reported to ASIC.

We have not identified any matters requiring a report at this stage. Any subsequently appointed Deed Administrator or Liquidator may report any matters they identify at a later stage.

11.2. Voidable Transactions Recoverable by a Liquidator

We have undertaken an investigation of the Company's business, property, affairs and financial circumstances to ascertain whether there are any transactions which appear to be voidable in respect of which money, property or other benefits might be recoverable under Part 5.7B of the Corporations Act 2001.

Based upon our investigations to date of the records of the Company, we are of the opinion that there are unlikely to be transactions that are voidable by a liquidator.

Unfair preferences (s588FA)

We have not identified any unfair preferences.

Uncommercial transactions (s588FB)

We have not identified any uncommercial transactions.

Insolvent transactions (s588FC)

Further details in respect to our investigations regarding the solvency of the Company are discussed at section 8.3 below. We have not identified any insolvent transactions.

Unfair loans to a Company (s588FD)

As set out in Section 7 of this report, the Company entered into a CND with Huarong and as a result it became a related party as it had an entitlement to appoint a Director to the Board. This agreement was entered in March 2017 for 4 years.

Interest was charged at 8% then 10% paid every 6 months.

The advance was made

- to further the Company's research and developments; and
- was therefore at risk that it may be unsuccessful; and
- the loan was unsecured; and
- it was likely further funding would be required to commercialise.

It is our opinion that the interest rate charged, in the circumstances was not unfair.

Unreasonable director-related transactions (s588FDA)

As mentioned above

- 1 of the Directors was appointed pursuant to the Corporate Guarantee providing in the CND, relying upon SPC’s rights in the Shareholder Agreement
- 2 of the Directors were appointed to represent the major shareholder, SPC
- 1 Director was appointed to represent BVT Founder Shareholders
- 1 Director is the CEO and
- 1 Director, the Chairman, is an independent appointee.

The Directors are entitled to Directors fees and the CEO is retained on a full time contract.

In our opinion none of the transactions are unreasonable Director related transactions.

We note that in effect, all shareholders have representation on the Board plus an independent nominee. Remuneration of the Directors therefore appears to have the implied approval of shareholders.

The Company has agreements with a number of the shareholders to provide services relating to the research and development of the Company’s Bionic Eye. All these arrangements appear to be at arms length agreements.

These agreements are with Bionics Institute of Australia, Centre For Eye Research Australia Limited and Data 61 (created from the merger of NICTA IPR Pty Ltd and CSIRO).

Entering into arrangements or transactions to avoid employee entitlements (s596AB)

We have not identified any arrangements or transactions to avoid employee entitlements.

11.3 Solvency

We have reviewed the Company’s records to assess whether the Directors may have incurred credit where there are reasonable grounds for suspecting that the Company was insolvent.

A company is considered to be insolvent if it is unable to pay its debts as and when they become due and payable.

There are two primary tests for corporate insolvency:

- **the cash-flow test:** is the company currently, or will it in the future, be unable to pay its debts as and when they fall due for payment?
- **the balance sheet test:** is the value of the company’s assets less than the amount of its liabilities, taking into account as-yet uncertain and future liabilities? Could the company sell assets or borrow funds?

The cash-flow test is a more relevant test as the test for solvency.

The balance sheet test may be relevant where a director relies upon using a company’s assets to sell or borrow funding to enable creditors to be paid. A temporary cash flow shortfall on its own is not sufficient to establish insolvency.

Financial statements were audited by ShineWing Australia. The last audited accounts were for the year ended 30 June 2019. The auditor's opinion is dated 20 November 2019 and states as following:

“Market Uncertainty Related to Going Concern

Without qualifying our opinion further we draw attention to Note 1 in the financial report, which indicates that the Company incurred a net loss of \$6,942,921 during the year ended 30 June 2019 and, as of that date, the Company's total liabilities exceeded its total assets by \$14,541,914. As stated in Note 1, these events or conditions, along with other matters as set forth in Note 1, indicate that a material uncertainty exists that may cast significant doubt on the Company's ability to continue as a going concern. Our opinion is not further modified in respect of this matter.”

Note 1 relevantly states:

“The financial statements have been prepared on a going concern basis which contemplates the continuity of normal business activities and the realisation of assets and the settlement of liabilities in the ordinary course of business. The Company incurred a net loss of \$6,942,921 during the year ended 30 June 2019 and, as of that date, the Company's total liabilities exceeded its total assets by \$14,541,914 due to the issuance of convertible notes on 7 March 2017.

As the repayment of convertible notes face value would mature in four years from the date of issue, the directors are satisfied that the Company has the ability to continue as a going concern and meet its obligations as and when they fall due and payable for the subsequent 12 months due to:

- the Company is currently engaged in raising the capital needed for its future programs.
- Management is actively involved with several potential investors and is addressing numerous due diligence questions but that existing Convertible Note may provide a roadblock to investment unless resolved.

However, the Company viability as a going concern depends on the successful and timely conclusion of its capital raising effort. If above events are not successful, that may cast significant doubt on the entity's ability to continue as a going concern and, therefore, that it may be unable to realise its assets and discharge its liabilities in the normal course of business. Therefore, a significant uncertainty of going concern exists.”

We refer to the minutes of the Directors' meeting and Chairman's statement as to the circumstances leading up to our appointment. Accordingly, as at the date of our appointment the Company was not insolvent but without taking action was likely to become insolvent about September 2020 or thereafter.

In our opinion at the date of our appointment the Company was not insolvent.

11.4 Directors’ Personal Financial Position

Following our appointment, we wrote to the Directors of the Company requesting that they provide details of the personal financial position by way of a statutory declaration.

To date we have not received this information and therefore we are not in a position to determine whether they have assets which may be available if an action against the Directors is pursued and is successful. Our enquiries to date have also not identified any claims against the Directors.

11.5 Books and Records

Based upon our review of the books and records to date it is our opinion the Company has kept written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared.

Our opinion is based on the following sighted during our investigations:

- the Company’s financial statements are audited with the last audit being for the period 30 June 2019 and signed on 20 November 2019;
- the accounts are maintained on Xero and managed by external accountants, ShineWing Australia Pty Ltd;
- the Xero records were current at the time of our appointment;
- processes are in place for the approval of purchase orders and payments.

12. Proposal for a Deed of Company Arrangement (“DOCA”)

The Chairman has presented a proposed DOCA for the consideration of creditors.

As has been set out previously in this report the CND has been an impediment to the Company being able to raise further capital. Potential investors have raised concerns about:

- the convertible note debt on the balance sheet;
- the Company’s largest shareholder is not demonstrating confidence in the Company by not committing to contribute to the capital raising; and
- the forecast timeline to commercialise and generate revenue.

These issues have been repeatedly raised in the minutes of the Board since September 2019.

The minutes also record that no progress was able to be made with Huarong to resolve the convertible note issue.

In accordance with section 444A(3) of the Corporations Act the Administrators have prepared the enclosed DOCA based upon the Chairman’s proposal. In summary:

1. Object of the Proposed DOCA

In accordance with section 435A of the Corporations Act 2001, the object of the DOCA is to maximise the chances of the Company and its business continuing in existence.

2. Control reverts to Directors

Upon executing the DOCA, control and management of the Company is to revert back to the directors.

3. Role of Administrators

The role of the Administrators is limited to monitoring the performance of the Company of the Terms of the DOCA together with a Committee of Inspection (if appointed). The Administrators and the Committee of Inspection shall determine whether the Company is complying with its obligations and performance criteria as set out in the DOCA.

4. Deed Covenants

The directors are entitled to continue to run the business under their own management subject to maintaining the following covenants and performance requirements:

- a) The business is to be operated consistent with the cash flow forecast provided in the Board reports, received by the Administrators on 25 April 2020.
- b) Any material variation is to be reported to the Administrators and Committee of Inspection within 7 days of the variation being identified together with any explanation. The Administrators and the Committee of Inspection will determine what action, if any is to be taken.
- c) The directors are to keep the Administrators informed as to the progress of the capital raising of US\$20,000,000.
- d) The directors are to advise the Administrators of any changes to the Company’s shareholding.
- e) The assets of the Company are not to be pledged, charged or otherwise encumbered without the consent of the Administrators or the Committee of Inspection

The performance of the Company and its adherence to the above covenants and performance criteria are to be considered in respect of the period commencing on the date of the DOCA until the termination of the DOCA.

5. Breach of Covenant(s)

The decisions of the Administrators and the Committee of Inspection are conclusive as to whether there has been a breach. The Administrators may then convene a meeting of the Committee of Inspection to determine the seriousness of the breaches and whether the breaches are to be acted upon and the DOCA terminated, the covenants waived or amended. The Committee of Inspection

shall make such determination at its absolute discretion. The Committee of Inspection can also determine that a meeting of all creditors be convened to vary the DOCA or terminate the DOCA and wind up the Company.

6. Funds

Following the execution of the DOCA the Administrators will return all but \$1,000,000 of the funds to the control of the directors. Any funds held when the administration and DOCA are finalised are to be returned to the Company.

Should the funds retained by the Administrators be insufficient, the directors will within 24 hours transfer such funds as are requested to the Administrators’ bank account.

At the conclusion of the DOCA the Administrators will provide an accounting of all funds.

These funds will also enable the priority entitlements of the employees to be paid, should the DOCA fail.

7. Interest

During the period of the DOCA, no creditor will be entitled to be paid interest by the Company on its outstanding debt.

8. Management Reports

During the period of the DOCA the directors are to provide to the Administrators all Board reports and minutes.

All budgets and forecasts made have been prepared by the directors of the Company. The Administrators makes no representation to the accuracy of the budgets and forecasts. The budgets and forecasts are subject to contingencies of varying degrees of probability, achievability and enforceability. Creditors, if they are uncertain about any matter concerning the budgets and forecasts should seek their own independent financial, accounting and legal advice.

9. Remuneration and Indemnity of the Administrator

The Administrators’ remuneration is to be approved by the Committee of Inspection. If no Committee is appointed then the remuneration of the Administrators’ and of their partners and staff shall be calculated within the scale of hourly rates of Lowe Lippmann for insolvency work, plus GST, and the Administrators shall be entitled to be reimbursed for all expenses and other disbursements incurred by them in the administration of the Company and of the DOCA.

The Administrators shall be indemnified by the Company against any liability arising from their administration of the DOCA other than such liability as may be attributable to any negligence, default, breach of duty or breach of trust on his part.

10. Ascertainment of Debt of Participating Creditors

The debts of creditors shall be calculated in accordance with subdivision A, B, C and E of Division 6 of Part 5.6 of the Corporations Act 2001 and Regulations 5.6.37 to 5.6.57 of the Corporations Regulations.

11. Convertible Note

As at the date of signing of the DOCA, the Company's obligations pursuant to the CND are terminated and all claims of the Note Holder, China Huarong International Holdings Limited ("Huarong"), are extinguished as against the Company.

The termination of the CND as against the Company does not release, modify, abrogate or render ineffective the rights of Huarong under the guarantees given to it by the Corporate Guarantor and the Personal Guarantor under the CND, but it does extinguish the rights of the Corporate Guarantor and the Personal Guarantor to seek indemnity from the Company if those guarantees are called upon.

Huarong is to be issued shares equal to 10% of the total issued shares in the Company in full and final satisfaction of any amount owing including the loan advance and interest. In addition, Huarong will be granted an anti-dilution right with respect to the projected capital raising of US\$20,000,000 (first round capital raise).

Based upon a projected capital raising of US\$20,000,000, at the value proposed by the Board, it is anticipated that 21,717 shares will be issued in the name of Huarong as follows:

- By the Administrators, 10,606 shares as a pre-condition to the DOCA being effectuated; and
- By the Company, further shares as capital is raised such that Huarong retain the lower of a 10% shareholding post capital raising or 40,908 shares.

12. Other Creditors

All other creditors' claims (excluding Huarong) are to be paid in full by the Company as and when due.

13. Term of the DOCA

Unless the term is extended by an Order of the Court, the 10,606 shares to be issued by the Administrators are to be registered in the name of Huarong within 4 weeks of the signing of the DOCA. The DOCA is to be effectuated by the Administrators within 5 business days of the registration of these shares.

14. Provisions of Schedule 8A of the Corporations Act 2001

The following provisions of Schedule 8A of the Corporations Act 2001 shall apply:

- a) The Administrator deemed agent of the Company
- b) Powers of the Administrator
- c) Termination of Deed where arrangement fails
- d) Priority
- e) Discharge of debts
- f) Claims extinguished
- g) Bar to creditors’ claims
- h) Committee of Inspection
- i) Termination of Deed where arrangement achieves purpose

with such modification to the DOCA as the Administrator considers appropriate.

15. Administrators’ Lien

The Administrators’ lien pursuant to Section 443F of the Corporations Act 2001 continues notwithstanding execution of the DOCA. The Administrators will have a lien over all of the Company’s property.

The proposed DOCA is enclosed at Annexure C

Administrators’ Assessment of Proposed DOCA

We have sought legal advice and considered the proposed DOCA in the context of the Foreign Acquisitions and Takeovers Act 1975 (“FATA”). As a consequence of Covid-19 the Federal Government have reduced the monetary threshold for assessing investments pursuant to the FATA \$0.

We have confirmed that the Ministry of Finance of China owns approximately 63.36% of China Huarong Asset Management Co Ltd, of which Huarong International Holdings Limited is a core subsidiary. Accordingly, we have formed the view that Huarong is a foreign government investor for the purpose of the FATA.

Regulatory Guide 53 states: *The changes to the monetary thresholds apply to actions taken after the announcement at 10:30pm AEDT on 29 March 2020....*

The extinguishment of the CND by the proposed DOCA, so far as it relates to the relationship between the Company and Huarong, results in a debt owed by the Company to Huarong. We have received legal advice that the conversion of that debt to shares in the Company is permissible (as recognised by section 444D(4) of the Corporations Act 2001) and that such transaction is a new transaction for the purposes of the FATA. We have therefore been advised that the timing for assessment of the requirements of the FATA is the date of the DOCA and the \$0 monetary threshold applies. Consequently, we have been advised that any issue of shares to Huarong in excess of 10% of the Company is likely to amount to a foreign investment which would require approval of the Foreign Investment Review Board pursuant to the FATA requirements.

We understand and have been advised that the proposed DOCA limits the debt to equity conversion of the Huarong claim to a maximum of 10% of the capital in the Company so as to comply with the advice that at this level FIRB approval would not be required.

At Section 13 below, Winding Up, we calculate the estimated return for unsecured creditors at approximately 8 cents in the dollar. In a winding up, it is expected that the shares will have no value.

Under the proposed DOCA, all employees retain their employment and their entitlements paid in the ordinary course. The creditors (other than Huarong) will be paid their claims in full in the ordinary course.

With the implementation of a new Shareholder Agreement and the extinguishment of the Company's obligations pursuant to the CND, we are not aware of any reason why the IPC Agreement will not continue, thus allowing the Company to implement its business plan, including the capital raising.

According to the independent assessment of the business plan undertaken by Nero Capital, who have formed the view that it is not unreasonable that by the end of calendar year 2025 the Company may have a value estimated at \$706,500,000 equating to \$3,098 per share, on the basis of the forecast shares on issue being 228,026. Under the proposed DOCA, Huarong is estimated to hold 21,717 shares equating to a potential forecast value of \$67,279,266.

We have received confirmation from two of the IP Licensors of their ongoing support of the Company and maintaining the IPC Agreement, should the Company execute a DOCA on the proposed terms.

We have also received written confirmation from one of the interested parties the Company had previously approached for an investment, advising that while the proposed investment is still to be confirmed, they expect an investment would be a minimum of \$5 million. It is subject to due diligence and the outcome of the administration and would require at least 2 to 4 weeks to finalise their position. The Chairman advises that his discussions with other potential investors also remain positive subject to dealing with the convertible note debt. The Chairman advises that he remains confident of completing the \$30 million capital raising with sufficient funds being raised progressively to ensure the Company is able to continue operating in accordance with the business plan.

13. Winding Up

Should creditors decide that the Company ought to be wound up, then it is likely that unsecured creditors will receive approximately 8 cents in the dollar on the basis that by end of June 2020 we will only have \$2.65 million of funds available and \$32 million of creditors.

In this instance the estimated dividend to Huarong in relation to its Convertible Note Deed will only be \$2.4 million.

In a winding up, pursuant to section 556(1A) and section 556(1B) of the Corporations Act 2001, the excluded employees would still be entitled to claim a maximum of \$3,500 each for outstanding wages, superannuation and leave entitlements. The priority entitlement of the excluded employees will total \$1,500.

The balance of the excluded employees' claims rank as unsecured debt.

14. Dividend Estimate

Below is a comparison of the return to creditors under each of the proposed DOCA and liquidation scenarios:

	<u>DOCA</u>		<u>Liquidation</u>	
	<u>High</u>	<u>Low</u>	<u>High</u>	<u>Low</u>
Funds available estimated	1,000,000	1,000,000	3,000,000	3,000,000
<u>Less:</u>				
Administration fees to 2nd meeting	150,000	200,000	150,000	200,000
Deed Administrators fees - estimated	50,000	100,000	-	-
Liquidators fees - estimated	-	-	50,000	100,000
Legal fees - estimated	125,000	200,000	125,000	200,000
Available funds	675,000	500,000	2,675,000	2,500,000
Less Priority creditors - ROCAP	n/a	n/a	34,586	34,586
Funds available to unsecured creditors	675,000	500,000	2,640,414	2,465,414
<u>Unsecured creditors</u>				
ROCAP creditors excluding Huarong interest	n/a	n/a	573,606	573,606
Huarong interest calculated to 6 April 2020	n/a	n/a	586,118	586,118
Huarong Convertible Note debt @ 7 April 2020	n/a	n/a	29,718,000	29,718,000
Additional creditors claims on outstanding contracts	n/a	n/a	939,558	939,558
Balance of excluded employees's non priority annual leave	n/a	n/a	12,412	12,412
	-	-	31,829,694	31,829,694
Dividend Available	100c	100c	0.08	0.08
	per dollar	per dollar	per dollar	per dollar

15. Interests of Creditors

We are required, by section 439A(b)(4) of the Corporations Act 2001, to set out our opinions, and our reasons for those opinions, about each of the following matters:

- whether it would be in the creditors’ interest for the Company to execute a Deed of Company Arrangement (in this case the proposed DOCA);
- whether it would be in the creditors’ interest that the administration should come to an end; or
- whether it would be in the creditor’s interests for the Company to be wound-up.

Because of the different treatment proposed by the DOCA in respect of Huarong, as compared to other creditors, we believe that it is necessary to address these issues separately in respect of Huarong and the other creditors.

Creditors other than Huarong

Creditors other than Huarong account for only about 4% of the liabilities of the Company.

If the proposed DOCA is implemented these creditors will have all their liabilities paid as and when they fall due.

In these circumstances:

- it is our opinion that it would be in their best interests for the Company to execute the proposed DOCA as they will have their liabilities paid as and when they fall due. Further, to the extent that they are employees they will retain their employment;
- correspondingly, it is our opinion that it would not be in their best interests for the Company to be wound-up as in that circumstance they would only receive about 8 cents in the dollar as a dividend;
- correspondingly, it would not be in their best interests for the administration to come to an end. It appears to us that in the current circumstances the Company will ultimately become insolvent as capital raisings will not be achievable. It is also our opinion that if the administration comes to an end and the capital raising is unsuccessful, then the Company will run out of money in around September 2020 and the convertible notes become due for repayment in March 2021. In these circumstances the Company will be insolvent. At those times (September 2020 and March 2021) should the Company be wound up creditors are likely to receive a dividend of nil cents in the dollar.

Huarong

The current debt owed to Huarong under the CND, and accrued interest, represents about 96% of the value of all of the Company's liabilities.

The position of Huarong is different to other creditors under the proposed DOCA. Under the proposed DOCA Huarong is to receive no payments from the property of the Company (or from any other source) and all of the debt owed to it under the CND is to be converted to equity. That liability is US\$18 million which was approximately A\$30 million at the time of our appointment. Accrued Interest of A\$586,118 was also outstanding at the time of our appointment. That interest will also not be paid.

Under the terms of the proposed DOCA Huarong's principal debt of US\$18 million and accrued interest is to be converted to equity and the Company's obligations pursuant to the CND terminated, such that all claims of Huarong against the Company are extinguished including as to principal and accrued interest.

Pursuant to the conversion of debt to equity Huarong is to be issued shares equal to 10% of the total issued shares in the Company in full and final satisfaction of all amounts owed to it by the Company including the above principal debt of US\$18 million and accrued interest. Huarong will be granted an anti-dilution right with respect to the projected capital raising of US\$20,000,000 (first round capital raise).

As stated above, in the event that the Company is wound up, then it is our view that the unsecured creditors are likely to receive only about 8 cents in the dollar as a dividend. In respect of Huarong, that equates to approximately \$2.4 million (in June 2020) or nil in September 2020 when the Company may otherwise run out of cash or March 2021 when the convertible note falls due.

As at this time it is our opinion that the shares in the Company proposed to be issued to Huarong will have nil value on issue (and certainly far less than \$2.4 million).

Nero Capital Pty Ltd has, however, taken the view that a value for the Company in 2025 of approximately \$706.5 million is not unreasonable.

If this valuation was achieved, Huarong may see the value of its shares increase from nil to a forecast valuation of \$3,098 per share by the end of 2025 noting that the forecast shares to be issued to Huarong is 21,717.

Therefore, the forecast value of the Huarong shares in 2025 is estimated to be \$67 million. This compares to a return on a winding up now, estimated at \$2.4 million (in June 2020) or nil in September 2020 when the Company may run out of cash or March 2021 when the convertible note falls due.

However, the view of Nero Capital Pty Ltd is based upon a number of assumptions coming to fruition including that the Company will, in the future, be able to raise additional capital of A\$40 million and, if so able to be raised, the otherwise successful implementation of the Company’s business plan on the assumptions therein contained.

The valuation is therefore highly speculative, such that no assurance or warranty can be given that such realisable value, or any realisable value, will ever eventuate.

As also stated above, we have not in our investigations been able to verify all information and have, save for commissioning the independent valuation, not undertaken or commissioned an investigation or report on the technology and intellectual property of the Company or the validity of the Company’s business plan, including the assumptions therein contained, or the Company’s prospects if the proposed DOCA is implemented.

We note that under the terms of the proposed DOCA the termination of the CND as against the Company does not release, modify, abrogate or render ineffective the rights of Huarong under the guarantees given to it by the Corporate Guarantor and the Personal Guarantor under the CND, but it does extinguish the rights of the Corporate Guarantor and the Personal Guarantor to seek indemnity from the Company if those guarantees are called upon.

However, we do not know whether those guarantees, if called upon, will result in any recovery for Huarong.

On the above basis, *and also because we have no information as to the financial position of Huarong*, it is extremely difficult for us to express any opinion as to whether or not it would be in the interests of Huarong for the Company to execute the proposed DOCA. We say this noting that \$2.4 million is still a significant sum of money, even though it is far less than the sum owed to Huarong under the CND.

In the above circumstances, we would, if entitled to do so at law, express no opinion to Huarong as to whether it was in its interests for the Company to execute the proposed DOCA.

As we are required at law to express an opinion we therefore recommend that Huarong consider whether it is its best interest to not vote in favour of the resolution that the Company execute the proposed DOCA.

Correspondingly, we are of the opinion that Huarong consider whether it is in its best interest that the Company be wound-up.

Correspondingly, unless Huarong was of the opinion that the continuation of the administration might result in a further proposal that may better serve its interests, we are of the opinion that it would not be in the interests of Huarong for the administration to continue. It appears to us that in the current circumstances the Company will ultimately become insolvent as capital raisings will not be achievable. It is also our opinion that if the administration comes to an end and the capital raising is unsuccessful, then the Company may run out of money in around September 2020 and the convertible notes become due for repayment in March 2021. In these circumstances the Company will be insolvent. At those times (September 2020 and March 2021) should the Company be wound up creditors, including Huarong, are likely to receive a dividend of nil cents in the dollar.

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