

Submitting Form EX03

(Appendix 4 of RG 109)

AA Fund request—Matters other than director banning

Liquidators must use Form EX03 to seek funding from the Assetless Administration Fund (AA Fund) to carry out an investigation and prepare a supplementary s533 report for matters other than s206F director bannings. This appendix contains:

- instructions on how to complete the form;
- details of additional information that should be provided to ASIC to assist with the assessment of a funding application; and
- a sample printout of a completed form.

The form can only be lodged online via ASIC's Registered Liquidator portal. Before lodging, refer to ASIC's funding criteria to determine whether you are eligible for funding from the AA Fund: see Regulatory Guide 109 *Assetless Administration Fund: Funding criteria and guidelines* (RG 109) Section B and RG 109.53.

As with all ASIC online forms, the EX03 has inbuilt validations. If you enter information at any stage that indicates your application does not meet the criteria, you will be unable to continue your application.

Once you log on to the Registered Liquidator portal, select Form EX03.

How to complete the form

You will first be asked to enter the ACN, ABN or ARBN of the company concerned and then confirm that it is the correct company.

1 Funding criteria

You will need to:

- confirm that a s533 report has been lodged for the company (see online Form EX01);
- confirm that the company of which you are liquidator meets the 'assetless' definition contained in RG 109 (see Section B);
- indicate whether there have been any receipts in the liquidation to date;

*If you answer **Yes**, provide a summary of receipts and payments to date as an attachment.*

- provide details of estimated net realisable assets:
 - to date of funding application;
 - within 12 months from date of funding application; and
 - after 12 months from date of funding application;
- provide the expected deficiency in the liquidation; and
- provide details of the number of creditors and estimated liability for:
 - secured creditors;
 - unsecured creditors—
 - statutory creditors
 - employees
 - related parties
 - other
 - total secured and unsecured creditors.

2 Relevant persons

The relevant person is the person who will be the subject, or one of the subjects, of a supplementary s533 report if this funding request is approved.

You must enter at least one relevant person. A maximum of five relevant persons can be included per funding request.

Relevant person details

The following must be provided for each relevant person:

- name;
- position held—select one or more of:
 - company secretary;
 - director;
 - officer (including shadow director);
 - employee;
 - other—please specify, for example—
 - CEO
 - CFO
 - CIO
 - financial adviser
 - lawyer
 - internal accountant

- external accountant;
- current location;
- contact details, if available;
- whether the relevant person is considered a flight risk;
- aliases, if available;

If yes, details for up to 10 aliases can be entered.

- whether you are in possession of any information or material to support allegations of inappropriate conduct;
- whether the relevant person has been a director of at least one other company that went into liquidation in the last seven years either:
 - at the time that they were a director of that other company; or
 - within 12 months of them ceasing to be a director of that other company;

If yes, provide the ACN, ABN or ARBN of up to 10 relevant companies.

- whether you have applied, or intend to apply, for funding relating to a possible director banning;
- which of the following alleged offences are relevant (select one or more):
 - s180 – care and diligence – civil;
 - s181 – good faith – civil;
 - s182 – use of position – civil;
 - s183 – use of information – civil;
 - s184 – good faith, use of position and use of information – criminal offence;
 - s206A – disqualified person not to manage companies;
 - s286/344 – obligation to keep financial records;
 - s471A – powers of officers suspended during winding up;
 - s588G – director’s duty to prevent insolvent trading;
 - s590 – offences by officers of certain companies;
 - s596AB – entering into agreements or transactions to avoid employee entitlements;
 - other – please specify;
- details of the alleged conduct, the date of the conduct, whether the conduct is continuing and any likely defences. When reporting more than one alleged offence, use the example schedule provided and attach the schedule to your application (see Appendix 5). The example schedule can also be used when there is only one alleged offence; and

- whether you have any documentation to support the alleged conduct and, if so, a list of all available documentation. When providing a list of available information, please complete the books and records listing and questionnaire provided at Appendix 6 of this guide. The listing and questionnaire can then be attached to your application.

3 Offence(s) summary

The offence summary relates to all offences for all relevant persons included on the funding application.

You will need to indicate:

- whether you have obtained legal advice on this matter and, if so, attach a copy of this advice;
- whether you have taken any legal action and provide details of any legal action taken or any inquiries you propose to make;
- whether you have taken possession of any computers or servers. Further detail can also be provided in the books and records listing and questionnaire (see Appendix 6);
- other agencies you have referred this matter to (select one or more):
 - none;
 - Australian Competition and Consumer Commission;
 - Australian Federal Police;
 - Australian Taxation Office;
 - state police; or
 - other, please specify; and
- whether you are able to provide details of witnesses.

If Yes, details of up to 10 witnesses can be entered.

4 Funding application

You are seeking funding from ASIC in order to investigate and complete a supplementary s533 report.

You must:

- provide an estimated range (excluding GST) and details of the fees and disbursements to carry out the investigation and prepare the report;
- confirm that you are able to provide, or believe you can obtain, substantially all of the information required by RG 109;
- indicate the estimated number of weeks for the investigation and report to be completed;

- confirm that you agree to be bound by the terms set out in the sample funding agreement annexed to RG 109 (see Appendix 8), if approval is granted for the requested amount and time frame indicated; and
- provide the following contact details:
 - name;
 - email; and
 - telephone.

5 Attachments

You should attach:

- a summary of receipts and payments to date, if there have been any receipts in the liquidation;
- the most recent detailed listing of creditors, by category, as set out in the application form, including a detailed listing of trade creditors;
- a summary of alleged offences and misconduct (see Appendix 5);
- books and records listing and questionnaire (see Appendix 6);
- a schedule of charge-out rates for practitioners and staff;
- an estimate of fees and disbursements. See Appendix 7 for an example schedule of estimated fees and disbursements. Your attachment must explain the maximum estimated fees and disbursements to investigate and prepare the report;
- a copy of relevant legal advice, if available; and
- details of other related or associated companies (including the company name and ACN), that have not already been identified in the funding application under the heading 'Relevant persons'. The definitions of related and associated companies can be found in s50 and 50AAA of the *Corporations Act 2001*.

You may provide any additional information on the alleged offences as an attachment to your funding application. For example, you may also attach relevant correspondence with directors, directors' questionnaires and reports to creditors.

The maximum number of attachments to the application is 10 and each attachment must be no larger than 5MB. If you have more than 10 attachments or you experience difficulties lodging your application due to the size of the attachments, you can forward the additional documents to Insolvency Practitioners and Liquidators, ASIC, GPO Box 9827, In Your Capital City.

Other considerations

If you are having difficulties recovering the books and records of the company, we ask that you consider exercising your powers in this regard, or seek our assistance before making an application for funding. If assistance is needed, please notify ASIC in writing: see www.asic.gov.au/liquidatorassistance for further details.

☞ See the following page for a sample printout of a completed form.



Electronic Lodgement
Document No. **7E2999X23**
Lodgement date/time: 03-09-2009 15:03:30
Reference Id: 78901234

Assetless administration funding request (Matters other than Section 206F - Director banning)

Form EX03

Refer to ASIC's Funding Criteria & Guidelines to determine if you are eligible for funding from the Assetless Administration Fund.

Registered liquidator details

Registered liquidator number

31113

Registered liquidator name

Given names **EVELYN FLOWER**
Family name **POTTS**

Principal place of practice and firm name

ASIC Register details

Principal place of practice

**LEVEL 1
100 GARDEN ROAD WYSTERIA VIC 3000
AUSTRALIA**

Are these details correct?

Yes

Firm name

**POTTS & CO. CHARTERED
ACCOUNTANTS**

Are these details correct?

Yes

Company details

Company name

X PTY LTD

ACN

550 570 833

Funding criteria

Have you lodged a s533 report for this company?

Yes

Does the company of which you are liquidator meet the "assetless" definition contained in ASIC's Funding Criteria & Guidelines?

Yes

Have there been any receipts in the liquidation to date?

Yes

Details of estimated "Net Realisable Assets"

To date of funding application		0
Within 12 months from date of funding application		0
After 12 months from date of funding application		0
Expected deficiency in the liquidation		1200000
Creditors	Number	Value
Secured creditors	1	300000
Unsecured creditors:		
Statutory creditors	2	160000
Employees	1	50000
Related parties	1	200000
Other	19	490000
Total secured & unsecured creditors	24	1200000

Relevant persons

The relevant person is the person proposed to be the subject, or one of the subjects, of a supplementary s533 report if this funding application is approved.

1. Relevant person

Given names	John Arthur
Family name	SMITH
Position held	Company Secretary Director
Current location	50 James Street, Rosevale VIC 3333

Do you have contact details?

Yes

Do you consider them to be a flight risk?

No

Are you able to provide additional names/aliases used by them?

No

Are you in possession of any evidence to support allegations of inappropriate conduct by the relevant person?

Yes

Has the relevant director also been a director of at least one other company that went into liquidation in the last 7 years :

- at the time that they were a director of that other company; or
- within 12 months of them ceasing to be a director of that other company?

No

Have you applied, or do you intend to apply, for funding under s206F director banning?

No

Alleged offence(s)

**S180 - care and diligence - civil
S182 - use of position – civil
S286/344 - obligation to keep financial records
S588G - director's duty to prevent insolvent trading**

Description of the alleged conduct

Refer to attached summaries of alleged offences and misconduct [see Appendix 5 of this guide]

Date of alleged conduct

From **01-01-2008**

To **30-04-2009**

Is the conduct continuing?

No

Likely defences (if any)

Not known

Do you have documentary evidence to support the alleged conduct listed above?

Yes

List of all available evidence

Refer to attached books and records listing and questionnaire [see Appendix 6 of this guide] and attached summaries of alleged offences and misconduct [see Appendix 5 of this guide]

Offence(s) summary

Have you obtained any legal advice on this matter?

No

Have you taken any legal action?

No

Have you taken possession of any relevant computers/servers?

No

Other agencies you have referred this to:

None

Are you able to provide details of any relevant witness(es)?

Yes

Are you able to provide additional information as an attachment to this document?

No

Witnesses

1. Witness

Given names **Mary**
Family name **BROWN**
Position held: **Bookkeeper / CPA**
Relationship to the person: **Nil**
Location of the witness **(03) 9999 9999**
Is the witness contactable?
Yes

Funding application

You are seeking funding from ASIC in order to investigate and complete a supplementary section 533 report.

You expect your fees (excluding GST) to carry out the investigation and prepare the report will be between

\$40000 and \$50000

Details of estimated fees

Refer to attached schedule of estimated fees and disbursements [see Appendix 7 of this guide]

You expect your disbursements will be between

\$3000 and \$5000

Details of estimated disbursements

Refer to attached schedule of estimated fees and disbursements [see Appendix 7 of this guide]

Are you able to provide, or believe you can obtain, substantially all of the information required per ASIC's Funding Criteria & Guidelines?

Yes

The estimated number of weeks for the investigation and report to be completed will be between

6 and 8 weeks

Do you agree that you will be bound by the terms set out in the sample Funding Agreement annexed to ASIC's Funding Criteria & Guidelines if approval is granted for the requested amount and time frame indicated?

Yes

Contact details for this application:

Given names **Evelyn Flower**

Family name **POTTS**

Email **epotts@epotts.com.au**

Telephone

Number **03 9999 2222**

Comments **Joint & Several Liquidator**

Authentication

This form has been authenticated by

Name **EVELYN FLOWER POTTS**

This form has been submitted by

Name **EVELYN POTTS**

Date **03-09-2009**

For help or more information

Telephone 1300 300 630

Email info.enquiries@asic.gov.au

Web www.asic.gov.au