

28 June 2024

CIRCULAR TO CREDITORS
DAVEX AUSTRALIA PTY LTD (IN LIQUIDATION)
ACN 052 491 657 ("THE COMPANY")

Introduction

I refer to the Appointment of Benjamin Campbell, Kelly-Anne Trenfield and I, David McGrath, as Voluntary Administrators of the Company on 18 January 2024, and subsequently as Liquidators of the Company on 23 February 2024, and to my Statutory Report to Creditors dated 8 May 2024 ("Statutory Report").

Following the issuance of the Statutory Report we have continued to investigate the potential claims against Davex Malaysia SDN BHD ("Davex Malaysia") in relation to the Statement of Support provided by Davex Malaysia to the Company in connection with the 12-month period commencing on or around 27 July 2023.

The purpose of this document is to provide you with:

- An updated Estimated Statement of Position "ESOP"; and
- Information regarding the proposed settlement we have reached with Davex Malaysia with respect to the Statement of Support.

Liquidators' Estimated Statement of Position

We set out below the Liquidators' current ESOP detailing the amounts expected to be realised following the conclusion of the Liquidation.

I have included a Low and a High case to illustrate the potential range of returns for creditors – the key variable between the two cases is the assumed level of recoveries against the remaining pre and post appointment debtor book and the total value of unsecured creditor claims which successfully prove in the Liquidation. I note the below ESOP does not consider the impact of any settlement with Davex Malaysia in respect of the Statement of Support.

Liquidators' estimated statement of position		
\$	Low	High
Cash balance as at 26 June 2024	1,117,473	1,117,473
Future liquidation recoveries and costs		
Debtor recoveries	0	203,718
Trading costs	5,436	5,436
Future Liquidators' remuneration	-56,494	-56,494
Liquidators' disbursements	-550	-550
Further legal fees	-50,000	-50,000
Contingency	-100,000	-100,000
Estimated cash available for unsecured creditors	862,358	1,066,076
Unsecured Creditors		
Total related party creditors	-4,930,996	-4,801,494
Statutory creditors	-247,758	-247,758
Other unsecured creditors	-426,139	-233,022
Contingent QLD Lease Debt	-363,625	-181,812
Total third party unsecured creditors	-1,037,521	-662,592
Total unsecured creditors	-5,968,518	-5,464,085
Priority creditors cents/\$	1.00	1.00
First ranking creditors cents/\$	1.00	1.00
Unsecured creditors cents/\$	0.14	0.20

I note the following with respect to the ESOP:

- The ESOP includes estimated unsecured creditor claims, based on proof of debts submitted and the Company's records. These claims have not yet been subject to a formal adjudication process and accordingly the quantum of claims admitted in the Liquidation may be different to the estimates set out above.
- The related party claims referred to in the ESOP are the claims held by Davex Malaysia. These claims are estimated to be in the region of \$4.8 to \$4.9m. This represents approximately 82.5% to 87.9% of the total unsecured creditor claims against the Company.
- Absent any settlement with Davex Malaysia, all unsecured creditors would participate equally in respect of any dividend and, accordingly, the estimated dividend for all unsecured creditors is 14 to 20 cents in the \$.

Proposed Settlement with Davex Malaysia

On or around 8 May 2024 we commenced without prejudice discussions with Davex Malaysia in relation to the Statement of Support.

We have now negotiated an outcome with Davex Malaysia in which third party creditors will be paid a dividend of 55 cents in the dollar, with any funds remaining with the Company to be distributed to Davex Malaysia ("Proposed Settlement").

In the table below we have summarised the estimated returns to unsecured creditors, i.e. Davex Malaysia and the third party creditors, under the Proposed Settlement:

Return to unsecured creditors with Davex Malaysia settlement - 55 cents		
	Low	High
Estimated cash available for unsecured creditors	862,358	1,066,076
Third party creditor claims	1,037,521	662,592
Total return - \$	570,637	364,425
Total return - cents/\$	0.55	0.55
Davex Malaysia claims	4,930,996	4,801,494
Total return - \$	291,722	701,651
Total return - cents/\$	0.06	0.15

As illustrated in the table below, the estimated returns to third party creditors under the Proposed Settlement are greater than the estimated returns set out in the ESOP above (which does not account for any settlement with Davex Malaysia):

Benefit to third party creditors of settlement		
	Low	High
\$ return to unsecured creditors - without settlement	149,906	129,276
\$ return to unsecured creditors - with settlement	570,637	364,425
Improvement in \$ value of return	420,731	235,150
Cents/\$ return to third party creditors - without settlement	0.14	0.20
Cents/\$ return to third party creditors - with settlement	0.55	0.55
Improvement in Cents/\$ return	0.41	0.35

The two tables above illustrate that, under the Proposed Settlement:

- The estimated cents in the \$ return to third party creditors increases from a range of 14 to 20 cents in the \$, to 55 cents in the \$
- Davex Malaysia's cents in the \$ return reduces from 14 to 20 cents in the \$ to 6 to 15 cents in the \$
- The total value of the distribution to third party creditors increases as follows:
 - From \$149.9k to \$570.6k in the Low case, an increase of \$420.7k; and
 - From \$129.3k to \$364.4k in the High case, an increase of \$235k.

Alternative Options

The alternative to accepting the Proposed Settlement is that the Liquidators (for and on behalf of the Company) pursue Davex Malaysia to seek remedies in respect of Davex Malaysia's obligations under the Statement of Support.

Davex Malaysia has indicated it will defend any further recovery actions brought by the Liquidators in respect of the Statement of Support. Accordingly, the Liquidators would likely need to commence formal legal proceedings against Davex Malaysia in order to pursue any such claims.

There are several risks associated with commencing litigation in respect of the Statement of Support, including, but not necessarily limited to:

- The outcome of any Court proceedings are inherently uncertain.
- Commencing proceedings would require the Company to incur material costs, including in respect of legal fees.
- Even if the Company successfully obtained orders from an Australian Court requiring Davex Malaysia to pay damages so as to ensure an increased return to third party unsecured creditors, or some other remedy, then:
 - The Company would still need to recover those funds from Davex Malaysia, which may require the commencement of separate court proceedings in Malaysia
 - It is possible that Davex Malaysia may have insufficient funds to satisfy any orders made against it, in which case the Company may not recover the full value (or indeed anything at all) of any successfully litigated claim.
- If the Company was unsuccessful in the litigation, it would likely be ordered to pay some of Davex Malaysia's costs, which would further diminish the funds available for distribution to creditors.
- Commencing proceedings will result in further delays to the distribution of funds to creditors.

Liquidators' recommendation

It is our recommendation that the Company accept the Proposed Settlement. The reasons for this are that:

- It provides a material improvement to the estimated returns to third party unsecured creditors.
- It avoids the requirement for the Company to commence litigation against Davex Malaysia and incur associated costs.
- It avoids the risk of the Company incurring litigation related costs in circumstances where its recoveries may be limited or zero, which could occur if (i) the action is unsuccessful, or (ii) the action is successful but the Company is unable to recover any Court awarded remedy.
- It avoids the risk of an adverse costs order against the Company which could occur if the Company is unsuccessful in the litigation. This would have the effect of reducing returns to unsecured creditors below the status quo estimate of 14 to 20 cents in the dollar.
- It will allow the Liquidators to commence a dividend process as soon as possible, whereas in a litigation scenario the dividend process would be delayed until the litigation had been completed and any remedies had been recovered. We estimate a litigation process would add

at least 6 to 12 months to the timeframe for declaring and paying a dividend to unsecured creditors, as compared to the timeframe under the Proposed Settlement.

Next steps

The Liquidators are intending to document and execute the Proposed Settlement with Davex Malaysia on or before 31 July 2024.

If any creditor is interested in proposing an alternative strategy and is willing to provide necessary funding for the Company to commence alternative recovery actions against Davex Malaysia in respect of the Statement of Support, we request that you contact davex@fticonsulting.com by no later than **19 July 2024**.

Yours faithfully



David McGrath
Joint and Several Liquidator