

## REPORT TO CREDITORS

**MB Australia Pty Ltd (In Liquidation)**  
**ACN 115 512 993 ('the Company')**  
Formerly trading as Max Brenner Australia

**10 March 2022**

Liquidators: Andrew Sallway  
Helen Newman

Contact for Queries: Bill Todd  
Contact Phone: 02 8221 2228  
Contact Email: [Bill.Todd@bdo.com.au](mailto:Bill.Todd@bdo.com.au)



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## ABBREVIATIONS USED

Abbreviation	Description
ARITA	Australian Restructuring Insolvency & Turnaround Association
Assets	Assets of the Company which were sold to Opera pursuant to the Sale Agreement
ASIC	Australian Securities & Investments Commission
ATO	Australian Taxation Office
BAS	Business Activity Statement
BDO	BDO Business Restructuring Pty Ltd
CAANZ	Chartered Accountants Australia and New Zealand
Citadel	Citadel Group Properties Pty Ltd
CLS	Commercial List Statement in the Doody Street Litigation
CFA	Claims Funding Australia Pty Ltd
Commonwealth	Commonwealth of Australia (acting through the Attorney-General's Department)
Directors	Tamir Haikin and Lilach Haikin
Doody Street Litigation	Proceeding commenced by the Liquidators in the Supreme Court of New South Wales against defendants including the Wentworth Group in relation to various transactions between the Company and Wentworth Group including the transfer of the Property
EOS	Estimated Outcome Statement
FEG	Fair Entitlement Guarantee
GST	Goods and Services Tax
Liquidators	Andrew Sallway and Helen Newman
Mothership Proceedings	A single proceeding commenced by the Liquidators in the Supreme Court of New South Wales in respect of multiple unfair preference claims and unreasonable related party transaction claims.
Opera	Max Brenner Australia Pty Limited, formerly known as Opera Developments Pty Ltd and formerly known as MB Chocolate Pty Ltd



PILN	Payment in Lieu of Notice
PPSR	Personal Property Securities Register
Property	The property located at 15-21 Doody Street, Alexandria, NSW
SGC	Superannuation Guarantee Charge
the Act	Corporations Act 2001 (Cth)
the Company	MB Australia Pty Ltd (In Liquidation) ACN 115 512 993
Wentworth Group or the Secured Creditor	Citadel Group Holdings Pty Ltd, Citadel Group Properties Pty Ltd, RS Family Holdings Pty Limited, Zajasam Pty Limited and Wentworth Capital Group Pty Ltd

## ATTACHMENTS

Annexure	Description
A	Proposal without a meeting document
B	Information Sheet - Proposals without meeting
C	Proof of Debt
D	Estimated Outcome Statement
E	Receipts and Payments
F	Remuneration Report
G	ARITA Creditor Information Sheet

## 1. EXECUTIVE SUMMARY

We refer to our Initial Notification to Creditors dated 14 November 2018, in which we advised you of our appointment and your rights as a creditor in the liquidation.

The purpose of this report is to provide you with:

- An update on the progress of the liquidation;
- Information in relation to a request by the Liquidators for approval of the retrospective remuneration of the Liquidators; and
- Advice on the likelihood of a dividend being paid in the liquidation.

### Investigations

- Following our investigations into the transfer of the Property, the Liquidators have commenced the Doody Street Litigation with funding provided by the Commonwealth of Australia (acting through the Attorney-General's Department).
- We commenced Mothership Proceedings against 10 defendants. These proceedings relate to various liquidators' rights of action, including unfair preference payments and unreasonable director related transactions. We have settled six of these claims. The Mothership Proceedings against the remaining defendants is ongoing. All of the remaining claims are against Director related parties.

### Return to creditors

- Any dividend to priority and unsecured creditors of the Company is subject to further successful recoveries in the liquidation from the Mothership Proceedings and/ or the Doody Street Litigation.
- The estimated range of returns to creditors is as follows:
  - Priority (employee) creditors: 0 cents in the dollar to 100 cents in the dollar
  - Unsecured creditors: 0 cents in the dollar to 38.1 cents in the dollar

### Remuneration

- We will be seeking approval of our additional remuneration for the following period:
  - 16 October 2021 to 28 February 2022 for \$164,482.50 (excluding GST and disbursements)
- As indicated at previously to creditors, to minimise the costs in the liquidation, I intend to seek remuneration approval by a proposal without a meeting.
- We enclose the proposal without meeting document (Annexure A), ARITA information sheet (Annexure B) and Proof of Debt (Annexure C).
- These documents must be returned to me by 31 March 2022 for your vote to count.

## 2. INVESTIGATIONS AND RECOVERY ACTIONS

### 2.1 Unfair preference claims

As previously advised to creditors we have settled nine unfair preference claims totalling \$1,410,700. We provide the following update on the six remaining unfair preferences claims:

Party	Claim Status
Anita Gelato	\$71,368.15 Subject to the Mothership Proceedings.
The Fire Company	\$2,479,700.78 Subject to the Mothership Proceedings.
Chimney Cake	\$337,723.76 Subject to the Mothership Proceedings.
Benchmark Patisserie	\$2,705,941.17 In liquidation
Arie Haikin	\$633,028.00 Subject to the Mothership Proceedings.
Wolf Peretz	\$170,000.00 Subject to the Mothership Proceedings.

Benchmark Patisserie was placed into liquidation on 13 December 2021. We have submitted a claim in the liquidation for \$2,705,941.17. Further details of Benchmark Patisserie's asset and liability position has been requested from the liquidator so that recoverability can be determined. The Liquidator's statutory report to creditors is due by 13 March 2022.

A without prejudice meeting was attended with all of the remaining defendants except for Fire Company and Benchmark Patisserie on 16 February 2022. A settlement was not able to be agreed.

A directions hearing was held on 14 February 2022 and the Court made orders that the defendants file and serve any defences by 7 March 2022. The defendants filed and served their defences and we are currently considering these with our lawyers.

#### Next Steps

The defendants must file and serve all lay and expert evidence on which they intended to rely by 4 April 2022. A directions hearing is scheduled for 11 April 2022.

These proceedings continue to be funded by CFA as previously approved by Creditors.

## 2.2 Doody Street Litigation

Since our last report to creditors, we have progressed the claim in relation to the transfer of the Property to the Wentworth Group. Please see below key actions since the last report to Creditors.

Area	Work Completed to date
Commercial List Statement/Amended Summons	<ul style="list-style-type: none"> <li>▶ On 12 November 2021 we served our lay evidence in chief.</li> <li>▶ The defendants were due to produce documents on 26 November 2021 to assist the Liquidator's expert in calculating a damages claim. Some of the requested documents were provided. A request has been made for the missing documents.</li> <li>▶ On 10 December 2021, the Liquidators served their expert evidence in chief in relation to solvency of the Company.</li> </ul>
Mediation	<ul style="list-style-type: none"> <li>▶ Mediation was attended by Wentworth, the Liquidators, their respective lawyers and the Commonwealth on 3 September 2021.</li> <li>▶ We were unable to agree on a settlement amount.</li> </ul>
Next Steps	<ul style="list-style-type: none"> <li>▶ The Doody Street Proceeding is next listed for directions on 18 March 2022.</li> <li>▶ It is expected the Liquidators will receive and review the evidence served by Wentworth during March 2022 and the proceedings will be set down for hearing in mid-2022.</li> </ul>

The proceeding is continuing to be funded by the Commonwealth as previously approved by Creditors.

## 2.3 Reports to ASIC

We submitted our report to ASIC pursuant to Section 533 of the Act on 23 July 2021.

This report is required to be submitted by liquidators to ASIC when a company is being wound-up and offences have been committed by directors.

We reported to ASIC that the Directors had breached their duties and traded the Company whilst insolvent. ASIC requested that the Liquidators prepare a supplementary report to ASIC on breaches committed by the Directors. That report will be lodged in early March 2022.

## 3. CREDITORS

### Employee (Priority Claims)

We have previously advised creditors of an increase to the outstanding employee superannuation following an updated proof of debt received from the ATO on 18 September 2019 in the amount of \$9,124,646.72. We have since liaised with the Company's pre-appointment superannuation fund, REST Industry Super, obtaining records detailing all employee contributions made since 2014 as we believe the ATO's claim is overstated. We continue to work with the ATO to reconcile the superannuation paid to employees and once the reconciliation has been completed, we expect the ATO will update their proof of debt.

The Liquidators have revised their estimates of employee entitlements including, wages, leave, redundancy and PILN amounts since the last creditors report. Estimates of outstanding entitlements for the Company have reduced by approximately \$123k and the revised estimates are as per the table below.

	Claim to date \$	Liquidators' estimate \$
Wages and allowances (including bonuses)	1,070,960	1,071,703
Superannuation (incl SGC)	9,288,098	2,867,808
Leave (annual leave, loading, long service)	797,121	766,698
Redundancy and PILN	1,149,318	1,055,028
<b>Total (incl FEG advanced amounts)</b>	<b>12,305,497</b>	<b>5,761,237</b>

### Unsecured Creditors

Unsecured creditors have lodged 72 proofs of debt totalling \$17,522,287. This excludes claims by:

- The ATO for \$1,922,533 for unpaid taxation liabilities (excluding SGC);
- The Bankruptcy Trustee of the Directors for an amount of \$55,400,490.88; and
- The Wentworth Group for \$32,917,366 (comprising several proofs of debt).

We have not formally adjudicated on any of the claims received or verified any of the information contained in the books and records to date.

## 4. LIKELIHOOD OF DIVIDEND

Please refer to the Estimated Outcome Statement enclosed at **Annexure D**.

Below is a summary of the expected return for each class of creditor in a high and low scenario.

Liquidation Return	High (c/\$)	Low (c/\$)
Secured Creditor	38.1 cents	0.0 cents
Employees (Preferential Creditors)	100.0 cents	0.0 cents
Unsecured Creditors	38.1 cents	0.0 cents

Any return to creditors is contingent on substantial recoveries from the claims discussed in section 2 of this report.

## 5. RECEIPTS AND PAYMENTS

Please refer to **Annexure E** for a summary of receipts and payments as at 28 February 2022.





## 6. LIQUIDATORS REMUNERATION

To date, creditors and the Court have approved the Liquidators' remuneration to 16 October 2021 in the amount of \$1,202,511.25.

The Liquidators are seeking in the attached proposal without a meeting retrospective remuneration for the period 16 October 2021 to 28 February 2022 in the amount of \$164,482.50.

A significant portion of the remuneration will be funded by the Attorney General's Department and CFA.

Attached at **Annexure F** is a detailed report on our remuneration, called a Remuneration Approval Report. Included in this report are further details on our fees.

We are unable to pay our remuneration without the approval of creditors or the Court.

## 7. PROPOSALS WITHOUT A MEETING

We have attached "proposal without a meeting" documents that you can use to vote on the following resolutions (**Annexure A**):

*To approve the remuneration of the Liquidators, their partners and staff for the period 16 October 2021 to 28 February 2022 on a time basis fixed in the amount of \$164,482.50 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2021. Such remuneration may be drawn as funds become available.*

These documents must be returned to me by 31 March 2022 for your vote to count. I have attached an information sheet to assist you to understand what a "proposal without a meeting" is at **Annexure B**.

Should you have any queries in relation to the meeting please do not hesitate to contact Bill Todd of our office on 02 8221 2228 or via email Bill.Todd@bdo.com.au.

## 8. DISCLAIMER

BDO, (its affiliates - present or future), Andrew Sallway and Helen Newman, employees and agents ('the Liquidators') hereby advise that:

- a) When preparing this report and the accompanying documents, the Liquidators have relied on the available books and records, financial accounts and other documentation pertaining to the Company's affairs.
- b) When preparing this report and the accompanying documents, the Liquidators have relied on the advice of the Company's officers and/or senior management.
- c) The Liquidators have not conducted an audit of the books and records, financial accounts and other documentation pertaining to the Company's affairs.
- d) Whilst the Liquidators have endeavoured to verify the accuracy or otherwise of the records, the financial accounts and other documentation pertaining to the Company's affairs and the advice of the Company's officers, the Liquidators give no warranty as to the accuracy, completeness or reliability of same.
- e) The Liquidators undertake no responsibility arising in any way whatsoever to any person for errors or omissions however caused by way of this report or accompanying documents.

## 9. 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 [Bill.Todd@bdo.com.au](mailto:Bill.Todd@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.

## 10. COMMITMENT TO CLIENT SERVICE

BDO conducts files to the highest ethical and professional standards.

BDO adheres to the codes of conduct prescribed by CAANZ, AFSA, ARITA and INSOL.

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.

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.

## 11. FURTHER INFORMATION

ARITA provides information to assist creditors with understanding liquidations and insolvency. This information, including details of your rights as a creditor, is available from ARITA's website at [arita.com.au](http://arita.com.au). Attached at **Annexure G** is the ARITA Guide for Creditors.

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

We would welcome any information which creditors feel may be of assistance in the conduct of the liquidation.

If you have any queries with respect to this liquidation and the enclosed documents, please do not hesitate to contact Bill Todd of our office on 02 8221 2228.

Yours faithfully



Andrew Sallway  
Joint & Several Liquidator



# ANNEXURE A

**NOTICE OF PROPOSAL TO CREDITORS**

**MB AUSTRALIA PTY LTD (IN LIQUIDATION)**

**ACN 115 512 993**

**(‘THE COMPANY’)**

10 March 2022

**Proposals for creditor approval**

*To approve the remuneration of the Liquidator, his partners and staff for the period 16 October 2021 to 28 February 2022 on a time basis up to a maximum amount of \$164,482.50 excluding GST and disbursements calculated in accordance with the hourly rates prescribed by BDO Business Restructuring Pty Ltd’s as at 1 July 2021. Such remuneration may be drawn as funds become available.*

**Reasons for the proposal and the likely impact it will have on creditors if it is passed**

*It is required by law that the Liquidator needs to obtain remuneration approval from creditors for the cost of winding up the Company. The Liquidator’s remuneration is associated with the costs of the liquidation process, including the realisation of assets of the Company (if any). Therefore, this resolution will only impact the return to creditors in the event that assets are realised by the Liquidators.*

**Vote on proposal**

Creditors have the option of approving, not approving or objecting to the proposal being resolved without a meeting of creditors. Please select the appropriate Yes, No or Object box referred to below:

- Yes  I approve the proposal  
No  I do not approve the proposal  
Object  I object to the proposal being resolved without a meeting of creditors

Your claim against the Company must be admitted for the purposes of voting by the Liquidation for your vote to count. Please select the option that applies:

- I have previously submitted a proof of debt form and supporting documents  
 I have enclosed a proof of debt form and supporting documents with this proposal form

**Creditor details**

Name of creditor: \_\_\_\_\_ ACN / ABN (if applicable): \_\_\_\_\_

- I am not a related creditor of the Company.  
 I am a related creditor of the Company, relationship: \_\_\_\_\_

Address: \_\_\_\_\_

Name of creditor / authorised person: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Please complete this document and return with any supporting documents by no later than 31 March 2022 for your vote to be counted, via email to [bill.todd@bdo.com.au](mailto:bill.todd@bdo.com.au) or via post to our firm's address, attention Bill Todd. If posting, please ensure you allow sufficient time for your vote to arrive by the due date.



# **ANNEXURE B**

## Information sheet: Proposals without meetings

You may be a creditor in a liquidation, voluntary administration or deed of company arrangement (collectively referred to as an external administration).

You have been asked by the liquidator, voluntary administrator or deed administrator (collectively referred to as an external administrator) to consider passing a proposal without a meeting.

This information sheet is to assist you with understanding what a proposal without a meeting is and what your rights as a creditor are.

### What is a proposal without a meeting?

Meetings of creditors were previously the only way that external administrators could obtain the views of the body of creditors. However, meetings can be very expensive to hold.

A proposal without a meeting is a cost effective way for the external administrator to obtain the consent of creditors to a particular course of action.

### What types of proposals can be put to creditors?

The external administrator is able to put a range of proposals to creditors by giving notice in writing to the creditors. There is a restriction under the law that each notice can only contain a single proposal. However, the external administrator can send more than one notice at any single time.

### What information must the notice contain?

The notice must:

- include a statement of the reasons for the proposal and the likely impact it will have on creditors if it is passed
- invite the creditor to either:
  - vote yes or no to the proposal, or
  - object to the proposal being resolved without a meeting, and
- specify a period of at least 15 business days for replies to be received by the external administrator.

If you wish to vote or object, you will also need to lodge a Proof of Debt (POD) to substantiate your claim in the external administration. The external administrator will provide you with a POD to complete. You should ensure that you also provide documentation to support your claim.

If you have already lodged a POD in this external administration, you do not need to lodge another one.

The external administrator must also provide you with enough information for you to be able to make an informed decision on how to cast your vote on the proposal. With some types of proposals, the law or ARITA's Code of Professional Practice sets requirements for the information that you must be provided.

For example, if the external administrator is asking you to approve remuneration, you will be provided with a Remuneration Approval Report, which will provide you with detailed information about how the external administrator's remuneration for undertaking the external administration has been calculated.

### What are your options if you are asked to vote on a proposal without a meeting?

You can choose to vote yes, no or object to the proposal being resolved without a meeting.

### How is a resolution passed?

A resolution will be passed if more than 50% in number and 50% in value (of those creditors who did vote) voted in favour of the proposal, but only so long as not more than 25% in value objected to the proposal being resolved without a meeting.

### What happens if the proposal doesn't pass?

If the proposal doesn't pass and an objection is not received, the external administrator can choose to amend the proposal and ask creditors to consider it again or the external administrator can choose to hold a meeting of creditors to consider the proposal.

The external administrator may also be able to go to Court to seek approval.

### What happens if I object to the proposal being resolved without a meeting?

If more than 25% in value of creditors responding to the proposal object to the proposal being resolved without a meeting, the proposal will not pass even if the required majority vote yes. The external administrator will also be unable to put the proposal to creditors again without a meeting.

You should be aware that if you choose to object, there will be additional costs associated with convening a meeting of creditors or the external administrator seeking the approval of the Court. This cost will normally be paid from the available assets in the external administration.

This is an important power and you should ensure that it is used appropriately.

### Where can I get more information?

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides information to assist creditors with understanding external administrations and insolvency.

This information is available from ARITA's website at [artia.com.au/creditors](http://artia.com.au/creditors).

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").





# 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

**MB Australia Pty Ltd (In Liquidation)**

**Estimated Outcome Statement**

	Low	High
<b>Circulating assets</b>		
Cash at Bank on appointment	-	-
Stock	270,360	270,360
<b>Total Circulating Assets</b>	<b>270,360</b>	<b>270,360</b>
<b>Remuneration and Costs (Circulating)</b>		
Administrators' Lien Claim	(270,360)	(270,360)
Liquidators' Remuneration (Circulating)	(183,357)	(183,357)
Liquidators' Costs (Circulating)	-	-
Legal Fees (Circulating)	-	-
<b>Net Circulating Assets Available</b>	<b>(183,357)</b>	<b>(183,357)</b>
<b>Priority Creditors</b>		
Wages	1,071,703	1,071,703
Superannuation	3,020,651	2,867,808
Annual and Long Service Leave	797,121	766,698
Retrenchment (PILN and Redundancy)	1,149,318	1,055,028
<b>Total Priority Creditors</b>	<b>6,038,793</b>	<b>5,761,237</b>
Surplus/(shortfall) in circulating assets	<b>(6,038,793)</b>	<b>(5,761,237)</b>
Estimated Return to Priority Creditors (c/\$)	-	-
<b>Circulating assets available for creditors</b>		
	Nil	Nil
<b>Non-Circulating assets</b>		
Plant and Equipment and Fixed Assets	1	1
<b>Total Non-Circulating Assets</b>	<b>1</b>	<b>1</b>
<b>Remuneration and Costs (Non-Circulating)</b>		
Legal Fees (Non-circulating)	(26,000)	(26,000)
Liquidators' Remuneration (Non-circulating)	(34,269)	(34,269)
<b>Total Costs Attributable to Non-Circulating Assets</b>	<b>(60,269)</b>	<b>(60,269)</b>
Surplus Non-Circulating assets available	<b>(60,268)</b>	<b>(60,268)</b>
<b>Secured Creditor</b>		
Secured Creditor Claim: Wentworth Group	40,863,699	40,863,699
Estimated return to secured creditor (c/\$)	0.0	0.0
<b>Total Assets available to creditors</b>		
	Nil	Nil
<b>Potential recoveries</b>		
Amount recovered by Liquidators to date	1,410,700	1,410,700
Bank Guarantees and Turnover Rent Adjustment	42,876	42,876
Mothership proceeding	-	1,710,032
Claims against directors	-	-
Doody Street proceeding	-	20,000,000
<b>Total Recoveries Available for Distribution</b>	<b>1,453,576</b>	<b>23,163,607</b>
Petitioning Creditor Costs	(216,884)	(216,884)
Administrators' lien claim (shortfall)	(117,477)	(117,477)
Estimated Liquidator and Legal Fees	(6,097,782)	(6,247,782)
Less: Liquidator and Legal Fees Funded by the Purchaser	720,607	720,607
<b>Available for Priority Creditors</b>	<b>-</b>	<b>17,302,071</b>
<b>Priority Creditors</b>		
Wages	1,071,703	1,071,703
Superannuation (incl penalties and interest)	3,020,651	2,867,808
Annual and Long Service Leave	797,121	766,698
Retrenchment (PILN and Redundancy)	1,149,318	1,055,028
<b>Total Priority Creditors</b>	<b>6,038,793</b>	<b>5,761,237</b>
Surplus/(shortfall) in Recoveries	<b>(6,038,793)</b>	<b>11,540,834</b>
Estimated Return to Priority Creditors (c/\$)	-	100.0
<b>Unsecured creditors</b>		
Trade Creditors	17,522,287	17,522,287
Statutory Creditors	1,922,533	2,075,376
Secured Creditor Shortfall	40,863,699	10,723,014
Related Party Creditors	25,742,562	-
<b>Total Unsecured Creditors</b>	<b>86,051,081</b>	<b>30,320,677</b>
Estimated Return to Unsecured creditors (c/\$)	-	38.1



# **ANNEXURE E**

**Receipts and Payments Summary - MB Australia Pty Ltd (In Liquidation)**  
**18 October 2018 to 28 February 2022**

**28-Feb-22**

<b>Receipts</b>	<b>Amount (Incl. GST)</b>
Bank Guarantee	16,365.53
Contributions	954,317.54
Dividends Recoverable	13,878.37
FEG Funding	1,409,694.93
CFA Funding	355,191.72
ATO Refund	201,507.55
Interest Income	3,200.91
Lease Costs Refund	215.00
Legal Recoveries	1,403,700.00
Rental Refund	8,517.70
Sales	1,236,921.13
Bank Fee Refunds	29.27
Stock/Inventory on Hand	308,860.44
<b>TOTAL Receipts</b>	<b>5,912,400.09</b>

<b>Payments</b>	<b>Amount (Incl. GST)</b>
Administrators Lien	(117,477.43)
Administrators Stock	(260,271.44)
Allowances	(2,900.39)
Appointee Disbursements	(42,309.30)
Appointee Fees	(583,960.17)
Assignment Costs	(6,912.78)
Bank Charges	(16,736.66)
Broker Fees	(6,088.50)
Cleaning Expenses	(25,656.64)
Contributions	(85,000.00)
FOI Application Fee	(60.00)
Freight Outwards	(5,641.61)
GST Paid	(55,378.00)
Hire Purchase Lease Equipment	(59,328.83)
Insurance	(21,123.39)
IT Expense	(40,055.07)
Legal Disbursements	(401,980.89)
Legal Fees	(2,123,074.35)
Meeting Costs	(6,899.20)
Merchant Fees	(19,767.96)
Motor Vehicle Expenses	(41.00)
Payroll Tax	(13,795.95)
PAYG Control (Paid)	(44,436.00)
Petitioning Creditor Costs	(216,884.43)
Policy Fees	(21.75)
Purchases (GST Free)	(68,420.03)
Purchases (GST Inclusive)	(192,356.66)
Refund of AMEX Sales	(14,526.68)
Refund of Delivery Sales	(29,481.15)
Rent & Rates	(390,898.55)
Repairs & Maintenance	(32,031.62)
Security Expenses	(627.00)
Stamp Duty	(1,033.24)
Stock/Inventory on Hand (Deposit from Sale Agreement)	(30,000.00)
Store Expenses (Music)	(1,057.91)
Subcontractors	(8,440.00)
Superannuation Control (Paid)	(33,978.90)
Utilities	(20,472.05)
Valuation Costs	(7,150.00)
Wages & Salaries (Net of PAYG, Superannuation and Payroll Tax)	(366,963.32)
<b>TOTAL Payments</b>	<b>(5,353,238.85)</b>
<b>Net Receipts and Payments</b>	<b>559,161.24</b>



# ANNEXURE F





## REMUNERATION REQUEST APPROVAL REPORT

MB AUSTRALIA PTY LTD (IN LIQUIDATION)

ACN 115 512 993 ('the Company')

### Part 1: Declaration

We, Andrew Sallway and Helen Newman 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, \$1,202,511.25 in remuneration has been approved. This remuneration report details approval sought for the following fees:

Period	Remuneration Report Reference	Amount (excl. GST and disbursements)
Past remuneration approved		\$1,202,511.25
Resolution 1: 16 October 2021 to 28 February 2022	(A & B)	\$164,482.50
Total cost of liquidation		<hr/> <b>\$1,366,993.75</b>

### Indemnities

The indemnified amounts are discussed in Part 9 of the Remuneration Request Approval Report.

### Part 3: Details of Remuneration

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

Resolution	Detailed <sup>1</sup>	Summary <sup>2</sup>
Resolution 1: 16 October 2021 to 28 February 2022	Schedule A	Schedule B

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

### Part 4: Statement of Remuneration Claim

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

**Resolution [1]:** *‘To approve the remuneration of the Liquidators, their partners and staff for the period 16 October 2021 to 28 February 2022 on a time basis fixed in the amount of \$164,482.50 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2021. Such remuneration may be drawn as funds become available.’*

### Total Remuneration Reconciliation

At this point in time, the total remuneration for this Liquidation is \$1,366,993.75 excluding GST. This includes the current approval amount being sought of \$164,482.50.

As creditors are aware, at the meeting of creditors held on 12 November 2021, the resolutions for the Liquidators’ remuneration for the following periods were proposed:

- 1 January 2021 to 15 October 2021; and
- 16 October 2021 to 22 June 2022.

Both resolutions were not passed by creditors. Therefore, the Liquidators applied to the Court to seek approval for the Liquidators’ remuneration for the period 1 January 2021 to 15 October 2021 in the amount of \$341,590. This amount differs from the remuneration sought in our report to creditors dated 29 October 2021 in the amount of \$344,288. The reduction in the Liquidators’ remuneration claim of \$2,698 we regarded as appropriate to write-off having regard to the nature of the work performed, the complexity of the work performed, and the time taken to complete the relevant work.

Matters that have been undertaken resulting in the remuneration following 16 October 2021 include:

- Issued the Report to Creditors Dated 29 October 2021;
- Convened the Meeting of Creditors on 12 November 2021;
- Reconciling the Company’s super contributions in adjudicating upon the ATO’s SGC claim;
- Completion of a supplementary investigation report for ASIC;

- Reviewed the proofs of debt lodged by the Secured Creditor;
- Applied to the court for approval of remuneration for the period 1 January to 15 October 2021;
- Progressed investigations in respect to voidable transactions and insolvent trading;
- Attended a mediation for the some of the mothership defendants;
- Further progressed investigations into the transfer of the Doody Street Property;
- Continuation of Mothership Proceedings;
- Settled Unfair Preferences; and
- General communications with creditors.

Further detail of the work completed has been included in **Schedules A and B**.

### Part 5: Likely impact on dividends

The Corporations Act 2001 sets the order for payment of claims against the Company and it provides for remuneration of the liquidation to be paid in priority to other claims. This ensures that when there are sufficient funds, the Liquidators receives payment for the work done to recover assets, investigate the Company's affairs, report to creditors and ASIC and distribute any available funds. Even if creditors approve our remuneration, this does not guarantee that we will be paid, as we are only paid if sufficient assets are recovered.

Any dividend to creditors will also be impacted by the amount of recoveries that we are able to recover and the amount of creditor claims that are admitted to participate in any dividend, including any claims by priority creditors such as employees.

At this stage our estimated return to creditors is as follows:

Liquidation Return	High (c/\$)	Low (c/\$)
Secured Creditor	38.1cents	0.0 cents
Employees (Preferential Creditors)	100.0 cents	0.0 cents
Unsecured Creditors	38.1 cents	0.0 cents

### 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

## Part 7: Report on Progress of the Liquidation

Andrew Sallway, Helen Newman, and Nicholas Martin were appointed Joint and Several Liquidators of the Company on 17 October 2018 pursuant to an order by the Supreme Court of Queensland. On 4 August 2020, Nicholas Martin ceased as a Joint and Several Liquidator of the Company.

We are continuing the litigation mentioned in this report including the Mothership Proceedings and the Doody Street litigation.

## Part 8: Summary of Receipts and Payments

A summary of the receipts and payments is attached as Annexure E to our creditors report.

## Part 9: Remuneration funded from External Sources

Name	Nature of indemnity or funding	Amount Drawn to Date
Attorney Generals' Department	<p>The agreed work includes the following:</p> <ul style="list-style-type: none"> <li>Public Examinations;</li> <li>Investigations into the financial affairs of the Company;</li> <li>Legal advice about potential claims available to the Company and/or the Liquidators;</li> <li>Taking others steps that are reasonably necessary to undertake the above work and preserve assets;</li> <li>The Doody Street Litigation.</li> </ul> <p>The Attorney General's Department has also agreed to provide the Liquidators with an indemnity for adverse costs orders in the Mothership Proceedings.</p>	<p>This funding agreement has been used to pay part of the Liquidators' remuneration (including remuneration the subject of the previous approval and remuneration the subject of the current request for approval), fees and disbursements.</p> <p>This funding agreement will include the Liquidators' remuneration for future remuneration approvals.</p>

Name	Nature of indemnity or funding	Amount Drawn to Date
CFA	<p>The funding agreement between the Liquidators and CFA provides funding for costs related to the Mothership Proceedings.</p> <p>The costs include the Liquidators' remuneration as well as other expenses such as legal fees.</p>	<p>This funding agreement has been used to pay part of the Liquidators' remuneration (including remuneration the subject of the previous approval and remuneration the subject of the current request for approval), legal fees and disbursements.</p> <p>The funding agreement will include future remuneration claims.</p>
Opera	<p>Creditors will recall that Opera purchased the Company's business from the Liquidators.</p> <p>Opera provided an indemnity to the Liquidators in respect of any trading expenses incurred during the Liquidation. The indemnity also funded the fees and disbursements of the Liquidators and their legal costs in respect of trading the business during the negotiation and completion of the Sale Agreement.</p> <p>This indemnity has been used to pay part of the Liquidators' past remuneration, fees, and disbursements.</p>	<p>This indemnity has been used to pay remuneration totalling \$331,119.75 (excluding GST) for the period 1 July 2019 to 30 June 2020.</p> <p>I do not anticipate relying on this indemnity in the future.</p>

## 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 Rates as at 1 July 2021 together with a general guide showing the qualifications and experience of staff engaged in the administration and the role they take.

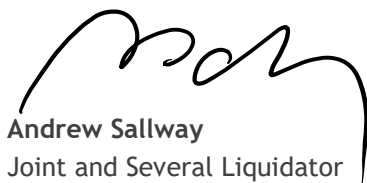
### Part 11: Queries/Information Sheets

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.

Yours faithfully,



Andrew Sallway  
Joint and Several Liquidator

## Schedule A: Description of Work completed

Resolution 1: 16 October 2021 to 28 February 2022

	General Description	Includes
<b>Administration</b> <b>80.6 Hrs</b> <b>\$37,188.00</b>	Planning / Review	<ul style="list-style-type: none"> <li>Attended to all statutory requirements</li> <li>Liaised with our solicitors on progress of liquidation</li> <li>Internal meetings on the status of liquidation</li> <li>External meetings with our solicitors</li> <li>External meetings with current litigation funders</li> </ul>
	Remuneration Application	<ul style="list-style-type: none"> <li>Liaising with solicitors in preparation of affidavit</li> <li>Review and amendment of Liquidator's time entries and narrations</li> <li>Providing necessary supporting documentation for affidavit</li> <li>Review the affidavit for the application to court for remuneration</li> <li>Assisting Solicitors in compiling supporting information and providing further detail for application</li> <li>Assisting Solicitors with any ad hoc queries</li> </ul>
	Document Maintenance / File Review / Checklist	<ul style="list-style-type: none"> <li>File of documents</li> <li>File reviews</li> <li>Update checklists</li> </ul>
	Banking	<ul style="list-style-type: none"> <li>Bank account reconciliations</li> <li>Payments made to third parties</li> <li>Prepared monthly invoices for CFA and Commonwealth Funding</li> </ul>
	ASIC Forms & Other Statutory Lodgements	<ul style="list-style-type: none"> <li>Corresponded with ASIC regarding statutory forms</li> <li>Complete ASIC Form 5602 "Annual Administration Form"</li> <li>Completed BAS lodgements</li> </ul>

<b>Creditors</b> <b>64.8 Hrs</b> <b>\$30,240.50</b>	Creditor Enquiries	<p>Telephone conversations with creditors</p> <p>Receive and follow up creditor enquiries via telephone, email, and post</p> <p>Review and prepare correspondence to creditors and their representatives via email and post</p>
	Processing proofs of debt	<p>Receive and file PODs</p> <p>Correspond with the ATO regarding POD</p> <p>Update creditor claims on the file and MYOB</p> <p>Reviewing the proofs of debts issued by the ATO, the Wentworth Group of Companies and the Bankruptcy Trustee on behalf of the Estate of the Directors</p>
	Creditor Report	<p>Prepared report to creditors dated 10 March 2022</p> <p>Prepared Liquidators' remuneration report</p>
	Creditors' Meeting	<p>Convened and held the meeting of creditors on 12 November 2021</p> <p>Prepared meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors and notice of meeting</p> <p>Reviewed and approved proofs and proxies, attendance register etc. at the meeting</p> <p>Responded to stakeholder queries and questions immediately following meeting</p> <p>Prepare and lodge the minutes of the meeting with the Australian Investments &amp; Securities Commission (ASIC)</p>
<b>Employees</b> <b>3.50 Hrs</b> <b>\$1,435.00</b>	Employee Enquiries	<p>Responded to ongoing employee queries including entitlements and superannuation</p> <p>Reviewed and withdrew application from Administrative Appeals Tribunal</p>
	Superannuation Guarantee	<p>Liaised with the Company's pre-appointment superannuation fund, REST Industry Super, for a reconciliation of employer contributions</p>



		Reconciled ATO proof of debt with pre-appointment SGC contributions Issued the ATO with a request for an amended Proof of Debt
<b>Investigations</b> <b>174.60 Hrs</b> <b>\$95,619.00</b>	Conducting investigation	Review Legal Advice about potential claims available to the Company and/or the Liquidators  Meetings with CFA and FEG to discuss progress of litigation  Prepare monthly reports to the CFA and FEG  Discussions with solicitors regarding Doody Street Litigation  Liaising with the Bankruptcy Trustee of the Director regarding progress of Bankruptcy and replacement of Trustee  Further investigations into Company's books and records for additional potential unfair preference claims  Further investigations of additional Director Related transactions following review of Company books and records  Preparation of solvency evidence and liaising with lawyers on preparation of expert's solvency evidence  Attend directions hearings for Doody Street Litigation and Mothership Proceedings  Attend mediation with Mothership defendants  Further review of Secured Creditors' claims  Finalise Investigations File Note
	ASIC reporting	Prepared statutory investigation reports  Lodged with ASIC a supplementary report pursuant to Section 533 of the Corporations Act  Liaise with ASIC



## Schedule B: Summary of Work Completed

### Resolution 1: Liquidators' Remuneration for the Period from 16 October 2021 to 28 February 2022

Staff	Staff Position	Hourly Rate	Total		Administration		Creditors		Employees		Investigations	
			Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Andrew Sallway	Partner	710.00	55.40	39,334.00	6.00	4,260.00	5.20	3,692.00	-	-	44.20	31,382.00
Tom Whitmarsh	Senior Manager	545.00	110.70	60,331.50	20.00	10,900.00	19.90	10,845.50	0.80	436.00	70.00	38,150.00
Ben Carney	Manager	500.00	9.00	4,500.00	9.00	4,500.00	-	-	-	-	-	-
Ryan Davies	Assistant Manager	460.00	46.50	21,390.00	-	-	11.00	5,060.00	-	-	35.50	16,330.00
Bill Todd	Senior Accountant	410.00	30.60	12,546.00	16.40	6,724.00	0.60	246.00	-	-	13.60	5,576.00
Bill Todd	Accountant	370.00	71.30	26,381.00	29.20	10,804.00	28.10	10,397.00	2.70	999.00	11.30	4,181.00
	<b>Total</b>		<b>323.50</b>	<b>164,482.50</b>	<b>80.60</b>	<b>37,188.00</b>	<b>64.80</b>	<b>30,240.50</b>	<b>3.50</b>	<b>1,435.00</b>	<b>174.60</b>	<b>95,619.00</b>
	<b>GST</b>			<b>16,448.25</b>								
	<b>Total (incl. GST)</b>			<b>180,930.75</b>								
	<b>Average hourly rate</b>			<b>508.45</b>								

### Business Restructuring - Corporate Rates as at 1 July 2021

Title	Description	Hourly Rate (excl GST)
Partner	Registered Liquidator- Partner bringing specialist skills to administration or insolvency task.	710
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.	545
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.	500
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.	460
Senior Accountant - Experienced	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.	410
Accountant	1-2 years, CA (or equivalent) would normally be commenced during this period. Required to control the fieldwork on small jobs and responsible for assisting complete fieldwork on medium to large jobs.	370
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.	300
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.	235
Executive Assistant/ Personal Assistant	Appropriate computer skills including machine usage	235

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



# ANNEXURE G

# 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.