



**EDDIE  
SENATORE**

**EDDIE SENATORE**  
Advisory

PO Box 3481  
MANUKA ACT 2603

+61 2 6100 3435  
hello@eddiesenatore.com  
eddiesenatore.com

6 January 2020

**To the creditor as addressed**

Dear Sir or Dear Madam

**Diverse Security Group Pty Ltd (In Liquidation) ACN 169 333 466 (the “Company”)**

As you are aware, I was appointed Liquidator of the Company on 11 October 2019.

Please find enclosed a copy of the Statutory Report to Creditors, dated 6 January 2020.

Please contact my office should you require further information.

Yours faithfully

**Ezio Senatore**  
Liquidator

<b>Date of Appointment:</b>	<b>Liquidator:</b>	11 October 2019
<b>Contact name:</b>	Ezio (Eddie) Senatore	
<b>Contact number:</b>	(02) 6100 3435	
<b>Email:</b>	<a href="mailto:hello@eddiesenatore.com">hello@eddiesenatore.com</a>	

***Encl: Statutory Report to Creditors***



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**Diverse Security Group Pty Ltd  
(In Liquidation)  
ACN 169 333 466  
(the “Company”)**

**Statutory Report by Liquidator  
Insolvency Practice Rules (Corporations) 70-40**

**6 January 2020**



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## 1. Executive Summary

### 1.1 Appointment

I, Ezio (Eddie) Senatore of Eddie Senatore Advisory, Registered Liquidator, Unit 2, 16 Bougainville Street, Griffith ACT 2603 was appointed Liquidator of the Company on 11 October 2019.

I hereby submit the following report as required, Pursuant to Rule 70-40 of the *Insolvency Practice Rules (Corporations) 2016* (“IPR”).

You are welcome to contact me to discuss any aspect of this liquidation.

### 1.2 Purpose of Report

This report is provided in accordance with Rule 70-40 of the IPR. The purpose of this report is to provide creditors with information on:

- The progress of the liquidation;
- The estimated assets and liabilities of the Company;
- The inquiries I have made to date;
- Further inquiries needed to be made;
- What happened to the business of the Company;
- The likelihood of a dividend being paid to creditors; and
- Any possible recovery actions.

### 1.3 Progress of Liquidation

This report has been prepared based on my investigations including a review of the Company’s financial information. Whilst I have endeavoured to determine the accuracy or otherwise of the information provided, I am unable to warrant the accuracy, completeness or reliability. I reserve the right to alter any conclusion or recommendation in this report on the basis of further information that may become available.

A brief overview of the steps I have taken in this liquidation is provided below:

- Opened a liquidation bank account;
- Contacted all banks in order to secure Company funds held in any bank account;
- Liaising with Company’s bankers in regard to existing and opening new bank accounts;
- Review of general insurance requirements;
- Discussions with the Company’s Director;



- Notified service providers to advise of appointment of the liquidator and cease all services in the name of the Company;
- Received and reviewed proofs of debt;
- Corresponded with various State and Territory Government agencies;
- Searched personal property securities (PPS) registered on the PPS Register (PPSR)
- Corresponded with PPS holders registered on the PPSR;
- Lodgements and notifications of appointment with relevant statutory bodies;
- Preparation and dissemination of initial circular to creditors;
- Preparation of creditor updates and correspondence to creditors;
- Bank reconciliations;
- Company, individual and land title searches;
- Sought and obtained the books and records of the Company from various parties;
- Examined the Company's books and records that have been provided in detail;
- Liaising with the Company's accountant and director in order to seek information regarding the Company's affairs;
- Examined the Company's books and records to determine if there are any recoveries pursuant to Part 5.7B of the Act, which includes unfair preference action, insolvent trading action against the director and potential uncommercial transactions and/or unreasonable director related transactions;
- Undertook a preliminary insolvency analysis to determine if the Company traded whilst insolvent;
- Examined the Company's books and records to determine if there are undisclosed assets of the Company; and
- Initial examination of the Company's affairs to determine if the director have complied with their obligations.

#### 1.4 Receipts and Payments

A summary of my receipts and payments are attached in **Appendix A**.

#### 1.5 Summary of Initial Investigations

I have identified transactions which warrant further investigations and currently in the process of finalising my investigations. My investigations have confirmed that the Company traded whilst insolvent from at least 20 February 2019.

#### 1.6 Remuneration

The quantum of remuneration sought is consistent with my previous remuneration advice dated 17 October 2019.

#### 1.7 Next Steps

To progress the liquidation, the following matters will be undertaken as next steps:

- Liaising with the director in respect to queries concerning the Company's affairs;
- Finalise inquiries in respect of potential voidable transactions under Part 5.7B of the Act;
- Completing ongoing statutory obligations; and



- Preparation and dissemination of progress reports to creditors.

## 2. Meeting of Creditors

If I receive a request for a meeting complying with the guidelines set out in the initial information provided to you, I will hold a meeting of creditors. Otherwise, and pending further progress of my investigations into the affairs of the Company, I do not intend to call a meeting of creditors at this time.

## 3. Company Background

### 3.1 History of the Company

Detailed below is information regarding the Company obtained from the ASIC searches as at the date of my appointment.

#### Company Details

Information	Details
Commencement Date	1 May 2014
Registered Office	27 Wedgwood Close, Chisholm Australian Capital Territory 2905
Principal Place of Business	Unit 9 21 Colbee Court, Phillip Australian Capital Territory 2606

### 3.2 Directors and Officers

Detailed below is information regarding the directors and secretaries of the Company obtained from the ASIC searches as at the date of my appointment.

The following directors are disclosed:

Director	Appointment Date	Cease Date (if applicable)
Matthew Phillip Mahoney	1 May 2014	Current
Shane Logan Tipa	27 July 2017	Current

The following are disclosed as former directors:

Former Director	Appointment Date	Cease Date
Lauren Anne Crowe	1 May 2014	11 March 2015
Phillip Anthony Mahoney	1 May 2014	11 March 2015

The ASIC database indicates the following Secretaries:

Director	Appointment Date	Cease Date (if applicable)
Matthew Phillip Mahoney	1 May 2014	Current



### 3.3 Security Interests

A search of the Personal Property Security Register indicates 6 security interests registered against the Company. This will be further discussed in section 3.7 of this report.

### 3.4 The Business of the Company

The Company commenced operations on 1 May 2014, the Company's registered office was 27 Wedgwood Close, Chisholm Australian Capital Territory 2905 and the Company's principal place of business was Unit 9 21 Colbee Court, Phillip Australian Capital Territory 2606.

The business of the Company provided security services in the ACT.

### 3.5 Events leading up to Liquidation

The director has not provided a reason for the failure of the Company.

A review of the Company's financial statements and Company's bank statements indicates that the Company was experiencing cash flow issues in the lead up to the Company ceasing to trade, due to the Company earning zero to minimal profit while experiencing high cash use.

### 3.6 Books and Records

Failure to maintain books and records may be relied upon by a liquidator in an application for compensation for insolvent trading and other actions for recoveries pursuant to Division 2 of Part 5.7B of the Act.

The Company's books and records have been received and in my opinion, given the size and nature of the business operated by the Company, it appears that the Company's books and records are not adequate to comply with section 286 of the Act.

The Company's Xero accounting software is only prepared up to 30 June 2019 and no externally prepared financial statements have been prepared for FYE 2019.

### 3.7 Report on Company Activities and Property (ROCAP)

A ROCAP provides information on the financial position of the Company as at the date of appointment of a liquidator. This is completed by a company's director. I confirm the directors of the Company have completed a ROCAP.

Should any creditor wish to inspect or obtain a copy of the ROCAP please contact me.

The directors advised in their ROCAP that the business of the Company was sold prior to my appointment.



A summary of the assets and liabilities of the Company is as follows:

### Summary of Assets and Liabilities

Details	Director's SoA	Estimated Realisable Value
	\$	\$
<b>Assets</b>		
Business Cheque Account Plus	2,002	2,893
Accounts Receivable	7,600	-
Cash on Hand	100	-
Other Assets	23,000	20,909
<b>Total Assets</b>	<b>32,702</b>	<b>23,802</b>
<b>Liabilities</b>		
Accounts Payable	507,082	383,475
ATO Running Balance Account	-	191,517
<b>Total Liabilities</b>	<b>\$507,082</b>	<b>\$574,992</b>
<b>Estimated surplus / deficiency</b>	<b>(\$474,380)</b>	<b>(\$551,190)</b>

#### Assets

##### Cash at Bank

As at the date of my appointment correspondence was sent to all banks requesting details of any bank accounts.

Inquiries indicated the Company previously operated a bank account with the Australian and New Zealand Banking Corporation ("ANZ") and had a bank account with the St George Bank ("St George").

A total of \$2,893.61 was realised from the Company's St George pre-appointment bank account.

No other bank accounts in the name of the Company have been identified to date.

##### Cash on hand

The directors Summary of Affairs ("SoA"), detailed no cash on hand held by the Company as at the date of my appointment.

A review of the Company's balance sheet as at the date of my appointment indicated that the Company had cash on hand in the amount of \$100.



As this amount is minimal, no further investigation will be conducted in relation to this amount.

### **Accounts Receivable**

The directors SoA, stated that there was \$7,600 collectable in debtors as at the date of my appointment.

A discussion with the directors prior to my appointment indicated that the debtors were factored.

A review of all the outstanding invoices in the Company's accounting system indicated that all the outstanding debtors were factored and payable to the secured creditor and not collectable by the Company.

### **Director Loans**

The directors SoA detailed no related party loans that were receivable in the name of the Company as at the date of my appointment.

Enquiries to date indicates that there was loans receivable from the director, Shane Tipa in the amount of \$522.

Demand letters will be sent to the director to request these amounts be paid, however it appears it may be uncommercial to pursue.

### **Motor Vehicle**

The directors SoA detailed no motor vehicles registered in the name of the Company as at the date of my appointment.

My inquiries to date indicated that the Company was the owner of three (3) motor vehicles.

Correspondence was sent to the financiers requesting details in relation to the motor vehicles.

To date, only Volkswagen Financial Services Australia Pty Limited ("Volkswagen") provided a response advising that their security interest related to a 2018 Land Rover Range Rover Evoque ("the Motor Vehicle").

Volkswagen subsequently provided a discharge verification statement, confirming the security interest had been discharged in full.

Correspondence with the directors indicated that the Motor Vehicle had been traded in prior to appointment.

My inquiries indicate that there was no equity in the Motor Vehicle.



## **Sale of Business**

The director's SoA indicated that the business of Company had sold for \$23,000 prior to my appointment.

A copy of the sale of business indicated that the business of the Company had been sold as a going concern, being all the current contracts of the Company in the amount of \$20,700.

To date a total of \$20,909.09 has been received for the sale of business.

A review of the sale of business agreement, indicates that this may have been an uncommercial transaction.

A review of the profit and loss statement for FYE 2019, indicates that the business of the Company had \$3,892,185 in sales, indicating that the amount of \$20,909.09 for the sale was undervalued.

In addition, there does not appear that there was any effort to go to the market to sell the business.

## **Interest in Land**

The director's SoA indicated that the Company had no Interest in land as at the date of appointment.

Land title searches in the all the States and Territories of Australia were conducted and confirm that the Company has no Interest in land as at the date of appointment.

No further investigation will be conducted in relation to the Company's Interest in land.

## **Liabilities**

### **Priority Creditors**

As at the date of appointment the director advised there were no outstanding employee entitlements owed to any former employees of the Company.

Enquiries to date have not identified any entitlements owed to any employees of the Company.

No further investigations will be conducted in relation to employee entitlements owed by the Company.



## Secured Creditors/PPSR

There were 6 PPSR registrations in the name of Company as at the date of my appointment, details of which are below:

Registration Number	Secured Party	Date	Collateral
201611040058740	Nissan Financial Services Australia Pty Ltd	4 November 2016	Motor Vehicle
201802070005855	Ricoh Australia Pty Ltd	7 February 2018	Other Goods
201802130015049	Scottish Pacific (BFS) Pty Ltd	13 February 2018	All PAP
201802130015054	Scottish Pacific (BFS) Pty Ltd	13 February 2018	Account
201807190047992	Nissan Financial Services Australia Pty Ltd	19 July 2018	Motor Vehicle
201902270009800	Volkswagen Financial Services Australia Pty Limited	27 February 2019	Motor Vehicle

### Nissan Financial Services Australia Pty Ltd

Correspondence was sent to Nissan Financial Services Australia Pty Ltd ("Nissan Financial") as at the date of appointment advising of the appointment of the liquidator.

To date no response has been received.

### Ricoh Australia Pty Ltd

Correspondence was sent to Ricoh Australia Pty Ltd ("Ricoh Australia") as at the date of appointment advising of the appointment of the liquidator.

To date no response has been received.

### Scottish Pacific (BFS) Pty Ltd

Correspondence was sent to Scottish Pacific (BFS) Pty Ltd ("Scottish Pacific") as at the date of appointment advising of the appointment of the liquidator and a follow up letter was also sent.

To date no response has been received.

### Volkswagen Financial Services Australia Pty Limited

As previously stated, correspondence was sent to Volkswagen as at the date of appointment advising of the appointment of the liquidator.

Volkswagen responded providing a copy of the discharge verification statement, advising that the security interest had been satisfied in full.



As stated earlier, correspondence with the directors indicated that the motor vehicle had been traded in prior to appointment.

Inquiries indicate that there was no equity in the motor vehicle.

### **Unsecured Creditors**

The directors advised as at the date of my appointment that unsecured creditors of the Company were owed a total of \$507,082.

My inquiries to date indicates a total of 16 unsecured creditors totalling \$574,992 are owed by the Company, details of which are below:

<b>Unsecured Creditor</b>	<b>Amount \$</b>
High Beam Holdings Pty Ltd	288,950.47
Australian Taxation Office	191,516.92
Employsure Pty Ltd	35,593.00
Aulich Civil Law Pty Ltd	16,679.30
Marland Accounting	11,165.00
Matt Mahoney*	10,665.00
QBE Insurance	9,321.19
Jarib Pty Ltd	6,810.60
SNP Security	2,239.88
Unsecured Creditors (7)	2,050.50
<b>Total</b>	<b>\$574,991.86</b>

\*Former director, in the event of a dividend, this amount will be further investigated.



## Deficiency Analysis

A deficiency analysis has been undertaken.

Based on the information provided by the Director and from my inquiries to date, I estimate the net deficiency (loss) to creditors to be approximately \$551,190, before the costs of the liquidation.

This deficiency is calculated as follows:

### Summary of Assets and Liabilities

Details	Director's SoA	Estimated Realisable Value
	\$	\$
<b>Assets</b>		
Business Cheque Account Plus	2,002	2,893
Accounts Receivable	7,600	-
Cash on Hand	100	-
Other Assets	23,000	20,909
<b>Total Assets</b>	<b>32,702</b>	<b>23,802</b>
<b>Liabilities</b>		
Accounts Payable	507,082	383,475
ATO Running Balance Account	-	191,517
<b>Total Liabilities</b>	<b>\$507,082</b>	<b>\$574,992</b>
<b>Estimated surplus / deficiency</b>	<b>(\$474,380)</b>	<b>(\$551,190)</b>

The explanation of the deficiency is indeterminable due to the Company's books and records failing to be properly maintained post 30 June 2019.

My inquiries into the Company's books and records indicates that the deficiency may have been caused by high cash use coupled with reduced profits.



### 3.8 Historical Financial Performance

The following is a summary of the Company's financial position from FYE 2018 to the date of my appointment:

Comparative Balance Sheets				
	As of 11 October 19	Internally Prepared FYE 2019	Externally Prepared FYE 2018	Internally Prepared FYE 2018
	\$	\$	\$	\$
<b>Assets</b>				
<b>Bank</b>				
Business Access Saver	200	200	200	200
Business Cheque Account Plus	177,948	92,700	-	(10,969)
Diverse Security Group – ANZ	-	-	-	(68)
<b>Total Bank</b>	<b>\$178,149</b>	<b>\$92,900</b>	<b>\$200</b>	<b>(\$10,836)</b>
<b>Current Assets</b>				
Accounts Receivable	156,731	119,885	99,040	98,776
Cash on Hand	100	100	100	100
CIT - Cash In Transit	(5,251)	(8,543)	-	(5,581)
Loan MFC	6,194	6,194	-	-
Current Tax Liability	-	-	64	-
Other Assets	-	-	-	-
<b>Total Current Assets</b>	<b>\$157,774</b>	<b>\$117,636</b>	<b>\$99,204</b>	<b>\$93,294</b>
<b>Non-Current Assets</b>				
Formation Costs	1,300	1,300	1,300	1,300
Lease Hold Improvements	1,039	1,039	1,039	1,039
Less: Accumulated Depreciation	(35)	(35)	(84)	(35)
Less: Accumulated Depreciation	(13,936)	(13,936)	(65,811)	(13,936)
Less: Amounts Written Off	(520)	(520)	-	(520)
Motor Vehicles	302,469	302,469	145,430	145,430
Motor Vehicles - Cost Exceeding Depreciation Limit	102,448	102,448	-	-
Associated Loans	-	-	19,235	-
Less: Accumulated Amortisation	-	-	(1,040)	-
<b>Total Non-Current Assets</b>	<b>\$392,766</b>	<b>\$392,766</b>	<b>\$100,069</b>	<b>\$133,278</b>
<b>Total Assets</b>	<b>\$728,688</b>	<b>\$603,303</b>	<b>\$199,473</b>	<b>\$215,736</b>
<b>Liabilities</b>				
<b>Current Liabilities</b>				
Bank Overdraft	-	-	10,968	-
Bank Overdraft	-	-	68	-
Bank Overdraft	-	-	5,581	-
Loans from Directors	-	-	40,796	-
Loan - Scottish Pacific	-	-	62,953	-
Accounts Payable	226,339	77,046	58,637	3,725
American Express	198	198	-	198
ATO Running Balance Account	(1,473,827)	(1,453,827)	-	(921,818)
FBT	6,219	4,087	-	-
GST	711,457	664,621	58,967	456,780
Hire Purchase	64,953	70,293	140,645	126,340
Less: Unexpired Interest	(25,298)	(25,298)	(14,229)	(25,298)
PAYG Withholding Payable	1,056,924	983,256	-	641,838
Rounding	-	-	-	-



Superannuation Payable	(73)	2,715	-	26,533
Wages Payable – Payroll	59,690	(6,901)	-	(7,630)
<b>Total Current Liabilities</b>	<b>\$626,583</b>	<b>\$316,192</b>	<b>\$364,386</b>	<b>\$300,669</b>
<b>Non-Current Liabilities</b>				
Chattel Mortgage Liability - Evoque	97,935	100,362	-	-
Chattel Mortgage Liability - Navara	93,010	93,010	-	-
Chattel Mortgage Liability - Range Rover	153,234	166,232	-	-
Invoices Paid to Scottish Pacific	(182,315)	75,193	-	39,080
Less: Unexpired Interest (Evoque)	(33,498)	(33,498)	-	-
Less: Unexpired Interest (Navara)	(10,348)	(10,348)	-	-
Less: Unexpired Interest (Range Rover)	(32,702)	(32,702)	-	-
Loan – CEG	(2)	(2)	-	(2)
Loan - Director (Matt Mahoney)	10,665	10,665	-	(49,004)
Loan - Director (Shane Tipa)	(522)	(522)	-	-
<b>Total Non-Current Liabilities</b>	<b>\$95,456</b>	<b>\$368,389</b>	<b>-</b>	<b>(\$9,926)</b>
<b>Total Liabilities</b>	<b>\$722,039</b>	<b>\$684,581</b>	<b>\$364,386</b>	<b>\$290,743</b>
<b>Net Assets/(Deficiency)</b>	<b>\$6,649</b>	<b>(\$81,278)</b>	<b>(\$164,913)</b>	<b>(\$75,007)</b>

The Company's financial performance from FYE 2018 to 11 October 2019 is summarised as follows:

Detail	Internally Prepared 11/10/2019	Internally Prepared FYE 2019	Externally Prepared FYE 2018	Internally Prepared FYE 2018
<b>Revenues</b>	785,438	3,892,185	4,703,207	4,694,157
<b>Other Revenue</b>	-	-	-	-
<b>Less: Costs</b>	-	-	4,763	-
<b>Gross Profit</b>	<b>785,438</b>	<b>3,892,185</b>	<b>4,698,444</b>	<b>4,694,157</b>
<b>Less Expenses</b>	697,511	3,898,456	4,580,903	4,524,354
<b>Other Expenses</b>	-	-	-	-
<b>Net Profit</b>	<b>87,927</b>	<b>(6,271)</b>	<b>117,541</b>	<b>169,803</b>
<b>Gross Profit Ratio</b>	<b>100.00%</b>	<b>100.00%</b>	<b>99.90%</b>	<b>100.00%</b>
<b>Net Profit Ratio</b>	<b>11.19%</b>	<b>(0.16%)</b>	<b>2.50%</b>	<b>3.62%</b>

I provide the following explanation in relation to the ratios detailed in the table above;

The gross profit ratio is a profitability ratio that shows the relationship between gross profit and total net sales revenue. It is a popular tool to evaluate the operational performance of a business.

As seen from the above table, the Company's gross profit ratio from the internally prepared financial statements from FYE 2018 to the date of appointment remains constant at 100%. It is noted there is a slight drop when comparing the externally prepared financial statement for FYE 2018, which has a gross profit ratio of 99.90%. Overall, the gross profit ratios appear consistent with a service business, as there is little to no costs of goods sold in providing services.



The net profit percentage is the ratio of profits to net sales. It reveals the remaining profit after all costs of production, administration, and financing have been deducted from sales.

The net profit ratio as detailed above indicates a profit below 10% as per the externally prepared financial statements for FYE 2018 and internally prepared financial statement for FYE 2018 to FYE 2019.

The internally prepared financial statements for the period ending 11 October 2019 indicates that the profit increased to 11.19%, however the financial statements prepared after the 30 June 2019 were incorrectly prepared, therefore the profit for the period ending 11 October 2019 is incorrect.

#### 4. Asset Realisations

Attached as **Appendix A** is a summary of my receipt and payments.

#### 5. Investigations

##### 5.1 Overview

As liquidator, I am required to investigate the affairs of the Company. The purpose of these investigations is to identify matters which require a more detailed review, as well as determining any causes of action (legal claims) and other potential sources of recovery, such as loan accounts, that might be available for the benefit of creditors of the Company.

I am also required to lodge a report pursuant to section 533 of Act where it appears that any past or present officer of the Company may have committed an offence or where a dividend to unsecured creditors of less than 50 cents in the dollar is paid.

I have considered whether there are transactions where money, property or other benefits may be recoverable as liquidator under Part 5.7B of the Act. These are discussed further below.

I have undertaken an investigation of the affairs of the Company in relation to suspected contraventions of sections 180 - 184 of the Act regarding the general duties of directors and officers. At this stage I have not found any contraventions.

##### 5.2 Approach to Preliminary Investigations

From my preliminary investigation, I have:

- Identified, reviewed and analysed financial and other information; and
- Undertaken searches of various publicly available databases, including ASIC and PPSR.



### 5.3 Voidable Transactions

As the Company has been placed into liquidation, certain transactions may be investigated and recovered by me. Recovery of any voidable transaction may be expensive and likely to require Court applications and litigation. As such, should there be inadequate funds available, or I consider it uncommercial or not in the creditors' best interests, such recovery actions may not be commenced.

In these circumstances, creditors wishing to fund any such actions may do so. Should any funds be recovered from these actions, the creditors providing the funding may be entitled to receive their contribution in priority to other creditors.

Litigation insurance or litigation funding may also be available to fund potential actions.

However, such funding is generally only available where legal advice indicates that there is a strong likelihood for a successful outcome.

I provide the following information in relation to voidable transactions:

#### **Unfair Preferences Payments (Section 588FA)**

My investigations into the affairs of the Company have included the review of payments from the Company's bank account in the six months leading up to my appointment as liquidator which could be considered preferential in nature and recoverable.

I have examined the books and records of the Company, in which I have identified 19 transactions to 4 different creditors totalling \$446,063 which could be considered to be preferential in nature pursuant to the provisions of the Act.

The recovery of preferential payments may be subject to defences available to the recipient(s) of the above payments as per the provisions of the Act.

Further inquiries reveal that 7 payments totalling \$141,863 may be collectable in full whereas payments totalling \$304,200 are *prima facie* based on a debtor-creditor relationship and will be subject to defences available to the recipient(s) of these payments as per the provisions of the Act.

I am still conducting a more thorough investigation of these transactions by collating sufficient evidence both documentary and circumstantial to determine whether recovery action should be commenced in respect of these transactions.

#### **Uncommercial Transactions (Section 588FB)**

As you are aware the Company's business was sold prior to my appointment.

My review of the sale of business agreement indicates that this may have been an uncommercial transaction.



I am still conducting a more thorough investigation of the sale of business by collating sufficient evidence both documentary and circumstantial to determine whether recovery action should be commenced.

### **Arrangements to Avoid Employee Entitlements (Section 596AB)**

I have not identified any transactions of this nature.

### **Circulating Security Interests Created Within Six Months (Section 588FJ and FL)**

A search of the PPSR reveals no circulating security interests created in the six (6) months prior to the relation back day.

### **Unreasonable Director-Related Transactions (Section 588FDA)**

I am still conducting my investigations in relation to Unreasonable Director-Related Transactions.

### **Unfair Loans (Section 588FD)**

My investigations have not identified any unfair loans.

## **5.4 Insolvent Trading**

Directors can be held personally liable for the debts of a company in certain circumstances.

The Act provides that directors owe a duty of care not to incur debts at a time when a company is insolvent or would become insolvent by incurring the debt (section 588G of the Act). If there are reasonable grounds for suspecting that a company would become insolvent, then a director can be held personally liable for any debts incurred after that time.

The Act provides that a liquidator may seek to recover compensation for such debts incurred from the directors of a company.

I advise pursuing claims for insolvent trading are often drawn out and involve significant cost.

Creditors should also be aware any successful claim may be set-off by a director against amounts due to that individual by way of unsecured advances or loan accounts. In this regard, I note the Director, Matthew Mahoney, is a creditor of the Company in the amount of \$10,665.

### **Defences**

The Act provides a number of possible defences to Directors to a claim for insolvent trading. These defences are:

- At the time a debt was incurred, a director had reasonable grounds to expect and did expect the company was solvent and would remain solvent if it incurred that debt and any other debts that it had incurred at that time.



- At the time the debt was incurred, a director had reasonable grounds to believe and did believe that a competent and reliable person was responsible for providing information about the company's solvency and that person was fulfilling that responsibility.
- A director through illness or some other good reason were not taking part in the management of a company at the time the debt was incurred.
- The directors took all reasonable steps to prevent a company from incurring the debt.
- The directors took a 'safe harbour' course of action that resulted in a better return to creditors than immediately entering into external administration.

### **Timing of Insolvency**

The Act states a company is considered to be solvent if, and only if, the company is able to pay its debts as and when they become due and payable. A company that is not solvent is insolvent. Accordingly, the test for insolvency is not a balance sheet test but rather a cash flow test.

### **Results of Investigations**

My investigations indicate that the Company has been trading whilst insolvent from at least 20 February 2019, as this is the time debts started to accumulate and the Company began to incur cash flow issues.

### **Further Inquiries**

The following further inquiries will be undertaken to finalise my investigations and determine whether any recovery actions should be taken:

1. Finalising my inquiries into preferential transactions;
2. Finalise my inquiries into insolvent trading; and
3. Finalise my inquiries into uncommercial transactions.

### **Funding of Further Investigations**

In relation to pursuing voidable transactions, including insolvent trading, money for the recovery of such actions would come from the assets of the Company. If there were insufficient funds from the assets of the Company, alternative options are:

- Funding by creditors - if funding was received from creditors, section 564 of the Act provides the Court with the power to make orders in favour of creditors who have provided an indemnity for costs of litigation or costs of the liquidator, where those creditors may be given an advantage over other creditors in consideration of the risk assumed by creditors. An advantage may include the distribution of some or all of the net proceeds from that action that was funded to the creditor that provided the funding or indemnity in priority to creditors with whom that creditor would normally be ranked.



- Funding from a litigation funder - a litigation funder is an organisation that provides funds for the pursuit of legal actions. The funding typically covers the costs of lawyers, barristers and the external administrator and provides an indemnity for any adverse cost order if the legal action is unsuccessful. A litigation funder only takes on actions that it considers have a high probability of success and are likely to result in a substantial return. The agreement with the litigation funder usually provides for a substantial amount of any return to be paid to them.
- ASIC's Assetless Administration Fund – this fund finances preliminary investigations and reports by liquidators into the failure of companies with few or no assets, where it appears that enforcement action may result from the investigation and report. A particular focus of the fund is to curb fraudulent phoenix activity. This fund is subject to certain limitations and will not be available in this liquidation.
- Fair Entitlements Guarantee (FEG) Recovery Program – this program provides funding for pursuing recovery proceedings, including litigation, to increase assets available to creditors in the winding up where there have been amounts advanced under FEG. I have reviewed the criteria and do not consider that an application for funding would be successful and accordingly, I do not intend to make an application.

Any creditor willing to fund any recovery action is requested to contact me.

## 5.5 Offences

On my examination of the Company's affairs to date I have not identified any offences committed by the officers of the Company.

## 5.6 Limitation of Investigations

The opinion outlined above is based on investigations undertaken by my office into the Company's affairs, business and financial position. My investigations have been based on the following information:

- Representations of the Directors;
- The details of the Company's assets and liabilities;
- The books and records of the Company; and
- Publicly available searches.

## 5.7 Offences in Relation to the Companies – Section 533

Any offences committed by the Directors will be included in my report to ASIC under section 533 of the Act.



## 6. Likelihood of a Dividend

At this stage of the liquidation there will be no dividend paid in this liquidation. However, this is subject to the outcome of any recoveries from antecedent transactions.

## 7. Outstanding Matters

The following matters still need to be completed and further inquiries made, prior to the finalisation of the liquidation:

- Finalise investigations into voidable transactions; and
- Finalise investigation regarding insolvent trading.

It is expected that the liquidation will be completed within 6 months. However, completion may be delayed if any of the following occur:

- Recovery actions are pursued; or
- ASIC commences litigation against an officer of the Company, including a Director.

## 8. Further Information Available to Creditors

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides information to assist creditors with understanding liquidations and insolvency. This information is available from ARITA's website at [www.arita.com.au](http://www.arita.com.au).

ASIC provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at [www.asic.gov.au/insolvencyinfosheets](http://www.asic.gov.au/insolvencyinfosheets).

If further information becomes available on the progress of the liquidation, I may distribute a further report to creditors.

Creditors requiring further information regarding the liquidation can contact me.

Yours faithfully

**Ezio Senatore**  
**Liquidator**



**Date of Appointment:** 11 October 2019  
**Contact name:** Ezio (Eddie) Senatore  
**Contact number:** (02) 6100 3435  
**Email:** [hello@eddiesenatore.com](mailto:hello@eddiesenatore.com)

### **Appendices**

Appendix A - List of receipts and payments



# Appendix "A"



**Diverse Security Group Pty Ltd  
(In Liquidation)  
ACN 169 333 466  
Summary of Liquidator's Receipts and Payments  
To 6 January 2020**

Receipts	Total (AUD) \$
Cash at Bank	2,893.61
ACTEWAGL Credit	500.17
Sale of Business Proceeds	20,909.09
GST Payable	2,140.93
<b>Total Receipts</b>	<b>\$26,443.80</b>

Payments	Total (AUD) \$
Bank Charges	2.70
Postage	22.73
Search Fees	80.95
GST Receivable	10.37
<b>Total</b>	<b>\$116.75</b>

<b>Cash At Bank As At 6 January 2020</b>	<b>\$26,327.05</b>
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**Ezio Senatore  
Liquidator**