

TO THE CREDITOR ADDRESSED

23 December 2020

Dear Sir/Madam

MB AUSTRALIA PTY LTD (IN LIQUIDATION)
ACN 115 512 993 ('THE COMPANY') FORMERLY TRADED AS 'MAX BRENNER AUSTRALIA'

I refer to the appointment of Helen Newman and myself as Joint and Several Liquidators of the Company on 17 October 2018.

The purpose of this correspondence is to provide creditors with a brief update on the liquidation following our last report dated 25 August 2020. If creditors have not received that report, please contact Ben Gan of my office at Ben.Gan@bdo.com.au. I anticipate issuing a further report to Creditors and convening a meeting of Creditors in January 2021.

Caveat on the located Property at 15-21 Doody Street, Alexandria ('the Property')

On 27 November 2019 the Liquidators lodged a caveat on the Property to protect creditor interests and to prevent third parties from dealing with the property without the Liquidators' knowledge.

Citadel Group Properties Pty Ltd ('Citadel'), who is currently listed as the registered proprietor of the property, subsequently requested that the Liquidators remove the caveat because it prejudices the refinance of their loan secured by the Property. The Liquidators declined this request. Citadel then lodged a lapsing notice with the Registrar General and served this on the Liquidators on 2 November 2020. The effect of the lapsing notice was that the Liquidators were required to obtain an order from the Supreme Court of NSW extending the caveat within 21 days of receiving the lapsing notice.

The Liquidators commenced proceedings, and obtained a short extension of the caveat to 14 December 2020 (on which date the Court was going to hear the application to extend the caveat). In that time, the Liquidators and Citadel agreed to a regime by which the Liquidators agreed to allow the caveat to lapse on the basis that Citadel and its directors Mr Wein and Mr Schwarz personally provided undertakings to the Supreme Court of NSW in relation to its dealings with the Property. The following undertakings were given:

1. Citadel will provide the Liquidators with fourteen (14) days' prior written notice of its entry into:
 - (a) any agreement for the sale or other disposition of any interest in the Property, or any transaction or dealing which creates or confers an interest in the Property (including without limitation the entry into a contract for the sale of land or any other form of sale agreement or transfer, the entry into any option agreement, or the grant of any security by mortgage). Such written notice is to be given to the Liquidators' solicitors and is to include notice of the terms of the sale or other disposition; or

- (b) any transaction involving a refinance of the current facility or any other financier, or any replacement mortgage or security as part of any refinance of the current facility, and Citadel will provide the Liquidators with evidence of the identity of the financier and the terms of the finance, including those terms which evidence the amount(s) which will be secured by any security provided by Citadel over the Property.
2. In the event that the Property is sold for any reason, Citadel will, independently of and in addition to and without limiting the terms of the undertaking in paragraph 1:
 - (a) provide written notice to the Liquidators of the sale of the Property and the estimated proceeds of sale; and
 - (b) hold the net proceeds of sale remitted to Citadel (after repayment of bank debt secured by first mortgage on the Property and any agent costs and other selling costs) in a separate bank account for a period of fourteen (14) days after provision of the written notice referred to in paragraph 2(a), and will not deal with or in any way dispose of such proceeds of sale within that fourteen (14) day period.

The undertakings provide protections to creditors without the need for the Liquidators to give Citadel an undertaking as to damages.

Additional Funding

The Commonwealth of Australia (acting through the Attorney-General's Department) ('Funder') have funded the examinations and investigations to date in relation to the Uncommercial Transaction Claim (referred to below) and certain other unfair preference claims. This was approved at the meeting of creditors held on 19 September 2019 in accordance with section 477(2B) of the Act. The scope of agreed work under that Funding Agreement included the following (as previously disclosed to creditors):

- public examinations;
- investigations into the financial affairs of the Company;
- legal advice about potential claims available to the Company and/or the Liquidators; and
- taking others steps that are reasonably necessary to undertake the above work and preserve assets.

On 24 April 2020 and 9 December 2020, the Liquidators and the Funder agreed to amend the Funding Agreement, including an increase in the amount funded, for the purpose of investigations into the financial affairs of the Company (including public examinations) and taking other steps in relation to asset preservation (including to protect the position of creditors following receipt of the lapsing notice).

To commence the substantive action in relation to the Uncommercial Transaction Claim, we will be seeking further funding from the Funder. We will seek the approval of creditors for any funding agreement prior to entering the funding agreement. If Creditors do not approve the Liquidators entering into the funding agreement, we intend to apply to Court for approval.

Should any creditor wish to consider funding the potential action, please contact this office.

Uncommercial Transaction Claim

As noted in previous reports, the Supreme Court of Queensland 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 (i.e. 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 any potential sale of the Company's assets; and
2. The need for the sale of the Property to be investigated by the 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."

Our investigations indicated that the Property was transferred to Citadel on 24 November 2017. The undertakings detailed above obtained by the Liquidators from Citadel and its directors Mr Wein and Mr Schwarz personally are given for protection of the Property subject to this claim (the 'Uncommercial Transaction Claim').

Subject to funding being obtained and being approved by Creditors or the Court, we intend to commence the Uncommercial Transaction Claim by February 2021.

A further update on the next steps and the commencement of the claim will be provided in a further report to Creditors issues during January 2021.

Elite Luxury International Pty Ltd (In Liquidation) ('Elite Luxury')

Elite Luxury is a related entity of the Company and entered into voluntary administration on 30 September 2018. Subsequently, it entered Liquidation on 5 November 2018. As at the date of our appointment, an outstanding claim for intercompany loans against Elite Luxury totalled \$1,121,521.30. On 6 October 2020, Elite Luxury declared a first and final dividend for 1.24 cents in the dollar. We confirm a total distribution of \$13,878.37 has now been received into the Liquidators' bank account.

If you have any further queries in respect to the matter, please contact Ben Gan at Ben.Gan@bdo.com.au of our office or on 02 8264 6679.

Yours faithfully



Andrew Sallway
Joint & Several Liquidator