



Tel: +61 2 9251 4100  
Fax: +61 9240 9821  
www.bdo.com.au

Level 11, 1 Margaret St  
Sydney NSW 2000  
Australia

MB AUSTRALIA PTY LTD  
(IN LIQUIDATION)  
ACN 115 512 993

TRADING AS "MAX BRENNER AUSTRALIA"

Report to creditors pursuant to Section 70-  
30 of the Insolvency Practice Rules  
(Corporations) 2016

14 November 2018

Contact: Ben Gan  
Phone: (02) 8264 6679  
Facsimile: (02) 9240 9821  
Email: [ben.gan@bdo.com.au](mailto:ben.gan@bdo.com.au)

## TABLE OF CONTENTS

1.	Notice of Appointment	1
2.	What is a Court Liquidation?	1
3.	What happens to your debt?	1
4.	Your Rights as a Creditor	1
5.	Debts incurred since the Voluntary Administration	2
6.	Update on the Liquidation	2
7.	Summary of the Company's Affairs	3
8.	Possible Recovery Actions	4
9.	Insolvent trading	6
10.	Proof of your Claim prior to 30 September 2018	7
11.	Meeting of Creditors	7
12.	What happens next?	7
13.	Cost of the Liquidation	8
14.	Where can you get more information?	8
15.	Electronic Communication	9
16.	Commitment to Client Service	9
17.	Where Can I Get More Information?	9
18.	What You Should Do Next	10

---



## 1. Notice of Appointment

On 17 October 2018, the Company was wound up by the Supreme Court of Queensland. Andrew Sallway, Helen Newman and Nicholas Martin were appointed Joint and Several Liquidators. The application to wind up the Company was made by Strauss Group Limited who replaced Sunstate Ceilings Pty Ltd as the petitioning creditor.

We note that Barry Kogan, Katherine Sozou and Jason Preston of McGrath Nicol were previously appointed Joint and Several Voluntary Administrators of the Company on 30 September 2018. From the date of our appointment as Liquidators, their appointment as Administrators ceased.

The purpose of this report is to provide you with information about the liquidation of the Company and your rights as a creditor. This report is prepared pursuant to Section 70-30 of the Insolvency Practice Rules (Corporations) 2016.

A copy of our Declaration of Independence, Relevant Relationships and Indemnities ('DIRRI') is attached (Annexure A). The DIRRI assists you to understand any relevant relationships that we have, and any indemnities or upfront payments that have been provided to us. None of the relationships disclosed in this document affect our independence.

## 2. What is a Court Liquidation?

A Court Liquidation, is where an order to place a company into liquidation is made by the Court. Usually this is on the application of a creditor where the company has not paid its outstanding debt. Usually this means that the company is insolvent.

According to the Company's records, you are a creditor of the Company.

## 3. What happens to your debt?

All creditors of the Company are now creditors in the liquidation. As a creditor, you have certain rights, although you no longer have the right to commence legal proceedings to seek payment from the Company.

## 4. Your Rights as a Creditor

Information regarding your rights as a creditor can be found at <https://asic.gov.au/regulatory-resources/insolvency/insolvency-for-creditors/liquidation-a-guide-for-creditors/>. This includes your right to:

- Make reasonable requests for a meeting;
  - Make reasonable requests for information;
  - Give directions to the Liquidators;
  - Appoint a reviewing Liquidator; and
  - To replace us as liquidators.
-



## 5. Debts incurred since the Voluntary Administration

Voluntary Administration period

Details of all debts incurred by the former Voluntary Administrators during the period 30 September 2018 to 17 October 2018 should be forwarded to Mr Emmanuel Hart at McGrath Nicol by email [ehart@mcgrathnicol.com](mailto:ehart@mcgrathnicol.com)

Liquidation period

The business has now been sold, please close the Liquidators account immediately and forward to this office all unpaid invoices for the period 18 October 2018 to 5 November 2018.

New owner

Please find details for the purchaser below:

Name: MB Chocolate Pty Ltd

ABN: 28 102 091 832

Contact: Antonella Lentini - [antonella@unitedcinemas.com.au](mailto:antonella@unitedcinemas.com.au)

The purchaser will be in contact with you shortly to discuss an ongoing relationship. If you would like further information, please do not hesitate to contact Antonella Lentini.

## 6. Update on the Liquidation

The Company was served with statutory demands by Sunstate Ceilings Pty Ltd ('Sunstate') on 22 May 2018, Strauss Group Ltd ('Strauss Group') on 13 June 2018 and Max Brenner Industries Ltd ('MBI') on 13 June 2018.

On 29 June 2018, Sunstate commenced proceedings in the Supreme Court of Queensland seeking an order that the Company be wound up in insolvency. On 24 August 2018, the Court ordered that Strauss Group be substituted for Sunstate in the role of petitioning creditor.

On 30 September 2018, before the winding up application was heard, Barry Kogan, Kathy Sozou and Jason Preston of McGrath Nicol were appointed as Joint and Several Voluntary Administrators of the Company. During their appointment, the Voluntary Administrators continued to trade the business whilst a sale of business was pursued.

On 3 October 2018, Strauss Group pressed the application to wind up the Company, while the Voluntary Administrators sought an adjournment of the application pursuant to section 440A of the Corporations Act 2001 (Cth) ('the Act') on the basis that "it is in the interests of the company's creditors for the company to continue under administration rather than be wound up." Justice Mullins adjourned the hearing until 17 October 2018, but did so generally (rather than pursuant to section 440A of the Act) because her Honour was not satisfied that the material before the Court was sufficient to satisfy the test under section 440A of the Act.

On 17 October 2018, the Voluntary Administrators pressed for an adjournment of the winding up application pursuant to section 440A of the Act, while Strauss Group again pressed the application to wind up the Company. Justice Dalton held that the continuation of the Voluntary Administration was not in the best interests of creditors (ie, the test in section 440A had not been satisfied).

On this basis, on 17 October 2018, the Company was wound up by the Supreme Court of Queensland. Andrew Sallway, Helen Newman and Nicholas Martin were appointed Liquidators.

Subsequent to our appointment, we attended the principal place of business for the Company at 15-21 Doody Street, Alexandria NSW 2015 on the morning of 18 October 2018.

On our appointment the petitioning creditor, Strauss Group, had entered into a deal with Tozer & Co to have the sole rights to the "Max Brenner Australia" brand. It should be noted that the "Max Brenner Australia" brand is not an asset of the Company. That deal required certain criteria to be met by Tozer & Co and on 18 October 2018 it became apparent that this deal would not go any further. The deal for Tozer & Co to own the sole rights for Max Brenner Australia was terminated on 18 October 2018. Neither the former Voluntary Administrators, the Liquidators, nor the Company were a party to this deal.

After the deal with Tozer & Co was terminated, Opera Investments Pty Ltd ("Opera") acquired the sole rights to use the "Max Brenner Australia" brand in Australia from Strauss Group. Neither the former Voluntary Administrators, the Liquidators, nor the Company were a party to this deal. Opera then entered into a license agreement with the Liquidators in which they indemnified the Liquidators to trade the Company on in the view of completing a sale of business to Opera.

On 1 November 2018 Opera and the Liquidators entered into a Sale Agreement to acquire the assets of the Company and transfer the employment of in excess of 275 people. The Sale Agreement had a number of completion steps. On 9 November 2018 the Sale Agreement completed. At that time Opera purchased all of the assets of the Company. Importantly the employment of in excess of 275 people was transferred and Opera assumed those employees' entitlements.

There have been no store closures during the Liquidation and all stores continue to remain open since completion.

The Sale Agreement requires that the leases for the trading premises' of the Company be transferred to Opera which is anticipated to be completed shortly.

## 7. Summary of the Company's Affairs

A request to prepare the Report as to Affairs ('RATA') was sent to the Directors of the Company, Tamir Haikin and Lilach Haikin, on 22 October 2018. Pursuant to Section 475 of the Act the RATA must be received by the Liquidators by no later than ten (10) business days after the making of the winding up order.

Tamir Haikin requested on 2 November 2018 that the Directors receive an additional five (5) business days to complete the RATA, which was granted by the Liquidators. Having not received the above, Andrew Sallway had a follow up conversation with the Directors on 13 November 2018. The Director has stated that the RATA will be available for the Liquidators on 15 November 2018.

We intend to report this breach of Section 475 of the Act to the Australian Securities and Investments Commission ('ASIC') if the RATA is not received by 15 November 2018.

The RATA will assist the Liquidators in reporting to creditors on the quantum of the assets and liabilities of the Company. This information will be available in our next report to creditors pursuant to Section 70-40 of the Insolvency Practice Rules, which will be issued to creditors within three (3) month of the appointment of Liquidators.

## 8. Possible Recovery Actions

We are required under the Act to inform creditors as to whether there are any transactions to which provisions of Part 5.7B of the Act may apply. The Act provides that where a company is being wound up, certain transactions may be recovered by a liquidator as unfair preferences, uncommercial transactions, unfair loans or insolvent transactions. The following transactions may be recoverable on the application of a liquidator of a company to the Court:

- A payment made to a creditor, in the six (6) months of the relation back day (winding up application) which is an insolvent transaction of the Company (unfair preference);
- A transaction with a non-related creditor during the two (2) years prior to the appointment of a liquidator which is an insolvent transaction and an uncommercial transaction;
- A payment made to a related creditor in the four (4) years prior to the appointment of a liquidator which is an insolvent transaction and an uncommercial transaction;
- A payment made to a creditor in the ten (10) years prior to the appointment of a liquidator which is fraudulent; and
- An unfair loan whenever made.

To assist with your review of this section of the report, we have attached as Annexure H, the Australian Restructuring, Insolvency & Turnaround Association ('ARITA') creditors' information sheet on director's offences, voidable transactions and insolvent trading.

### Unfair preferences

A transaction is an unfair preference if it results in a creditor receiving from a company, in respect of an unsecured debt, more than the creditor would receive if the transaction(s) was/were set aside and the creditor was to prove for the debt in the winding up. If the payment(s) to the creditor was/were made within the six (6) months preceding the winding up application (known as the 'relation back date'), a liquidator can take action to recover funds from the preferred creditor and distribute them according to the order of priority contained in Section 556 of the Act.

We have conducted a preliminary review of the Company's financial records. These records indicate that it has entered into payment arrangements with as many as ten creditors from at least late 2017 onwards.

Entering into a payment arrangement is an indicator that the Company was not able to meet its debts as and when they fell due. Investigations into certain payment plans has indicated that the Company defaulted on payment arrangements entered into.

We have requested information from the ATO under the Freedom of Information Act 1982 to assist with our investigations into payment arrangements with the ATO, but we are yet to receive the requested information in writing at the date of this report.

We will continue to conduct further investigations into unfair preference payments and will report on our progress in our report to creditors pursuant to Section 70-40 of the Insolvency Practice Rules.

## Related party Transactions

A transaction entered into by a director or close associate of the company, in circumstances where it may be expected that a reasonable person in the company's circumstances would not have entered into the transaction, can be deemed an unreasonable related party transaction and recoverable by a Liquidator. For unreasonable related party transactions:

- A director or close associate must be involved;
- The transaction does not have to have been entered into when the company was insolvent - meaning the Liquidator does not need to go to the effort of proving insolvency; and
- The relation-back period is 4 years.

Our preliminary investigations into related party transactions are inconclusive. We will continue to conduct further investigations and will provide an update on our progress in our report to creditors pursuant to Section 70-40 of the Insolvency Practice Rules.

## Uncommercial transactions

For an uncommercial transaction to exist, at the time of the transaction:

- A reasonable person would not have entered into the transaction after taking into account the detriment and benefits to the Company;
- It was made when the Company was insolvent;
- It must have been entered into two years or less prior to our appointment as Liquidator however, if it was a related entity it may be four years prior to the commencement of the Liquidation; and
- The person could have reasonably been aware that the Company was insolvent at the time of the transaction or the person did not provide valuable consideration.

As noted above in Section 6 of this report, the Court ordered that the Company be wound-up on 17 October 2018. In those proceedings, Justice Dalton held that the continuation of the administration was not in the best interests of creditors (ie, the test in section 440A of the Act had not been satisfied) based on two reasons:

1. The termination of the licence agreement between Max Brenner Industries Ltd and the Company on 17 October 2018 and its effect on the Company's ability to trade and the effect on any potential sale of the Company's assets; and
2. The need for the sale of the property at 15-21 Doody Street, Alexandria be investigated by liquidators of the Company.

In relation to the second reason, her Honour noted that "[t]here is some material before the Court which certainly shows a case for investigation as to whether or not that sale was at an undervalue at a time when the [Company] was insolvent. The material before the Court is to the effect that that under value might be in the vicinity of around \$20 million. So it certainly is something that needs to be investigated." We will continue to conduct further investigations into the sale of the Doody Street property and will provide an update on our progress in our next report to creditors pursuant to Section 70-40 of the Insolvency Practice Rules.

## Unfair loans

Section 588FD of the Act defines a loan as being unfair if:

- The interest on the loan was extortionate when the loan was made, or has since become extortionate because of variation; or
- The charges in relation to the loan were extortionate when the loan was made, or has since become extortionate because of variation.

Our preliminary investigations into unfair loans are inconclusive and we will continue to conduct further investigations and report on the progress of these claims in our report to creditors pursuant to Section 70-40 of the Insolvency Practice Rules.

## 9. Insolvent trading

Section 588G of the Act states that a director has a duty to prevent a company incurring liabilities where they know or ought to know that the Company is insolvent. The director can be liable to compensate the Company for losses resulting from insolvent trading, subject to defences available.

A company is considered to be insolvent at the point when it is unable to pay its debts as and when they fall due for payment. Consideration is given to when debts are commercially due for payment.

### Indicators of insolvency

The precedent case for determining the solvency of a company is set out in *ASIC v Plymin & Ors* (2003) 46 ASCR 126 (commonly referred to as the “Water Wheel case”), where Justice Mandy of the Supreme Court of Victoria referred to the following checklist of 14 indicators of insolvency:

1. Continuing losses
2. Liquidity ratios below 1
3. Overdue Commonwealth and State taxes
4. Poor relationship with present Bank, including inability to borrow further funds
5. No access to alternative finance
6. Inability to raise further equity capital
7. Suppliers placing the company on COD, or otherwise demanding special payments before resuming supply
8. Creditors unpaid outside trading terms
9. Issuing of post-dated cheques
10. Dishonoured cheques
11. Special arrangements with selected creditors
12. Solicitors’ letters, summons[es], judgments or warrants issued against the company
13. Payments to creditors of rounded sums which are not reconcilable to specific invoices
14. Inability to produce timely and accurate financial information to display the company’s trading performance and financial position, and make reliable forecasts.



Based on our preliminary analysis, we have identified a number of these indicators from at least 12 months before the Liquidation.

We will continue to conduct further investigations and report on how these indicators of insolvency are relevant to this matter and report to Creditors pursuant to Section 70-40 of the Insolvency Practice Rules.

## 10. Proof of your Claim prior to 30 September 2018

As a creditor of the Company, you may provide information to support your claim for debts incurred prior to the Voluntary Administration on 30 September 2018.

Please complete the Proof of Debt Form (Annexure C) and return it along with supporting documents for your claim.

Please either scan and email these documents to [ben.gan@bdo.com.au](mailto:ben.gan@bdo.com.au), or return the documents via post to our firm's address, attention Ben Gan.

## 11. Meeting of Creditors

A meeting of creditors will be held at the offices of BDO, Level 5, 1 Margaret Street, Sydney NSW 2000 on Friday, 30 November 2018 at 9:30am (AEST). We enclose the Notice of Meeting of Creditors (Annexure B), Formal Proof of Debt (Annexure C) and Proxy Form (Annexure D).

Proof of Debt and Proxy Forms must be lodged by 4:00PM (AEST) on Thursday, 29 November 2018.

## 12. What happens next?

We will proceed with the Liquidation, including:

- Convening and holding a meeting of creditors on 30 November 2018;
- Completing the outstanding tasks of sale of business including assigning property leases to the purchaser;
- Paying all Liquidators accounts with suppliers, landlords and utility providers during the period the business was traded by the Liquidators;
- Writing to all employees (c. 600 employees) to advise of their respective outstanding entitlements and informing them of the Government's Fair Entitlements Guarantee Scheme;
- Completing verification tasks in relation to employee entitlements with the Fair Entitlements Guarantee ('FEG');
- Recovering and realising any remaining assets of the Company;
- Investigating the Company's affairs including its reasons for failure;
- Identifying potential offences, voidable transactions and insolvent trading; and
- Reporting to the corporate regulator, the Australian Securities and Investments Commission ('ASIC').

If we receive a request for a meeting that complies with the guidelines set out in the creditor rights information sheet, we will hold a meeting of creditors.

We will write to you with further information on the progress of the Liquidation pursuant to Section 70-40 of the Insolvency Practice Rules. This report will be issued to creditors within three months of the appointment of Liquidators.

We estimate that the Liquidation will not be finalised within twelve (12) months.

### 13. Cost of the Liquidation

Included as Annexure E is our Initial Remuneration Notice pursuant to Section 70-35 of the Insolvency Practice Rules (Corporations) 2016. This document provides you with information about how we will get paid for undertaking the liquidation.

Creditors should refer to our Remuneration Report enclosed as Annexure F and to the Notice of Meeting of Creditors (Form 529) (Annexure B) for details of the resolutions to be considered by creditors at the meeting of creditors for our remuneration as Liquidators.

Creditors are advised that there a number of methods available to insolvency practitioners in calculating their professional remuneration. These alternatives include percentages of realisations or distributions, fixed fee amounts, time costs, or some combination.

ARITA recommends that remuneration based on the time spent at the level appropriate to the work performed is the most appropriate method of calculating professional remuneration. A web link to ASIC Guide for Approving Fees: A Guide for Creditors is detailed in the Remuneration Report.

It is proposed that the remuneration of the Liquidators be calculated on an hourly basis at the hourly fees charged by BDO for such work, as provided to creditors in Annexure E. Enclosed at Annexure F in our Remuneration Report is a schedule of BDO Business Restructuring's hourly fees as at 1 July 2018.

Please note that the remuneration approved for the Company at the forthcoming meeting can only be drawn from the Company's available funds. Should the Company have insufficient funds to meet our approved remuneration, we will not be able to draw our remuneration and subsequently, these costs will be written off. In the event that creditors do not approve the Liquidators' remuneration at the forthcoming meeting, the Liquidators are able to apply to Court for approval. The costs of such an application will be met from the assets of the Company.

### 14. Where can you get more information?

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. A summary of the information sheets available is attached at Annexure G. These information sheets can be accessed on ASIC's website at <https://asic.gov.au/regulatory-resources/insolvency/insolvency-information-for-directors-employees-creditors-and-shareholders/>.

## 15. Electronic Communication

BDO is committed to reducing its impact of our administrations on the environment. One way you can help contribute to our efforts is to agree to accept all communications from us electronically, by email. If you would like to receive all communications electronically, please send an email to [ben.gan@bdo.com.au](mailto:ben.gan@bdo.com.au). The request will remain active until you provide us with further instructions to the contrary. Please alert us, if you change your email or postal address.

## 16. Commitment to Client Service

BDO's policy is to conduct files to the highest ethical and professional standards. BDO adheres to the codes of conduct prescribed by the Chartered Accountants Australia and New Zealand, AFSA, ARITA and INSOL the International Federation of Insolvency Professionals.

If creditors have any questions, queries or complaints concerning the conduct of this administration please direct them to this office. If you are dissatisfied with a decision made by the appointee, you may ask the appointee to review their decision or explain their reasons. If you are still not satisfied it may be necessary for an application to court to have the decision reviewed. In this instance it is recommended that you seek your own independent legal advice.

In the event that you are not satisfied with our handling of your query you may refer your complaint to the Company Auditors and Liquidators Disciplinary Board.

In an effort to improve our standards and the quality of information that you receive, we welcome your feedback. You can submit feedback anonymously in writing to this office or by email. If you would like further information on the range of services offered by BDO, please visit our website at [www.bdo.com.au](http://www.bdo.com.au). Alternatively, you can contact this office on 02 9251 4100. We would welcome any information which creditors feel may be of assistance in the conduct of the administration.

## 17. Where Can I Get More Information?

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/creditors](http://www.arita.com.au/creditors).

The Australian Securities and Investment Commission (ASIC) also provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at [asic.gov.au](http://asic.gov.au) (search for "insolvency information sheets").

## 18. What You Should Do Next

You should now:

- read the attached information
- decide whether you are going to attend the first meeting in person or by proxy, and if so complete and return your proof of debt, and if required, proxy form by 20 April 2018
- advise our office if you have a PPSR claim.

Should you have any questions regarding the liquidation and the content of this report, please contact Ben Gan of this office on telephone number (02) 8264 6679 or by email [ben.gan@bdo.com.au](mailto:ben.gan@bdo.com.au).

Dated this 14<sup>th</sup> day of November 2018.



ANDREW SALLWAY  
Joint and Several Liquidator

Annexure A - Declaration of Independence, Relevant Relationships and Indemnities

Annexure B - Notice of Meeting

Annexure C - Proof of Debt Form

Annexure D - Proxy

Annexure E - Initial Remuneration Notice

Annexure F - Remuneration Approval Report

Annexure G - ASIC Information Sheet

Annexure H - ARITA Creditor Information Sheet

**‘ANNEXURE A’**



CORPORATIONS ACT 2001

Section 60(2)

DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES

MB AUSTRALIA PTY LTD (IN LIQUIDATION)

ACN 115 512 993 ('the Company')

This document requires the Practitioners appointed to an insolvent entity to make declarations as to:

- A. their independence generally
- B. relationships, including:
  - i. the circumstances of the appointment;
  - ii. any relationships with the Insolvent and others within the previous 24 months;
  - iii. any prior professional services for the Insolvent within the previous 24 months;
  - iv. that there are no other relationships to declare; and
- C. any indemnities given, or up-front payments made, to the Practitioners.

This declaration is made in respect of ourselves, our partners and BDO.

**A. Independence**

Nicholas Martin, Helen Newman and Andrew Sallway of BDO have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Joint and Several Liquidators of the Company in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to our independence. We are not aware of any reasons that would prevent us from accepting this appointment.

**B. Declaration of Relationships**

i. Circumstances of appointment

On 26 June 2018, Daisy Brown of Gadens contacted Helen Newman and Andrew Fielding of BDO by email to seek their consent to act as Liquidators of the Company. Gadens was acting for Sunstate Ceilings Pty Ltd. Helen Newman and Andrew Fielding provided their consent to act on 28 June 2018.

The winding up application hearing was set for 9 August 2018. On 13 August 2018, Daisy Brown of Gadens advised BDO that the hearing was adjourned to 24 August 2018 as the Company put forward a proposal to pay the petitioning creditor.

On 24 August 2018, Guy Edgecombe of Gadens advised BDO that their client, Sunstate Ceilings Pty Ltd, had been paid out and they intended to withdraw from the proceedings. He also advised that another creditor had substituted into the application. The substituted creditor was Strauss Group Limited, represented by Amelia Kelly and Andrew Schriffer of DLA Piper Australia.

On 16 August 2018, Amelia Kelly of DLA Piper requested Andrew Sallway of BDO to provide his consent to act as Liquidator of the Company on behalf of the petitioning creditor, Strauss Group Limited. Andrew Sallway, Helen Newman and Nicholas Martin provided their consent to act on 17 August 2018.



We had the following meetings and correspondence with the Petitioning Creditor's representatives between 16 August 2018 and our appointment as detailed below:

Date	People	Purpose
16 August 2018	Amelia Kelly (DLA Piper) Jeff Marsden (BDO)	Phone call from Amelia Kelly to Jeff Marsden regarding Max Brenner winding-up proceedings.
16 August 2018	Amelia Kelly (DLA Piper) Andrew Sallway (BDO)	Email from Amelia Kelly requesting a consent to act in the winding-up proceedings of the Company.
17 August 2018	Amelia Kelly (DLA Piper) BDO Representative	A BDO representative emailed DLA Piper providing the signed consent to act.
19 September 2018	Amelia Kelly (DLA Piper) Andrew Sallway (BDO)	Phone call from Amelia Kelly to Andrew Sallway regarding progress of the winding up application.
2 October 2018	Amelia Kelly (DLA Piper) Andrew Sallway (BDO)	Phone call from Amelia Kelly to Andrew Sallway regarding progress of winding up application.
3 October 2018	Amelia Kelly (DLA Piper) Andrew Sallway (BDO)	Phone call from Amelia Kelly to Andrew Sallway regarding progress of winding up application and adjournment of hearing.
16 October 2018	Amelia Kelly (DLA Piper) Andrew Sallway (BDO) Jeff Marsden (BDO)	Phone call and email exchanges between Andrew Sallway, Jeff Marsden and Amelia Kelly to provide a letter to the Court regarding extent of any relationships with major stakeholders and an undertaking not to seek to recover any remuneration relating to handover tasks with the administrators.
17 October 2018	Amelia Kelly (DLA Piper) Andrew Sallway	Phone calls and email exchanges between Andrew Sallway and Amelia Kelly regarding progress of winding-up application and confirmation of appointment.

We have provided no information or advice to the Company prior to our appointment.

ii. Relevant Relationships (excluding professional services to the insolvent)

We, or a member of our firm, have or have had within the preceding 24 months a relationship with:

Name	Nature of relationship	Reason why there is no conflict or duty
<p>Australian Taxation Office ('ATO')</p>	<p>Our colleagues and us undertake work from time to time on behalf of the ATO.</p> <p>The ATO is listed as a creditor in this liquidation.</p>	<p>We believe that this relationship does not result in a conflict of interest or duty because:</p> <ul style="list-style-type: none"> <li>• BDO has never undertaken any work for the ATO in respect of the Company;</li> <li>• The work that BDO undertakes for the ATO will not influence our ability to be able to fully comply with the statutory and fiduciary obligations associated with the liquidation of the Company in an objective and impartial manner;</li> <li>• This relationship does not preclude, by operation of the Corporations Act, 2001 or the ARITA Code of Professional Practice, us from accepting the appointment to the Company; and</li> <li>• The liquidation of the Company is an unrelated matter to any previous or current engagements/appointments undertaken for the ATO.</li> </ul>
<p>Strauss Group Limited ('Strauss')</p>	<p>Strauss is the petitioning creditor in the winding up of the Company.</p> <p>We consented to act as Joint and Several Liquidators at the request of the petitioning creditor's solicitor.</p>	<p>We believe that this relationship does not result in a conflict of interest or duty because:</p> <ul style="list-style-type: none"> <li>• BDO has never undertaken any work for Strauss; and</li> <li>• This relationship does not preclude, by operation of the Corporations Act 2001 or the ARITA Code of Professional Practice, us from accepting the appointment to the Company.</li> </ul>
<p>DLA Piper</p>	<p>DLA Piper represents the petitioning creditor of the Company, Strauss Group Limited.</p> <p>Unrelated matters have previously been referred to us by DLA Piper for various appointments and advice. We also engage DLA Piper to provide legal advice and representations on matters independent to the Company from time to time.</p> <p>We are not paid any commissions, inducements or benefits by DLA Piper to undertake the appointment, nor does BDO pay any commission, inducement or referral fee to DLA Piper.</p>	<p>We believe that this relationship does not result in a conflict of interest or duty because:</p> <ul style="list-style-type: none"> <li>– BDO has never undertaken any work for DLA Piper in respect of the Company;</li> <li>– This relationship does not preclude, by operation of the Corporations Act, 2001 or the ARITA Code of Professional Practice, us accepting the appointment to the Company; and</li> <li>– The Liquidation of the Company is an unrelated matter to any previous or current engagements/appointments referred from DLA Piper.</li> </ul> <p>Our relationship with DLA Piper is a normal business relationship and does not result in us having a conflict of interest or duty in this administration.</p>



iii. Prior professional services to the insolvent

Neither we, nor our firm, have provided any professional services to the Company in the previous 24 months.

iv. No other relevant relationships to disclose

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with the Company, an associate of the Company, a former insolvency practitioner appointed to the Company or any person or entity that has a security over the whole or substantially the whole of the Company's property that should be disclosed.

### c. Indemnities and up-front payments

We have been provided with the following indemnities for the conduct of this liquidation:

Name	Relationship with the Company	Nature of indemnity or payment
Opera Investments Pty Ltd ('Opera')	On 1 November 2018, Opera entered into an Asset Sale and Purchase Agreement to acquire the assets of the Company.	<p>On 19 October 2018, Opera provided an indemnity to the Liquidators in respect of any trading expenses incurred during the Liquidation. The indemnity also includes an indemnity for the fees and disbursements of the Liquidators and their respective legal costs in respect of trading the business during the negotiation and completion of the Asset Sale and Purchase Agreement.</p> <p>In accordance with the terms of the Deed of Indemnity, Opera has made cash advances totalling \$790,000 to the Liquidators. These funds are held in a separate BDO holding account.</p> <p>There are no conditions on the conduct or outcome of the Liquidation attached to the provision of these funds.</p>

Dated this 14<sup>th</sup> day of November 2018



ANDREW SALLWAY  
Joint and Several Liquidator



HELEN NEWMAN  
Joint and Several Liquidator



NICHOLAS MARTIN  
Joint and Several Liquidator

Note:

- 1 If circumstances change, or new information is identified, we are required under the Corporations Act, 2001 and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication as well as table a copy of any replacement declaration at the next meeting of the insolvent's creditors.
- 2 Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.

**‘ANNEXURE B’**

Insolvency Practice Rules (Corporation) 2016

Corporations Act 2001

NOTICE OF MEETING OF CREDITORS

MB AUSTRALIA PTY LTD (IN LIQUIDATION)

ACN 115 512 993

('the Company')

NOTICE IS GIVEN that a meeting of the creditors will be held at BDO Level 5, 1 Margaret St, Sydney NSW 2000 on Friday, 30 November 2018 at 9:30am (AEDT).

The purpose of this meeting is:

1. To approve the remuneration of the Liquidators, their partners and staff for the period 17 October 2018 to 11 November 2018 on a time basis up to a maximum amount of \$226,741.25 exclusive of GST and disbursements;
2. To approve the remuneration of the Liquidators, their partners and staff for the period 12 November 2018 to 17 January 2019 on a time basis up to a maximum amount of \$75,000 exclusive of GST and disbursements;
3. To approve the necessarily incurred internal disbursements of the Liquidators and any of the Liquidators' partners or employees for the period 17 November 2018 to the finalisation of the Liquidation in the capped sum of \$1,380 (excluding GST);
4. To consider the appointment of a Committee of Inspection (if appropriate); and
5. To authorise the Liquidators to destroy the books and records of the Company within a period of six (6) months after dissolution of the Company, subject to obtaining prior approval from the Australian Securities and Investments Commission.

Telephone conference facilities can be made available for creditors at the meeting. Creditors who wish to attend the meeting by phone are requested to contact this office on telephone number (02) 8264 6679, 48 hours prior to the meeting for this to be arranged. Creditors will not be entitled to vote at the meeting unless they have lodge particulars of their claim against the Company with us prior to the commencement of the meeting.

DATED this the 14<sup>th</sup> day of November 2018.



Andrew Sallway  
Joint and Several Liquidator

# **‘ANNEXURE C’**

## FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

**MB AUSTRALIA PTY LTD (IN LIQUIDATION)  
ACN 115 512 993 (THE COMPANY)**

To the Liquidators of

**MB AUSTRALIA PTY LTD (IN LIQUIDATION) ACN 115 512 993**

1. This is to state that the company was on 17 October 2018, and still is, justly and truly indebted to (insert full name and address of the creditor<sup>1</sup>)

for (insert amount of claim in words)

	dollars and	
		cents

Particulars of the debt are (give details of claim<sup>2</sup>):

Date	Consideration (state how the debt arose)	Amount \$            ¢	Remarks (include details of voucher substantiating payment)

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following<sup>3</sup>:

3. <sup>4</sup>I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied. I am the creditor, employed by the creditor, and/or the creditor's agent duly authorised in writing to make this statement.

Signed

Dated

Confirmation of postal/contact details of Creditor

Address		
City	State	Postcode
Phone	Email	

**Correspondence by email**

Do you consent to this office electing to send correspondence regarding the company to the above email address?      Yes

**Notes:**

1. Insert the full name and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor.
2. Insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form:

Date	Drawer	Acceptor	Amount	Due Date
			\$ ¢	

3. Under "Consideration" state how the debt arose, for example "goods sold and delivered to the company between the date of .....", "moneys advanced in respect of the Bill of Exchange." Include details of vouchers substantiating payment.
4. Do not complete section three if this proof is made by the creditor personally.

**FOR OFFICE USE ONLY**

Received	Admitted to Vote for	Admitted to rank for dividend
	\$ ¢	\$ ¢

**‘ANNEXURE D’**



## APPOINTMENT OF PROXY

**MB AUSTRALIA PTY LTD (LIQUIDATORS APPOINTED)**  
**ACN 115 512 993**

I/We (name of signatory).....of (creditor name).....  
 of (creditor address) \_\_\_\_\_

a creditor of MB AUSTRALIA PTY LTD

appoint (name of person to hold proxy) \_\_\_\_\_

of (address of proxy) \_\_\_\_\_

or in his or her absence (name alternative proxy) \_\_\_\_\_

of (address of alternative proxy) \_\_\_\_\_

as my/our proxy to vote at the creditors meeting to be held on 30 November 2018 at 9:30am at BDO, Level 11, 1 Margaret Street, Sydney NSW 2000, or at any adjournment of that meeting as follows:

I/We authorise my/our proxy to vote as special proxy as specified below.

RESOLUTIONS	For	Against	Abstain
<p>1. Liquidators' Remuneration</p> <p>To approve the remuneration of the Liquidators, their partners and staff for the period 17 October 2018 to 11 November 2018 on a time basis up to a maximum amount of \$226,741.25 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO Business Restructuring Pty Ltd's schedule of hourly rates as at 1 July 2018 that may be increased at 1 July each year. Such remuneration may be drawn as funds become available. The Liquidator reserves the right to convene a further meeting of creditors should the level of remuneration need to be increased.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>2. Liquidators' Remuneration</p> <p>To approve the remuneration of the Liquidators, their partners and staff for the period 12 November 2018 to 17 January 2019 on a time basis up to a maximum amount of \$75,000 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO Business Restructuring Pty Ltd's schedule of hourly rates as at 1 July 2018 that may be increased at 1 July each year. Such remuneration may be drawn as funds become available. The Liquidator reserves the right to convene a further meeting of creditors should the level of remuneration need to be increased.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<p>3. Internal Disbursements</p> <p>That the necessarily incurred internal disbursements of the Liquidators and any of the Liquidators' partners or employees for the period 17 November 2018 to the finalisation of the Liquidation is approved and paid in the capped sum of \$1,380 (excluding GST), charged at the rates as detailed in the Remuneration Approval Report attached to the Report to Creditors dated 14 November 2018.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>4. Committee of Inspection</p> <p>To appoint a Committee of Inspection.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>5. Destruction of Books and Records</p> <p>To approve the destruction of books and records at the conclusion of the winding up, subject to the approval of the Australia Securities &amp; Investment Commission.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

I/We authorise my/our proxy to vote as a general proxy on resolutions other than those specified above.

Signed

Dated

**‘ANNEXURE E’**



## INITIAL REMUNERATION NOTICE

MB AUSTRALIA PTY LTD (IN LIQUIDATION)

ACN 115 512 993 ('the Company')

14 November 2018

The purpose of the Initial Remuneration Notice is to provide you with information about how our remuneration for undertaking the Liquidation will be set.

### Remuneration Methods

For your information, there are four basic methods that can be used to calculate the remuneration charged by an Insolvency Practitioner. These are:

a) **Time Based Hourly Rates**

This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.

b) **Fixed Fee**

The total fee charged is normally quoted at the commencement of the liquidation and is the total cost for the liquidation. Sometimes a Practitioner will finalise a liquidation for a fixed fee.

c) **Percentage**

The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.

d) **Contingency**

The practitioner's fee is structured to be contingent on a particular outcome being achieved.

### Remuneration Method Chosen

Given the nature of this Liquidation, remuneration will be calculated on Time Based Hourly Rates for the following reasons:-

- It ensures that creditors are only charged for work that is performed. Our time, and that of our staff, are recorded and charged in six minute increments;
- We are required to perform a number of tasks which do not relate to the realisation of assets, for example responding to creditors' enquiries, reporting to ASIC and distributing funds in accordance with the provisions of the Act;
- Work often requires staff with different levels of experience as such different hourly rates reflect the expertise of our staff; and
- We are unable to estimate with certainty the total amount of fees necessary to complete all tasks required in this liquidation.

### Explanation of Hourly Rates

Set out at the end of this report is the standard schedule of fees for BDO Business Restructuring. Included is a general description of the staff levels and their relevant qualifications and experience.



The rates encompass the total cost of providing professional services and should not be compared to hourly wage rates.

## Disbursements

Disbursements are those out-of pocket expenses incurred during the course of an appointment. They are recovered from available funds and are broadly grouped into three types:

- A Externally provided professional services e.g. legal fees. These are recovered at cost.
- B1 Externally provided non-professional costs, such as travel, search fees, valuers or auctioneers fees. These are recovered at cost.
- B2 Internally provided non-professional costs such as photocopying, printing, telephone and document storage. These disbursements, if charged to the liquidation, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

We are not required to seek creditor approval for disbursements paid to third parties, but must account to creditors. However, we must be satisfied that these disbursements are appropriate, justified and reasonable.

We are required to obtain creditor's consent for the payment of internal disbursements, if any are paid. Creditors will be asked to approve our internal disbursements prior to these disbursements being paid from the liquidation. Details of the basis of recovering internal disbursements in this liquidation are provided below.

## Basis of Disbursement Claim

Disbursements	Amount (ex GST)
Externally provided professional services	At cost
Externally provided non-professional costs	At cost
Photocopying	30c a copy
Fax	\$1 per page
Property Search	\$25
Document Storage	At cost
Staff vehicle use	66c per km travelled (in line with ATO guidelines)

## Business Restructuring - Corporate Rates as at 1 July 2018

Title	Description	Hourly Rate (excl GST)
Partner	Registered Liquidator- Partner bringing specialist skills to administration or insolvency task.	665
Associate Director	Minimum of twelve years insolvency experience, at least five years at manager level, qualified accountant and capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in own right.	615
Senior Manager	More than 7 years' insolvency experience, more than 3 years as a manager, qualified accountant. Answerable to the appointee but otherwise responsible for all aspects of administration. Experienced at all levels and considered very competent. Control staff and their training.	510
Manager	6-7 years, qualified accountant, with well-developed technical and commercial skills. Should be constantly alert to opportunities to meet clients' needs and to improve the clients' future operation either by revenue enhancement or by reducing costs and improving efficiency. Controls 2-4 staff.	465
Assistant Manager	4-6 years, CA program (CA) complete. Will have had conduct of minor administrations and experience in control of 1-3 staff. Assists planning and control of medium to larger jobs.	425
Senior Accountant	2-4 years, CA (or equivalent) would normally be commenced during this period. Required to control of small to medium sized jobs as well as performing some of the more difficult work on larger jobs.	385
Accountant	1-2 years, CA (or equivalent) would normally be commenced during his period. Required to control the fieldwork on small jobs and responsible for assisting complete fieldwork on medium to large jobs.	345
Graduate Accountant	0-1 years, Trainee undertaking a degree with an accounting major. Required to assist in day-to-day fieldwork under supervision of more senior staff.	220
Undergraduate Accountant	HSC or equivalent, plans to undertake at least part-time degree/diploma. Required to assist in administration and day-to-day fieldwork under supervision of more senior staff.	220
Executive Assistant/ Personal Assistant	Appropriate computer skills including machine usage	220



These rates are current from 1 July 2018.

The Partners of BDO Business Restructuring are members of the Australian Restructuring Insolvency & Turnaround Association (ARITA) and follow ARITA's Statement of Best Practice - Remuneration.

A copy of this statement may be found on the ARITA website ([www.arita.com.au](http://www.arita.com.au)).

It is considered appropriate to keep and maintain a number of different staff levels. This is a reflection of the different levels of staff required and experience necessary in order to undertake the various tasks in an insolvency appointment.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Andrew Sallway'.

Andrew Sallway  
Joint and Several Liquidator

**‘ANNEXURE F’**





## REMUNERATION REQUEST APPROVAL REPORT

MB AUSTRALIA PTY LTD (IN LIQUIDATION)  
ACN 115 512 993 ('the Company')

### Part 1: Declaration

We, Andrew Sallway, Helen Newman and Nicholas Martin have undertaken a proper assessment of this remuneration claim for our appointment as Liquidator of the Company in accordance with the law and applicable professional standards. We are satisfied that the remuneration claimed is in respect of necessary work, properly performed in the conduct of the liquidation.

### Part 2: Executive Summary

To date, no remuneration has been approved or drawn in this liquidation. This remuneration report details approval sought for the following fees:

Period	Remuneration Report Reference	Amount (excl. GST and disbursements)
Past remuneration approved		NIL
Resolution [1]: 17 October 2018 to 11 November 2018	( A , B )	\$226,741.25
Resolution [2]: 12 November 2018 to 17 January 2018*	( C )	\$75,000.00

\* Approval for the future remuneration sought is based on an estimate of the work necessary to the next report to creditors pursuant to section 70-40 of the Insolvency Practice Rules. Should additional work be necessary beyond what is contemplated, further approval may be sought from creditors.

### Indemnity

On 19 October 2018, the ultimate purchaser of the business, Opera Investments Pty Limited, provided an indemnity to the Liquidators in respect of any trading expenses incurred during the Liquidation. The indemnity also includes an indemnity for the fees and disbursements of the Liquidators and their respective legal costs in respect of trading the business during the negotiation and completion of the Asset Sale and Purchase Agreement. This indemnity will be used to pay part of the Liquidators' fees and disbursements.

### Time incurred attending to handover tasks with McGrath Nicol

Prior to our appointment, the Liquidators provided an undertaking to the Supreme Court of Queensland agreeing not to seek to recover any remuneration relating to handover tasks with the former Voluntary Administrators. During the Liquidation, we have incurred fees totaling \$6,764.00 (excl. GST) in attending to handover tasks with the former Voluntary Administrators. This time has been written off and is NOT included in our remuneration claim.

### Part 3: Details of Remuneration

The basis of calculating the remuneration claims are summarised in the following schedules:

Resolution	Detailed <sup>1</sup>	Summary <sup>2</sup>
Resolution 1: 17 October 2018 to 11 November 2018	Schedule A	Schedule B
Resolution 2: 12 November 2018 to 17 January 2019	Schedule C	N/A

Notes:

1. Detailed schedules provide descriptions of the tasks performed within each task area, matching the amounts shown in the summary schedules.
2. Summary schedules provide detail of the time charged to each major task area by staff members working on the Liquidation for the relevant period, which is the basis of each claim.

## Schedule A: Description of Work that has been completed

Resolution: 17 October 2018 to 11 November 2018

	General Description	Includes
<b>Administration</b> 79.60 Hrs \$ 34,355.50 (refer to Table in schedule B)	Planning / Review	Attend to all statutory requirements Liaise with our solicitors Discuss the status of liquidation
	Correspondence	Letters advising third parties and utilities of appointment General correspondence with third parties Issuing Director Packs to Company Directors
	Document Maintenance / File Review / Checklist	File of documents File reviews Update checklists
	Insurance	Correspondence with our broker Arthur J. Gallagher ('AJG') Identify potential issues that required attention of insurance specialists Correspond with AJG regarding initial insurance requirements Review insurance policy
	Bank account administration	Prepare correspondence with St George to open a new bank account for the Company Bank account reconciliations Correspond with St George regarding specific transactions and account details
	ASIC Forms	Correspond with ASIC regarding statutory forms Lodge statutory notices and forms
	ATO & other statutory reporting	Obtain information from the ATO under the Freedom of Information Act

	Cash at Bank	<p>Prepare and dispatch correspondence with the 15 major banks to freeze any existing accounts held by the Company on appointment</p> <p>Correspond with NAB to transfer weekly eftpos sales into Liquidators' bank account</p>
	Stock	<p>Organise a stock count for stock on hand at appointment, at month end and at completion of the sale agreement</p> <p>Sell stock to purchaser of settlement</p>
	General	<p>Identify and secure assets that belong to the Company</p> <p>Meet with agent to commission a valuation of the Company's assets and ensure the assets are secured</p> <p>Correspondence with lawyers regarding Business Sale Agreement and the Indemnity Agreement with the purchaser</p>
	Leases	<p>Visit store premises leased under the Company name</p> <p>Liaise with Landlords regarding lease/license agreements</p> <p>Correspondence with Directors regarding bank guarantees held over premises</p>
	Sale of Business	<p>Negotiated a sale agreement with the Purchaser</p> <p>Negotiated a sale of business with the secured creditors of Receivers and Managers</p> <p>Undertook valuation of stock, inventory and equipment at Head Office, warehouse and stores</p> <p>Review of Stocktake listing</p> <p>Disclaimed all assets under PPSR charge except for registrations held with Citadel, Wentworth Capital and CH Central Village</p> <p>Attend settlement of sale of business</p>
Creditors 30.10 Hrs \$ 14,859.00 (refer to Table in schedule B)	Creditor Enquiries	<p>Telephone conversations with creditors and suppliers</p> <p>Receive and follow up creditor enquiries via telephone, email and post</p> <p>Maintain creditor enquiry register</p> <p>Review and prepare correspondence to creditors and their representatives via email and post</p>

	<p>Creditor report</p> <p>Secured Creditors</p> <p>Processing proofs of debt</p>	<p>Prepare initial notices to creditors and convene creditors meeting</p> <p>Prepare meeting proxy meeting</p> <p>Prepare liquidators' remuneration report</p> <p>Prepare statutory creditors report and lodge with ASIC</p> <p>Adjudicate on proofs of debt as required</p> <p>Prepared notices and disclaimers for PPSR registrations</p> <p>Prepare correspondence to potential creditors inviting lodgment of POD</p> <p>Receive and file PODs</p> <p>Update creditor claims in register</p>
<p>Employees 27.60 Hrs \$ 11,767.50 (refer to Table in schedule B)</p>	<p>Employee Enquiries</p>	<p>Visited stores and met with employees</p> <p>Received and followed up employee enquiries via telephone, email and post</p> <p>Calculation of employee entitlements</p> <p>Organise weekly payroll runs</p> <p>Reviewed and prepared correspondence to employees to notify of our appointment and provide an update on outstanding entitlements via facsimile, email and post</p> <p>Continuous communications with employees regarding update on liquidation</p> <p>Terminate employees upon completion of sale agreement</p> <p>Engaged and signed the Deed of Undertaking with the Fair Entitlements Guarantee (FEG)</p>
<p>Investigations 62.10 Hrs \$ 33,528.00 (refer to Table in schedule B)</p>	<p>Conducting investigation</p>	<p>Correspond with the Director of the Company regarding Form 507 and creditors listing</p> <p>Undertake company and director searches</p> <p>Review and prepare company nature and history</p> <p>Conduct and summarise statutory searches</p> <p>Review the Company's pre-appointment bank statements for preferences and voidable transactions</p> <p>Complete an image and back up for the Company's server and IT equipment</p>

		<p>Collect books and records</p> <p>Review of books and records</p> <p>Prepare investigation file</p> <p>Lodge the investigation with ASIC</p> <p>Investigate conduct of directors prior to appointment</p> <p>Investigate the circumstances which led to the winding up of the company</p> <p>Correspond with Fair Work Ombudsman</p> <p>Investigate potential preference payments made to ATO, Office of State Revenue and various secured parties</p> <p>Investigate circumstances of the sale of the Doody Street property</p>
	ASIC reporting	<p>Prepare statutory investigation reports</p> <p>Liaise with ASIC</p>
Trade On 263.30 Hrs \$ 107,767.25 (refer to Table in schedule B)	Trading of business	<p>Attending to all duties necessary to support the ongoing trading of the business including:</p> <ul style="list-style-type: none"> <li>• Setting-up new credit applications with suppliers</li> <li>• Notifying all utility providers of the Company's ongoing trade</li> <li>• Submitted ongoing purchase orders for the supply of trading stock</li> <li>• Payment of invoices for stock received</li> <li>• Liaised with Landlords of our intentions to continue occupying all 17 remaining store s</li> <li>• Review of Company's cash flow and cash position for new purchaser</li> <li>• Monitoring daily sales</li> </ul>



## Schedule B: Calculation of Remuneration

Resolution: Liquidators' Remuneration for the Period from 17 October 2018 to 11 November 2018

Staff	Position	Hourly		Total		Administration		Assets		Creditors		Employees		Investigations		Trade On	
		Rate	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	
Andrew Sallway	Appointee	665.00	94.0	62,510.00	30.5	20,282.50	28.0	18,620.00	9.5	6,317.50	3.5	2,327.50	1.5	997.50	21.0	13,965.00	
Helen Newman	Appointee	665.00	13.1	8,711.50	0.7	465.50	-	-	5.0	3,325.00	0.4	266.00	1.2	798.00	5.8	3,857.00	
Nicholas Martin	Appointee	665.00	24.5	16,292.50	-	-	3.8	2,527.00	1.8	1,197.00	-	-	8.5	5,652.50	10.4	6,916.00	
Duncan Clubb	Partner	665.00	1.0	665.00	1.0	665.00	-	-	-	-	-	-	-	-	-	-	
Andrew Fielding	Partner	665.00	1.7	1,130.50	-	-	-	-	-	-	-	-	1.7	1,130.50	-	-	
Shane Swift	Associate Director	615.00	34.2	21,033.00	-	-	-	-	-	-	-	-	34.2	21,033.00	-	-	
Charles Haines	Associate Director	615.00	0.2	123.00	0.2	123.00	-	-	-	-	-	-	-	-	-	-	
Jeff Marsden	Senior Manager	510.00	47.5	24,225.00	1.5	765.00	2.1	1,071.00	-	-	0.7	357.00	0.5	255.00	42.7	21,777.00	
Alastair Raphael	Senior Manager	510.00	2.5	1,275.00	-	-	-	-	-	-	-	-	-	-	2.5	1,275.00	
Daniel Rigg	Manager	465.00	2.3	1,069.50	0.6	279.00	-	-	0.5	232.50	0.2	93.00	-	-	1.0	465.00	
Ben Carney	Manager	465.00	11.0	5,115.00	8.4	3,906.00	0.1	46.50	-	-	2.5	1,162.50	-	-	-	-	
Mark Brereton	Manager	465.00	2.0	930.00	-	-	-	-	-	-	-	-	-	-	2.0	930.00	
Tom Whitmarsh	Assistant Manager	425.00	125.5	52,806.25	1.9	807.50	4.8	2,040.00	4.2	1,785.00	15.1	6,417.50	2.3	977.50	97.2	40,778.75	
Kani Zhang	Senior Accountant	385.00	0.6	231.00	-	-	0.3	115.50	-	-	-	-	-	-	0.3	115.50	
Ben Gan	Graduate Accountant	220.00	100.3	22,066.00	14.3	3,146.00	0.2	44.00	8.8	1,936.00	4.8	1,056.00	2.0	440.00	70.2	15,444.00	
Andrew Whittaker	Graduate Accountant	220.00	28.7	6,314.00	17.8	3,916.00	-	-	0.3	66.00	0.4	88.00	-	-	10.2	2,244.00	
Stephen Koustopolis	Graduate Accountant	220.00	10.2	2,244.00	-	-	-	-	-	-	-	-	10.2	2,244.00	-	-	
<b>Total</b>			499.3	226,741.25	76.9	34,355.50	39.3	24,464.00	30.1	14,859.00	27.6	11,767.50	62.1	33,528.00	263.3	107,767.25	
* Write-off																	
Net Amount																	
226,741.25																	
GST																	
22,674.13																	
Total (Incl. GST)																	
249,415.38																	
Average hourly rate																	
454.12																	

\* Prior to our appointment, the Liquidators provided an undertaking to the Supreme Court of Queensland agreeing not to seek to recover any remuneration relating to handover tasks with the former Voluntary Administrators. During the Liquidation, we have incurred fees totalling \$6,764.00 (excl. GST) in attending to handover tasks with the former Voluntary Administrators. This time is NOT included in our remuneration claim.

## Schedule C: Description of Work to be completed

Resolution: 12 November 2018 to 17 January 2018

	General Description	Includes
<b>Administration</b> 15.00 Hrs \$ 5,000.00	Planning / Review	Attend to all statutory requirements Liaise with our solicitors (if required) Discuss the status of liquidation
	Correspondence	Letters advising third parties and utilities of appointment General correspondence with third parties
	Document Maintenance / File Review / Checklist	First month administration review Three-month administration review File of documents File reviews Update checklists
	Insurance	Correspondence with our broker Arthur J. Gallagher ('AJG') Identify potential issues that required attention of insurance specialists Correspond with AJG regarding initial insurance requirements Review insurance policy and cancel insurance policy upon settlement
	Bank account administration	Prepare correspondence with St George to open a new bank account for the Company Bank account reconciliations Correspond with St George regarding specific transactions and account details
	ASIC Forms	Correspond with ASIC regarding statutory forms
<b>Assets</b> 15.00 Hrs \$ 5,000.00	General	Identify and secure assets that belong to the Company if necessary Correspondence with lawyers regarding outstanding items of the Business Sale Agreement



	Leases	Liaise with Landlords regarding lease/license agreements
<p>Creditors 30.00 Hrs \$ 10,000.00</p>	Creditor Enquiries	<p>Telephone conversations with creditors and suppliers</p> <p>Receive and follow up creditor enquiries via telephone, email and post</p> <p>Maintain creditor enquiry register</p> <p>Review and prepare correspondence to creditors and their representatives via email and post</p>
	Creditor report	<p>Prepare further notices to creditors and convene creditors meeting (if necessary)</p> <p>Prepare second creditors report pursuant to section 70-40 of IPR</p> <p>Prepare liquidators' remuneration report</p> <p>Prepare statutory creditors report and lodge with ASIC</p>
	Processing proofs of debt	<p>Prepare correspondence to potential creditors inviting lodgment of POD</p> <p>Receive and file PODs</p> <p>Correspond with the ATO regarding POD</p> <p>Update creditor claims in register</p>
<p>Employees 45.00 Hrs \$ 15,000.00</p>	Employee Enquiries	<p>Prepare letters to employees summarising all pre-appointment entitlements</p> <p>Responding to ongoing employee queries</p> <p>Verify employee entitlement claims with the Fair Entitlements Guarantee</p> <p>Organise final pay run for employees</p>

<p>Investigations 75.00 Hrs \$ 25,000.00</p>	<p>Conducting investigation</p>	<p>Correspond with the Director of the Company regarding Form 507 and creditors listing</p> <p>Begin investigations into transaction over Doody Street premises</p> <p>Letters of demand to be sent to creditors who have received unfair preference payments</p> <p>Review and prepare company nature and history</p> <p>Review the Company's pre-appointment bank statements for preferences and voidable transactions</p> <p>Collect books and records</p> <p>Review of books and records</p> <p>Prepare investigation file</p> <p>Prepare insolvent trading file note</p> <p>Lodge the investigation with ASIC</p> <p>Investigate the circumstances which led to the winding up of the company</p> <p>Correspond with Fair Work Ombudsman</p>
	<p>ASIC reporting</p>	<p>Prepare statutory investigation reports</p> <p>Liaise with ASIC</p>
<p>Trade On 45.00 Hrs \$ 15,000.00</p>	<p>Leases</p>	<p>Assign all leases to new buyer</p> <p>Transfer of all utility services and supply of stock to new buyers account</p> <p>Finalise all remaining items of sale agreement</p>
	<p>Trade On Management</p>	<p>Liaise with management and staff</p> <p>Liaise with suppliers regarding the winding up process and the final accounts</p> <p>Calculate and paid post-appointment wages to employees during trade on period</p> <p>Terminate all active service and supplies</p>
	<p>Processing Receipts and Payments</p>	<p>Prepare and authorise final payment vouchers for purchases</p>

## Part 5: Statement of Remuneration Claim

Creditors are being asked to pass the following resolution via a proposal without meeting:

Resolution [1]: 'To approve the remuneration of the Liquidators, their partners and staff for the period 17 October 2018 to 11 November 2018 on a time basis up to a maximum amount of \$226,741.25 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO Business Restructuring Pty Ltd's schedule of hourly rates as at 1 July 2018 that may be increased at 1 July each year. Such remuneration may be drawn as funds become available. The Liquidator reserves the right to convene a further meeting of creditors should the level of remuneration need to be increased.'

Resolution [2]: 'To approve the remuneration of the Liquidators, their partners and staff for the period 12 November 2018 to 17 January 2019 on a time basis up to a maximum amount of \$75,000 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO Business Restructuring Pty Ltd's schedule of hourly rates as at 1 July 2018 that may be increased at 1 July each year. Such remuneration may be drawn as funds become available. The Liquidator reserves the right to convene a further meeting of creditors should the level of remuneration need to be increased.'

## Part 6: Statement of Disbursements Claim

Disbursements are divided into three types:

1. Externally provided professional services - these are recovered at costs. An example of an externally provided professional service disbursement is legal fees;
2. Externally provided non-professional costs such as travel accommodation and search fees - these are recovered at costs; and
3. Internal disbursements such as ASIC Industry Funding Levy Coverage, advertising, photocopying, printing and postage and travel costs. These disbursements, if charged to the Administration, would generally be charged at costs; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

At the time of writing no disbursements have been charged in this matter.

Future disbursements provided by our firm will be charged to the administration on the following basis:

Internal disbursements	Basis
Externally provided professional services	At Cost
Externally provided non-professional services	At Cost
ASIC Industry Funding Levy Coverage	
- Flat fee	\$160
- Fee per metric event	\$185
Advertising	At Cost
Printing	At Cost
Travel	At Cost
Staff vehicle use	\$0.75 per km

Creditors are being asked to pass the following resolution via a proposal without meeting:

Resolution: 'That the necessarily incurred internal disbursements of the Liquidator and any of the Liquidators' partners or employees for the period 17 November 2018 to the finalisation of the Liquidation is approved and paid in the capped sum of \$1,380 (excluding GST), charged at the rates as detailed in the Remuneration Approval Report attached to the Report to Creditors dated 14 November 2018, and that approval be given for such amounts approved to be drawn on a monthly basis or as required subject to the right to seek further approval as required.'

## Part 7: Report on Progress of the Liquidation

We, Andrew Sallway, Helen Newman and Nicholas Martin were appointed Joint and Several Liquidators of the Company on 17 October 2018 pursuant to an order made by the Supreme Court of Queensland.

Currently, we are undertaking an urgent assessment of the Company's financial position and we will provide further information regarding the Company in the next statutory report to creditors within 3 months from our date of appointment.

## Part 8: Summary of Receipts and Payments

A summary of the receipts and payments will be uploaded to the BDO website prior to the meeting of creditors. Printed copies will be available at the meeting of creditors and can also be provided to creditors upon request.

## Part 9: Remuneration funded from External Sources

On 19 October 2018, the purchaser provided an indemnity to the Liquidators in respect of any trading expenses incurred during the Liquidation. The indemnity also includes an indemnity for the fees and disbursements of the Liquidators and their respective legal costs in respect of trading the business during the negotiation and completion of the Asset Sale and Purchase Agreement.

We have been engaged by the Fair Entitlements Guarantee ('FEG') with respect to performing a verification of employee entitlements on their behalf as the Company has been placed into liquidation.

As we will be undertaking the verification for FEG and will be remunerated for this work we will detail in future creditor correspondence our remuneration for this work.

## Part 10: Remuneration Methods

There are four basic methods that can be used to calculate the remuneration charged by an Insolvency Practitioner. They are:

- **Time based / hourly rates**

This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.

- **Fixed Fee**

The total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration. Sometimes a Practitioner will finalise an administration for a fixed fee.

– **Percentage**

The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.

– **Contingency**

The practitioner's fee is structured to be contingent on a particular outcome being achieved.

### Method chosen

Given the nature of this liquidation, we propose that our remuneration be calculated on time based / hourly rates. This is because:

- This method reflects our practice of assigning staff at the appropriate level to conduct the necessary work. Individuals are required to record the nature of the work performed at intervals of six minutes. This method ensures creditors are only charged for work that is performed and provides complete transparency; and
- Fixed fee and percentage method are inappropriate as we are unable to estimate with certainty the total amount of fees necessary to complete all tasks required in this administration. In addition, we are required to perform a number of tasks which do not relate to the realisation of assets, e.g., statutory obligations, responding to creditor queries, and reporting to ASIC.

It is proposed that the remuneration of the Liquidators is calculated on an hourly basis at the hourly fees charged by BDO current at the time the costs are incurred.

Attached is a table which details BDO Business Restructuring Rates as at 1 July 2018 together with a general guide showing the qualifications and experience of staff engaged in the administration and the role they take.

### Part 11: Queries/Information Sheets

The above information is provided to assist creditors consider the appropriateness of the remuneration claim that is being made.

Creditors should feel free to contact the Liquidators' office to seek further information concerning the remuneration claim if they so need.

ASIC have produced an Information Sheet entitled "Approving fees: a guide for creditors" that can be downloaded from the ARITA website (<http://www.arita.com.au>), the ASIC website ([www.asic.gov.au](http://www.asic.gov.au)) or alternatively a copy can be obtained if you contact this office.

## Business Restructuring - Corporate Rates as at 1 July 2018

Title	Description	Hourly Rate (excl GST)
Partner	Registered Liquidator- Partner bringing specialist skills to administration or insolvency task.	665
Associate Director	Minimum of twelve years insolvency experience, at least five years at manager level, qualified accountant and capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in own right.	615
Senior Manager	More than 7 years' insolvency experience, more than 3 years as a manager, qualified accountant. Answerable to the appointee but otherwise responsible for all aspects of administration. Experienced at all levels and considered very competent. Control staff and their training.	510
Manager	6-7 years, qualified accountant, with well-developed technical and commercial skills. Should be constantly alert to opportunities to meet clients' needs and to improve the clients' future operation either by revenue enhancement or by reducing costs and improving efficiency. Controls 2-4 staff.	465
Assistant Manager	4-6 years, CA program (CA) complete. Will have had conduct of minor administrations and experience in control of 1-3 staff. Assists planning and control of medium to larger jobs.	425
Senior Accountant	2-4 years, CA (or equivalent) would normally be commenced during this period. Required to control of small to medium sized jobs as well as performing some of the more difficult work on larger jobs.	385
Accountant	1-2 years, CA (or equivalent) would normally be commenced during his period. Required to control the fieldwork on small jobs and responsible for assisting complete fieldwork on medium to large jobs.	345
Graduate Accountant	0-1 years, Trainee undertaking a degree with an accounting major. Required to assist in day-to-day fieldwork under supervision of more senior staff.	220
Undergraduate Accountant	HSC or equivalent, plans to undertake at least part-time degree/diploma. Required to assist in administration and day-to-day fieldwork under supervision of more senior staff.	220
Executive Assistant/ Personal Assistant	Appropriate computer skills including machine usage	220

Note: Office rates charged by BDO are subject to change.

# **‘ANNEXURE G’**



**ASIC**  
Australian Securities &  
Investments Commission

## Insolvency information for directors, employees, creditors and shareholders

This information sheet (INFO 39) lists ASIC's information sheets for directors, employees, creditors and shareholders affected by a company's insolvency.

We have produced these with endorsement from the Australian Restructuring Insolvency & Turnaround Association (ARITA).

The information sheets give a basic understanding of the three most common company insolvency procedures – liquidation, voluntary administration and receivership – as well as the independence requirements for external administrators and approving external administrator remuneration. There is also a glossary of commonly used insolvency terms.

### List of information sheets

- [INFO 41](#) Insolvency: A glossary of terms
- [INFO 42](#) Insolvency: A guide for directors
- [INFO 43](#) Insolvency: A guide for shareholders
- [INFO 45](#) Liquidation: A guide for creditors
- [INFO 46](#) Liquidation: A guide for employees
- [INFO 54](#) Receivership: A guide for creditors
- [INFO 55](#) Receivership: A guide for employees
- [INFO 74](#) Voluntary administration: A guide for creditors
- [INFO 75](#) Voluntary administration: A guide for employees
- [INFO 84](#) Independence of external administrators: A guide for creditors
- [INFO 85](#) Approving fees: A guide for creditors

### Where can I get more information?

Further information is available from the [ARITA website](#). The ARITA website also contains the [ARITA Code of Professional Practice for Insolvency Practitioners](#).

This is **Information Sheet 39 (INFO 39)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Last updated: 01/09/2017 10:57



**‘ANNEXURE H’**

# Creditor Information Sheet

## Offences, Recoverable Transactions and Insolvent Trading



### Offences

A summary of offences under the Corporations Act that may be identified by the administrator:

180	Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.
181	Failure to act in good faith.
182	Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of the officer's position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.
198G	Performing or exercising a function or power as an officer while a company is under administration.
206A	Contravening a court order against taking part in the management of a corporation.
206A, B	Taking part in the management of corporation while being an insolvent, for example, while bankrupt.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of an auditor.
314-7	Failure to comply with requirements for the preparation of financial statements.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to the administrator.
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.

### Recoverable Transactions

#### Preferences

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under the Corporations Act.

#### Uncommercial Transaction

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to:

- the benefit or detriment to the company;
- the respective benefits to other parties; and,
- any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years.

The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

### **Unfair Loan**

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only must be entered into before the winding up began.

### **Arrangements to avoid employee entitlements**

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person. It will only be necessary to satisfy the court that there was a breach on the balance of probabilities. There is no time limit on when the transaction occurred.

### **Unreasonable payments to directors**

Liquidators have the power to reclaim '*unreasonable payments*' made to directors by companies prior to liquidation. The provision relates to payments made to or on behalf of a director or close associate of a director. The transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

### **Voidable charges**

Certain charges over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six months of its creation.

## **Insolvent trading**

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they did so expect;
- they did not take part in management for illness or some other good reason; or
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

**Important note:** This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.