

## REPORT TO CREDITORS

MB Australia Pty Ltd (In Liquidation) (Receivers  
Appointed)  
ACN 115 512 993 ('The Company')

TRADING AS MAX BRENNER AUSTRALIA

4 September 2019

MEETING OF CREDITORS

MEETING DATE: 19 September 2019

MEETING TIME: 10:00AM (AEDT)

Liquidators:

Andrew Sallway

Helen Newman

Nicholas Martin

Contact for Queries:

Ben Gan

Contact Phone:

02 8264 6679

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Ben.Gan@bdo.com.au



## TABLE OF CONTENTS

### CONTENTS

## TABLE OF CONTENTS

1.	EXECUTIVE SUMMARY	6
2.	INTRODUCTION	8
3.	TRADING OUTCOMES AND SALE OF ASSETS	9
4.	INVESTIGATIONS AND RECOVERY ACTIONS	9
5.	FUNDING OF FURTHER INVESTIGATIONS	13
6.	FORMER ADMINISTRATORS' REMUNERATION	14
7.	RECEIPTS AND PAYMENTS	14
8.	LIKELIHOOD OF DIVIDEND	15
9.	COSTS OF THE LIQUIDATION	16
10.	MEETING OF CREDITORS	17
11.	MATTERS OUTSTANDING	17
12.	FURTHER INFORMATION	18
13.	DISCLAIMER	18
14.	ELECTRONIC COMMUNICATION	18
15.	COMMITMENT TO CLIENT SERVICE	18

## ABBREVIATIONS USED

Abbreviation	Description
AEDT	Australian Eastern Daylight Saving Time
AFSA	Australian Financial Security Authority
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 East Coast Partnership
CAANZ	Chartered Accountants Australia and New Zealand
Directors	Tamir Haikin and Lilach Haikin
EOS	Estimated Outcome Statement
FEG	Fair Entitlement Guarantee
Former Administrators	Barry Kogan, Katherine Sozou and Jason Preston of McGrath Nicol
GST	Goods and Services Tax
Liquidators	Andrew Sallway, Nicholas Martin and Helen Newman
INSOL	International Association of Restructuring, Insolvency & Bankruptcy Professionals
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
Receivers	Peter Gothard and Stephen Parbery of the former Ferrier Hodgson, now KPMG
Sale Agreement	Asset Purchase Agreement dated on or about 1 November 2018 entered into between the Liquidators and Opera
SGC	Superannuation Guarantee Charge
the Act	Corporations Act 2001 (Cth)
the Company	MB Australia Pty Ltd (In Liquidation) (Receivers Appointed) ACN 115 512 993
Uncommercial Transaction Claim	The potential uncommercial transaction claim in relation to the sale of the Property
Wentworth Group or the Secured Creditor	Citadel Group Holdings Pty Ltd, Citadel Group Properties Pty Ltd, RS Family Holdings Pty Limited and Wentworth Capital Group Pty Ltd

## ATTACHMENTS

Annexure	Description
A	Notice of Meeting
B	Proof of Debt
C	Proxy
D	Receipts and Payments
E	Remuneration Report
F	Former Administrators' Remuneration Report
G	Estimated Outcome Statement
H	ARITA Creditor Information Sheet
I	Summary of Key Terms of the Funding Agreement

## 1. EXECUTIVE SUMMARY

This report should be read in conjunction with our previous reports dated 14 November 2018 and 17 January 2019.

Outlined below is a summary of the key points raised in this report:

### Insolvency appointments

- Barry Kogan, Katherine Sozou and Jason Preston of McGrath Nicol were previously appointed as 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.
- On Wednesday, 17 October 2018, Andrew Sallway, Nicholas Martin and Helen Newman were appointed as joint and several liquidators of the Company by order of the Supreme Court of Queensland.
- On 19 October 2018, Peter Gothard and Stephen Parbery of KPMG (formerly Ferrier Hodgson) were appointed as Receivers to certain secured property of the Company by Wentworth Capital Group Pty Ltd, the holder of an all present and after acquired property security interest.

### Sale of business and Assets

- The Company operated chocolate cafés that traded as “Max Brenner”. The Company operated from leased premises and provided desserts, coffee and other chocolate products.
- We entered into the Sale Agreement with Opera for the sale of the Assets. We provide an update on the sale progress in Section 3 of this report.

### Employees

- Based on the information available to us, we estimate the Company has the following outstanding employee entitlements:

Outstanding Entitlements	(\$)
Wages and allowances (including bonus)	1,070,960
Superannuation (Including SGC)	2,267,671
Leave (annual leave, leave loading and long service leave)	797,121
Redundancy and PILN	1,149,318
<b>Total employee entitlements</b>	<b>5,285,070</b>

- We are currently liaising with FEG in relation to the verification and distribution of outstanding employee entitlements under the FEG scheme. For any funds paid to employees by FEG, FEG will stand in the place of the respective employees for their priority, should a dividend be paid. As at the date of this report FEG has distributed entitlements to 349 employees in the amount of \$1,938,384. We anticipate the number and the amount of the FEG advances to increase further during the liquidation.

### Unsecured creditors

- To date, we have received 58 proofs of debt totalling \$18,397,288 from unsecured creditors (excluding the Directors and the Wentworth Group). This excludes a claim by:
  - The ATO for \$4,190,204 for unpaid taxation liabilities (excluding SGC);
  - The Directors for an amount of \$25,742,561; and
  - The Wentworth Group for \$32,917,366 (comprising several proofs of debt).
- We have not adjudicated on any of the claims received or verified any of the information contained in the books and records to date. The claims of the Wentworth Group and the Directors are discussed at Section 8 of this report.

### Investigations

- As part of our preliminary investigations we have identified 75 transactions that could be considered potential unfair preference payments totalling \$2,442,276. This includes transactions with statutory creditors, related parties and trade creditors.
- We have lodged three (3) demands for payment with statutory bodies for unfair preference payments. We have agreed to an in principle settlement with the Queensland Office of State Revenue, subject to documentation being agreed between the parties. Discussions with the ATO and NSW Revenue remain ongoing.
- We have also identified at least 17 director-related transactions totalling \$893,454 which could be considered potential voidable transactions. We have conducted initial investigations into these transactions and, subject to further investigations, examinations and funding, we will take steps to recover these amounts if it is considered commercially viable.
- We have identified the Uncommercial Transaction Claim in relation to the transfer of the Property in or about November 2017. The Property served as the Company's head office. We will require funding to continue our further investigations to determine the value of the claim and the prospects of recovery. This transaction and the proposed funding is discussed at Section 4.1.2 and Section 5 of this report.
- Our investigations are ongoing subject to obtaining further information and funding. Creditors will be advised as to the outcome of our investigations in a subsequent update.

### Return to creditors

- The declaration and distribution of a dividend to priority and unsecured creditors of the Company is subject to successful recoveries in the liquidation.
- Based on our analysis, the estimated return to creditors is as follows:

	Liquidation (High) (c/\$)	Liquidation (Low) (c/\$)
Secured Creditor	22.9 cents	0.0 cents
Employees (Preferential Creditors)	100.0 cents	0.0 cents
Unsecured Creditors	22.9 cents	0.0 cents

## Meeting of creditors

- A meeting of creditors will be held at Dexu Place, Level 5, 1 Margaret Street, Sydney NSW 2000 on Thursday, 19 September 2019 at 10:00AM (AEDT). We enclose the Notice of Meeting of Creditors (Annexure A), Formal Proof of Debt (Annexure B) and Proxy Form (Annexure C).
- At the meeting, we will be seeking creditor approval to enter into a funding agreement with the Commonwealth of Australia (acting through the Attorney-General's Department) pursuant to section 477(2B) of the Act.
- At the meeting, we will be seeking approval of our additional remuneration for the following periods:
  - 17 January 2019 to 30 June 2019 for \$115,920.50 (excluding GST and disbursements);
  - 1 July 2019 to 31 August 2019 for \$9,297.50 (excluding GST and disbursements); and
  - 1 August 2019 to 30 June 2020 for \$250,000.00 (excluding GST and disbursements).
- At the meeting, the Former Administrators will be seeking approval of their remuneration for the period 30 September 2018 to 17 October 2018 in the amount of \$740,125.50. The Former Administrators remuneration report is located at Annexure F.
- Creditors voting by proxy are required to complete and return the proxy form by 4:00PM (AEDT) on Wednesday, 18 September 2019 to Ben Gan of this office at [ben.gan@bdo.com.au](mailto:ben.gan@bdo.com.au).

## Next steps

- Execute the funding agreement (if approval is obtained from creditors or the Court) and undertake the next steps to progress the Liquidators' rights of action noted in Annexure I.
- We anticipate the winding up of the Company will continue for between twelve months to two years, the timing of which is subject to recovery of potential voidable transactions identified and whether legal proceedings are required to pursue the potential recoveries.

## 2. INTRODUCTION

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;
- An estimate of the Company's assets and liabilities;
- An update of the investigations conducted to date; and
- Advise you of the likelihood of a dividend being paid in the liquidation.

We will also be requesting that you consider our detailed remuneration report and approve our remuneration at an upcoming meeting of creditors to be held on Thursday, 19 September 2019 at 10:00AM (AEDT) at Dexu Place, Level 5, 1 Margaret Street, Sydney NSW 2000.

The Former Administrators are also requesting that you consider their remuneration report and approval of their remuneration at that meeting.



### 3. TRADING OUTCOMES AND SALE OF ASSETS

Prior to our appointment the Former Administrators closed twenty (20) stores across Australia. During our appointment there were two (2) store closures due to the termination of those leases.

The Company continued to trade during our appointment and on 1 November 2018 Opera and the Liquidators entered into the Sale Agreement to acquire the Assets and transfer the employment of in excess of 275 employees. The Sale Agreement had a number of completion steps. On 9 November 2018 the employment of in excess of 275 employees was transferred and Opera assumed those employees' entitlements.

The only outstanding condition precedent to completion of the Sale Agreement is the retirement of the Receivers in relation to the Assets. Opera has yet to satisfy or expressly waive this condition precedent (to the extent it has not been waived already by Opera, or that the Receivers are not already retired in relation to the Assets as a matter of law following the release by the Secured Creditors of their security in relation to the Assets).

In relation to twelve of the premises leased by the Company, Opera has requested that the Liquidators assign, and that the landlords of the properties consent to the assignment of, the leases. Opera has provided the Liquidators with an indemnity in relation to the continuation of those twelve leases until they are effectively assigned.

As at the date of this report all twelve (12) assignments of leases have been agreed to, documented and signed on behalf of the Company. Of these twelve (12) leases, seven (7) of the leases have been assigned to Opera and the remaining five (5) are awaiting settlement due to the landlords arranging for execution of the deeds of assignment.

### 4. INVESTIGATIONS AND RECOVERY ACTIONS

A liquidator has the ability to take recovery action against various parties that may have received preferential treatment ahead of other creditors. The objective is to recover funds and redistribute the money to creditors in accordance with the Act's priority provisions. The status of our investigations are detailed below.

Any creditor that considers a specific matter warrants investigation or has any information which would assist our inquiries should contact our office. The findings of our investigations as to whether it appears past or present officers may have been guilty of an offence in relation to the Company will be lodged with ASIC.

#### 4.1 Voidable Transactions

A liquidator has available certain actions pursuant to the Act, to recover funds that have been paid prior to their appointment.

We have conducted initial investigations into the Company's affairs to identify any potential recovery actions available to the Liquidators.

During the investigations we have conducted the following:

- Investigated the Company's accounting system;
- Reviewed the Company's books and records;
- Reviewed the Company's email systems;
- Requested and reviewed records provided under the freedom of information provisions from statutory bodies;
- Reviewed and identified transactions from the Company's bank statements;
- Conducted informal interviews with employees and a director of the Company; and
- Conducted an informal meeting with the Secured Creditors.

#### 4.1.1 Unfair Preferences

An unfair preference is a payment made to an unsecured creditor of the company in the six months preceding the date of the winding up (four years if the payment was made to a related entity) at a time when the company is insolvent (or if the company became insolvent as a result of the transaction), resulting in the creditor receiving more than it would have by proving in the liquidation. Such transactions are void as against a liquidator. However, creditors have several defences available, including a defence if the creditor:

- Entered into the transaction in good faith;
- Either had no reasonable grounds for suspecting that the company was insolvent (or would become insolvent), or a reasonable person in the creditor's circumstances would have had no such grounds for so suspecting; and
- Provided valuable consideration or changed their position in reliance on the transaction.

We are continuing our investigations into these payments and the supporting documentation available. We are also assessing whether the relevant creditors received a benefit and whether any of those creditors could reasonably conclude the Company was insolvent at the time.

Following the conclusion of these investigations, we may issue demand letters. If payment is not forthcoming and subject to funding, we will consider commencing legal proceedings to pursue recovery. Legal proceedings could take between twelve months to two years to resolve.

Creditors will be advised of the outcome of our investigations and any recoverable claim in subsequent updates.

To date I have lodged the following claims for unfair preferences:

Party	Amount (\$)
ATO	1,618,601
Revenue NSW	357,623
Queensland Office of State Revenue	117,583
<b>Total</b>	<b>2,093,807</b>

I have agreed to an in principle settlement of the preference claim against Queensland Office of State Revenue, subject to documentation being agreed. The claims against the ATO and Revenue NSW remain ongoing, and as at the date of this report, I am awaiting substantive responses from the ATO and Revenue NSW. We will provide creditors further updates when they become available. If I am unable to resolve these claims by October 2019, I will consider commencing legal proceedings.

Based on our further investigations, we have identified further transactions totalling \$664,650 that have the characteristics of unfair preference payments, summarised as follows:

Party	Number of Transactions	Total (\$)
Trade Creditors	8	54,500
Related Party Creditors	27	610,150
<b>Total</b>	<b>35</b>	<b>664,650</b>



We are also investigating numerous transactions that were made just prior to the Former Administrators being appointed which were not in the Company's accounting systems.

We are also aware of further payment arrangements with at least six (6) creditors which we are investigating to determine if these constitute preferential payments.

If creditors have any information which would assist our investigations, it is requested that this is provided to the Liquidators in writing.

At present we are without funds in the liquidation. Should any creditors wish to consider funding a potential action, please contact this office.

#### 4.1.2 Uncommercial Transactions

An uncommercial transaction is a transaction which a reasonable person in the company's circumstances would not have entered into having regard to the benefits and the detriment to the company and any other parties to the transaction.

An uncommercial transaction is voidable by a liquidator if:

- The company was insolvent at the time it entered into the transaction or the company became insolvent in consequence of the transaction; and
- The transaction was entered into within two years of the appointment of the Liquidator (or four years if it involves a related party).

As noted above in this report, 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 initial investigations indicate that the Property was transferred to the Secured Creditor on 24 November 2017. This may constitute an uncommercial transaction. We will continue to conduct further investigations into the sale of the Property.

We approached litigation funders to discuss the funding of investigations and proceedings in respect of the Uncommercial Transaction Claim.

We issued five (5) Non-Disclosure Agreements to potential funders for access to our briefing paper. We can confirm that the Commonwealth of Australia (acting through the Attorney-General's Department) has agreed to fund examinations and investigations in relation to the Uncommercial Transaction Claim and certain other unfair preference claims. Further information regarding the funding can be found at Section 5 of this report.

If creditors have any information which would assist our investigations, we request that this information is provided to the Liquidators in writing.

#### 4.1.3 Unreasonable Director Related Transactions

Under section 588FDA of the Act, unreasonable director related transactions are payments made by the company to a director of the company or a close associate of the director, and it may be expected that a reasonable person in the company's circumstances would not have entered into the transaction, having regard to:

- The benefits (if any) to the company of entering into the transactions;
- The detriment to the company of entering into the transactions;
- The respective benefits to other parties to the transactions entering into it; and
- Any other relevant matter.

We previously advised that we have reviewed the Company's books and records and identified 17 transactions totalling \$893,454 that may have the characteristics of unreasonable director related transactions since the winding up application was first filed with the Court on 29 June 2018. Further investigations into these transactions have identified that further payments have been made that may constitute unreasonable director related transactions.

We will investigate these payments further and commence action to recover these amounts if it is deemed commercially viable and if funding is available.

If creditors have any information which would assist our investigations, we request that this information is provided to the Liquidators in writing.

Should any creditors wish to consider funding a potential action, please contact this office.

#### 4.1.4 Unfair Loans

An unfair loan is a loan that provides for interest which is extortionate or the charges relating to the loan are extortionate. Whether interest or charges are extortionate will depend on various factors including the term of the loan, value of security in respect of the loan and repayments of the principle.

We have not identified any loans which appear to be unfair.

If creditors have any information which would assist our investigations, we request that this information is provided to the Liquidators in writing.

## 4.2 Insolvent Trading

Section 588G of the Act provides that it is an offence for directors to allow a company to trade whilst it is insolvent. Should a director contravene this section, a liquidator has the right to claim against them to recover the loss suffered by the company as a result.

However, directors have several defences available as follows:

- When the debt was incurred, the director had reasonable grounds to expect that the company was solvent and would remain so even if the debt was incurred (section 588H(2) of the Act);
- When the debt was incurred the director had reasonable grounds to believe, and did believe, that a competent and reliable person was providing adequate information about the company's solvency to the director and based on that information the director expected the company to be solvent and remain so (section 588H(3) of the Act);
- The director did not take part in the management of the company at the time due to illness or other good reason (section 588H(4) of the Act);
- The director took reasonable steps to prevent the company from incurring the debt (section 588H(5) of the Act); or

- The director was under safe harbour protection (section 588GA of the Act).

Pursuant to section 95A of the Act, a company is insolvent if it is unable to pay all of its debts as and when they become due and payable.

From our preliminary review of the Company's books and records it appears the Company may have traded while insolvent from 30 June 2016 if not earlier.

#### Directors' Personal Position

As part of the Liquidators' investigations, information in relation to the personal asset position of the Directors may be sought to determine the commerciality of pursuing such an action. We have requested a detailed personal asset and liability position of the Directors. As at the date of this report, we are yet to receive a response to that request.

We have undertaken real property searches and have identified that the Directors were the joint owners of two (2) properties in New South Wales.

We are aware that these properties have recently been sold and were subject to registered mortgages and numerous caveats. We are not yet aware of whether any surplus was available to the Directors.

Based on our searches, the Directors are not the current owners of any property in Australia.

Based on our initial investigations we are aware that the Directors are the shareholders and directors in other companies. We are unaware of the value of these holdings.

Further investigations including public examinations of the Directors to determine their personal asset position, any defences they may have and the preparation of a solvency report would be required. The costs to undertake these tasks could be substantial; we are currently without funds in the liquidation to pursue a claim.

If creditors have any information which would assist our investigations, we request that this information is provided to the Liquidators in writing.

Should any creditors wish to consider funding a potential action, please contact this office.

Pursuant to section 588R of the Act, a creditor may, with the consent of the Liquidators, commence proceedings under section 588M of the Act to pursue a director for an insolvent trading claim. If any creditor wishes to commence proceedings under section 588M of the Act, please contact our office within 14 days of the date of this report.

## 5. FUNDING OF FURTHER INVESTIGATIONS

As discussed in in Section 4.1.2 of this report we have engaged with a number of potential funders to consider funding the investigations and examinations pursuant to sections 596A and 596B of the Act into the Uncommercial Transaction Claim and certain other unfair preference claims. Given the lack of funds in the liquidation of the Company, the Liquidators have been unable to progress investigations in any substantive way without obtaining funding.

We are pleased to advise the Commonwealth of Australia (acting through the Attorney-General's Department) ('the Funder') has agreed to fund the litigation of the Uncommercial Transaction Claim discussed in Section 4.1.2 of this report, subject to approval of creditors or the Court pursuant to section 477(2B) of the Act.

Please find at Annexure I the summary of the key terms of the funding agreement proposed to be entered into between the Liquidators and the Funder (subject to approval by creditors or the Court).



We will be asking creditors to approve a resolution authorising the Liquidators to enter into the funding agreement.

If creditors do not approve the resolution, the Liquidators will consider exercising their right to seek approval of entry into the funding agreement from the Court.

## 6. FORMER ADMINISTRATORS' REMUNERATION

At the upcoming meeting of creditors, the Former Administrators will be seeking approval of their remuneration for the period 30 September 2018 to 17 October 2018 in the amount of \$740,125.50. Please refer to the Former Administrators' remuneration report located at Annexure F.

The remuneration of the Former Administrators was initially estimated to be within \$500,000 and \$750,000 (excluding GST).

The Former Administrators anticipate the amount of remuneration for work completed after 17 October 2018 (ie, after the appointment of the Liquidators) to be between \$200,000 and \$250,000 (excluding GST). The Former Administrators report that the matters that may affect the progress and the cost of finalising the administration include:

- Liaising with and making payments to suppliers for liabilities incurred during the period of our appointment;
- Realising outstanding amounts owed to the Former Administrators pursuant to their statutory and equitable lien; and
- The Court process concerning the winding up of the Company.

For the purposes of this remuneration report, creditors are only considering remuneration of the Former Administrators for the period from 30 September 2018 to 17 October 2018. The Former Administrators intend to seek Court approval of their remuneration for work completed after 17 October 2018 when all remaining issues have been resolved. A representative of the Former Administrators will be present at the forthcoming meeting of creditors.

The Former Administrators' report confirms that creditors will be provided details of the Former Administrators' remuneration, for the period after 17 October 2018, in advance of Court applications.

## 7. RECEIPTS AND PAYMENTS

Details of all receipts and payments in the liquidation for the period 17 October 2018 to 31 July 2019 is summarised at Annexure D.



## 8. LIKELIHOOD OF DIVIDEND

Please refer to the EOS enclosed at Annexure G. Below is a summary of the expected return for each class of creditors, in a high and low liquidation scenario which is further expanded in each section below:

	Liquidation (High) (c/\$)	Liquidation (Low) (c/\$)
Secured Creditor	22.9 cents	0.0 cents
Employees (Preferential Creditors)	100.0 cents	0.0 cents
Unsecured Creditors	22.9 cents	0.0 cents

A return to priority unsecured creditors and ordinary unsecured creditors of the Company is contingent on substantial recoveries from unfair preference payments and other voidable transactions.

### Wentworth Group's Claims

The Wentworth Group has lodged the following proofs of debt with the Liquidators:

	Amount (\$)
RS Family Holdings Pty Limited	5,350,671.17
Wentworth Capital Group Pty Ltd	12,955,327.87
Citadel Group Holdings Pty Ltd	1.00
Citadel Group Properties Pty Ltd	14,611,365.95
	32,917,365.99

We have reviewed the proofs of debt and our initial view is that these amounts are overstated. There was an amount of c. \$11.8m included in the proof of debt from Wentworth Capital Group Pty Ltd which relates to proceeds from the sale of the Directors' home. That amount was erroneously not deducted from their claim of c. \$12.9m, which would reduce their claim to \$1.1m.

There is a contingent amount of \$13,000,000 included in the proof of debt from Citadel Group Properties Pty Ltd for future rent at the Property for the remaining term of the lease. It is our understanding that Opera has continued the lease on similar terms as was entered into by the Company.

We will investigate the quantum of their claims during the liquidation. We have not adjudicated on these claims (or any of the claims received).

### Directors Claims

The Directors lodged a proof of debt with our office in the amount of \$25,742,561.56. It includes a capital injection from re-mortgaging their family home. We have reviewed the Director Loan Account of the Company accounts, which is consistent with the proof of debt amount. We have not adjudicated on these claims (or any of the claims received).

## 9. COSTS OF THE LIQUIDATION

At a meeting of creditors on 4 February 2019, we received remuneration approval totalling \$50,000 for the period 18 January 2019 to 30 June 2019. Our time costs for this period have exceeded the approval by \$115,920.50, due to the following:

- Extensive dealings with utility providers, particularly cancellation and transfer of services to the new owner;
- Extensive dealings with suppliers to close trading accounts and finalise payments;
- Extensive delays and issues reassigning all store leases to Opera;
- Issues with PPSR parties and their claims of ownership to various assets;
- Delays in completing the Sale Agreement;
- Issues surrounding the transfer of funds from pre-appointment NAB bank accounts;
- Extensive investigations into unfair preference payments;
- Lodgement of demands for unfair preference payments;
- Investigations into the Uncommercial Transaction Claim and other uncommercial transactions;
- Dealings with the Funder and other potential funders in relation to the Uncommercial Transaction Claim and other potential claims; and
- Creditor correspondence and reports to creditors.

We are seeking approval of our remuneration for the following periods:

- An additional \$115,920.50 for the period 18 January 2019 to 30 June 2019;
- Retrospective remuneration for the period 1 July 2019 to 31 July 2019 in the amount of \$9,297.50; and
- \$250,000 for the period 1 August 2019 to 30 June 2020.

Please note that part of the \$250,000 will be paid by the Funder if the funding agreement is approved by creditors or the Court.

On 19 October 2018, Opera Investments Pty Limited provided an indemnity to the Liquidators in respect of any trading expenses incurred during the Liquidation. The indemnity also included an indemnity for 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. This indemnity 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.

Attached at Annexure E is a detailed report on our remuneration, called a Remuneration Approval Report. Included in this report are further details on why our costs between the meeting and the report exceeded the approval given by creditors at the meeting of creditors held on 4 February 2019.

We are unable to pay our remuneration without the approval of creditors or the Court. In addition, we are only able to pay our fees if there are sufficient funds in the Liquidation.



## 10. MEETING OF CREDITORS

A meeting of creditors to consider this update and our remuneration will be held as follows:

Meeting Details	
Date	Thursday, 19 September 2019
Time	10:00 AM (AEDT)
Address	Dexus Place, Level 5, 1 Margaret Street, Sydney NSW 2000

Further meeting information, including notice of meeting and details of the information you are required to provide if you plan to attend the meeting are attached as Annexure A. To participate in this meeting, you may need to:

- Submit a proof of debt and information to substantiate your claim, if you have not already done so.
- Appoint a person - a "proxy" or person authorised under a power of attorney - to vote on your behalf at the meeting. This may be necessary if you are unable to attend the meeting, or if the creditor is a company.
- You can appoint the chairperson of the meeting as your proxy and direct the chairperson how you wish your vote to be cast. If you choose to do this, the chairperson must cast your vote as directed.

Proof of debt and proxy forms are included with the notice of meeting. To facilitate the conduct of the meeting, completed proof of debt and, if applicable, proxy forms must be returned to our office by post, fax or email by Wednesday, 18 September 2019 at 4:00PM (AEDT).

## 11. MATTERS OUTSTANDING

We will proceed with the liquidation, including:

- Completing the remaining assignment of store leases to Opera;
- Reporting to the corporate insolvency regulator, ASIC, pursuant to section 533 of the Act;
- Liaising with FEG in relation to the verification and distribution of funds to priority employee creditors;
- Completing our investigations with respect to potential voidable transactions and issuing demand letters to the relevant creditor(s) that received payments. If applicable, commence legal proceedings to pursue recovery if funding is available;
- Prepare a brief for, and liaise with, our solicitors regarding public examinations pursuant to sections 596A and 596B of the Act (if applicable and subject to approval of the funding by creditors or the Court);
- Commencing recovery action, including legal proceedings in relation to the Uncommercial Transaction Claim (subject to funding and if it is considered viable);
- Adjudicate on creditors' proofs of debt if a dividend is likely;
- Subject to the availability of funds, prepare and distribute a dividend to priority (employee) creditors (or to FEG in relation to amounts advanced to priority (employee) creditors);
- Subject to the availability of funds, payment of petitioning creditors costs; and



- Preparation of further reports to creditors.

We will write to you again with further information on the progress of the liquidation and the anticipated date the liquidation will be finalised.

## 12. 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 H is an ARITA Creditor Information Sheet.

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).

## 13. DISCLAIMER

BDO, (its affiliates - present or future), Andrew Sallway, Nicholas Martin and Helen Newman, employees and agents ('the Liquidator') 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.

## 14. 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.

## 15. 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.

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 Ben Gan of our office on 02 8264 6679.

Yours faithfully

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

Andrew Sallway  
Joint & Several Liquidator

**‘ANNEXURE A’**

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 Dexu Place, Level 5, 1 Margaret St, Sydney NSW 2000 on Thursday, 19 September 2019 at 10:00am (AEDT).

The purpose of this meeting is:

1. To approve the additional remuneration of the Liquidators, their partners and staff for the period 18 January 2019 to 30 June 2019 on a time basis fixed in the amount of \$115,920.50 exclusive of GST and disbursements;
2. To approve the remuneration of the Liquidators, their partners and staff for the period 1 July 2019 to 31 July 2019 on a time basis fixed in the amount of \$9,297.50 exclusive of GST and disbursements;
3. To approve the remuneration of the Liquidators, their partners and staff for the period 1 August 2019 to 30 June 2020 on a time basis up to a maximum amount of \$250,000 exclusive of GST and disbursements;
4. To approve the remuneration of the former Joint and Several Administrators of the Company for the period 30 September 2018 to 17 October 2018, calculated at hourly rates as detailed in the Initial Remuneration Notice dated 4 October 2018, is determined in the sum of \$740,125.50, exclusive of GST.
5. To approve that the Liquidators can enter into a funding agreement pursuant to Section 477 of the Corporations Act; and
6. To appoint a Committee of Inspection.

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 lodged particulars of their claim against the Company with us prior to the commencement of the meeting.

DATED this the 4<sup>th</sup> day of September 2019.



Andrew Sallway  
Joint and Several Liquidator

**‘ANNEXURE B’**

## 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 C’**

## APPOINTMENT OF PROXY

**MB AUSTRALIA PTY LTD (IN LIQUIDATION)**  
**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 19 September 2019 at 10:00am at Dexus Place, Level 5, 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 additional remuneration of the Liquidators, their partners and staff for the period 18 January 2019 to 30 June 2019 on a time basis fixed in the amount of \$115,920.50 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2018. Such remuneration may be drawn as funds become available.</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 1 July 2019 to 31 July 2019 on a time basis fixed in the amount of \$9,297.50 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2019. Such remuneration may be drawn as funds become available.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>3. Liquidators' Remuneration</p> <p>To approve the remuneration of the Liquidators, their partners and staff for the period 1 August 2019 to 30 June 2020 on a time basis up to a maximum amount of \$250,000 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2019 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>4. Former Administrators Remuneration</p> <p>To approve the remuneration of the Former Joint and Several Administrators, their partners and staff for the period 30 September 2018 to 17 October 2018, calculated at hourly rates as detailed in the Initial Remuneration Notice dated 4 October 2018, in the amount of \$740,125.50, exclusive of GST.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>5. Approval of Funding Agreement</p> <p>To approve the Liquidators to enter into a funding agreement with Commonwealth of Australia (acting through the Attorney-General's Department) pursuant to Section 477 (2B) of Corporations Act.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>6. Committee of Inspection</p> <p>To appoint a Committee of Inspection.</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 D’**

MB Australia Pty Ltd (In Liquidation)  
Liquidators' Receipts and Payments  
17 October 2018 to 31 July 2019

Account	Total (Incl GST) \$
<b>Receipts</b>	
Contributions	637,663
Interest Income	1,439
Stock/Inventory (Deposit from Sale Agreement)	308,860
Trading Revenue (CASH)	301,736
Trading Revenue (Delivery)	31,160
Trading Revenue (EFTPOS)	693,711
Trading Revenue Post Settlement	157,709
<b>Total Receipts</b>	<b>2,132,278</b>
<b>Payments</b>	
Appointee Disbursements	5,725
Appointee Fees	296,445
Bank Charges	16,633
Broker Fees	6,089
Cleaning Expense	25,657
Contributions	85,000
Employee Allowances	2,900
Freight Outwards	5,642
GST Paid	54,983
Hire Purchase Lease Equipment	65,419
Insurance	20,692
IT Expense	8,179
Legal Disbursements	1,138
Legal Fees	341,385
Merchant Fees	19,768
Motor Vehicle Expenses	41
PAYG Control (Trading)	44,436
Policy Fees	22
Purchases (GST Free)	68,420
Purchases (GST Inclusive)	192,357
Rent Expense	382,381
Repairs and Maintenance	32,032
Security Expenses	627
Stamp Duty	1,012
Stock/Inventory (Deposit from Sale Agreement)	30,000
Store Expense (Music)	1,058
Subcontractors	8,440
Utilities	20,472
Valuation Costs	7,150
Wages & Salaries (Net of PAYG, Super and Payroll Tax)	366,963
<b>Total Payments</b>	<b>2,111,063</b>
<b>Net Receipts and Payments</b>	<b>21,214</b>

**‘ANNEXURE E’**



## 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, \$392,084.25 in remuneration has been approved and drawn. This remuneration report details approval sought for the following fees:

Period	Remuneration Report Reference	Amount (excl. GST and disbursements)
Past remuneration approved		\$392,084.25
Resolution 1: 18 January 2019 to 30 June 2019	(A & B)	\$115,920.50
Resolution 2: 1 July 2019 to 31 July 2019	(C & D)	\$9,297.50
Resolution 3: 1 August 2019 to 30 June 2020	(E)	\$250,000.00
Total approval sought		\$375,218.00
Total approval for liquidation		\$767,302.25

### Indemnities

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 included 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 has been used to pay part of the Liquidators' fees and disbursements. As at the date of this report, the indemnity totals \$267,455.25 (excluding GST).

The Commonwealth of Australia (acting through the Attorney-General's Department) will indemnify the Liquidators and their staff for work undertaken relating to the Agreed Work located in the summary of key terms at Annexure I. The indemnified amount is included in the fee resolutions sought for approval above.

The Fair Entitlements Guarantee has indemnified the Liquidators for verification tasks relating to verifying employee entitlements of the Company. The indemnified amount is not included in the fee resolutions sought for approval above.

Time incurred attending to handover tasks with McGrath Nicol (Former Voluntary Administrators)

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 \$9,291.50 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: 18 January 2019 to 30 June 2019	Schedule A	Schedule B
Resolution 2: 1 July 2019 to 31 July 2019	Schedule C	Schedule D
Resolution 3: 1 August 2019 to 30 June 2020	Schedule E	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 completed

Resolution 1: 18 January 2019 to 30 June 2019

	General Description	Includes
<b>Administration</b> 54.00 Hrs \$ 21,011.00	Planning / Review	Attended to all statutory requirements Liaised with our solicitors Discussed the status of liquidation
	Correspondence	General correspondence with third parties
	Document Maintenance / File Review / Checklist	Filed documents Filed reviews Updated checklists
	Insurance	Correspondence with our broker Arthur J. Gallagher ('AJG') Cancelled insurance policies where appropriate Identified further potential issues that required attention of insurance specialists Reviewed insurance policy and cancel insurance policy upon as needed
	Bank account administration	Bank account reconciliations Corresponded with St George and NAB regarding specific transactions and account details
	ASIC Forms	Corresponded with ASIC regarding statutory lodgments
<b>Assets</b> 3.30 Hrs \$ 1,882.50	General	Correspondence with lawyers regarding outstanding items of the Business Sale Agreement
	Leases	Liaise with Landlords regarding lease agreements

<p>Creditors 51.40 Hrs \$ 22,091.00</p>	Creditor Enquiries	<p>Telephone conversations with creditors and suppliers Received and followed up creditor enquiries via telephone, email and post</p> <p>Maintained creditor enquiry register</p> <p>Reviewed and prepared correspondence to creditors and their representatives via email and post</p>
	Creditor report	<p>Prepared third creditors report</p> <p>Prepared Liquidators' remuneration report</p> <p>Prepared statutory creditors report and lodged with ASIC</p>
	Creditor Meeting	<p>Convened and held the second meeting of creditors on 4 February 2019</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>Prepared and lodged the minutes of the meeting with the Australian Investments &amp; Securities Commission (ASIC)</p>
	Processing proofs of debt	<p>Prepared correspondence to potential creditors inviting lodgment of POD</p> <p>Received and filed PODs</p> <p>Corresponded with the ATO regarding POD</p> <p>Updated creditor claims in register</p>
<p>Employees 22.7 Hrs \$ 8,039.50</p>	Employee Enquiries	<p>Responded to ongoing employee queries</p> <p>Organised payment of outstanding entitlements to employees for trading period</p> <p>Liased with employees regarding missing and invalid TFNs</p> <p>Prepared and sent PAYG summaries</p>

<b>Investigations</b> 155.50 Hrs \$ 66,932.00	<b>Conducting investigation</b>	Continued investigations into transaction over Doody Street premises  Reviewed the Company's pre-appointment bank statements for preferences and voidable transactions  Collected and reviewed books and records  Prepared investigation file  Prepared insolvent trading file note  Investigated the circumstances which led to the winding up of the company  Corresponded with Fair Work Ombudsman  Lodged preference claims against 3 statutory bodies  Received and settled preference claims  Provided further information to progress the preference claims
	<b>ASIC reporting</b>	Prepared statutory investigation reports  Liaised with ASIC
<b>Trade On</b> 99.70 Hrs \$ 45,964.50	<b>Sale of Business</b>	Assigned remaining leases to new buyer  Transferred all utility services and supply of stock to new buyers account  Finalised all remaining items of sale agreement  Corresponded with hire purchase parties for final invoices  Transferred existing Hire Purchase contracts to purchaser
	<b>Processing Receipts and Payments</b>	Prepared and authorised final payment vouchers for purchases and contacts rendered in the trading period



## Schedule B: Calculation of Remuneration

### Resolution 1: Liquidators' Remuneration for the Period from 18 January 2019 to 30 June 2019

Staff	Position	Hourly Rate	Total		Administration		Assets		Creditors		Employees		Investigations		Trade On	
			Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Andrew Sallway	Partner (Appointee)	665	51.5	34,247.5	-	-	1.5	997.5	8.5	5,652.5	0.5	332.5	20.0	13,300.0	21.0	13,965.0
Helen Newman	Partner (Appointee)	665	1.4	931.0	-	-	0.5	332.5	0.8	532.0	-	-	0.1	66.5	-	-
Nicholas Martin	Partner (Appointee)	665	1.7	1,130.5	-	-	-	-	-	-	-	-	-	-	1.7	1,130.5
Shane Swift	Associate Director	615	1.0	615.0	-	-	-	-	-	-	-	-	1.0	615.0	-	-
Anuj Chopra	Manager	465	20.1	9,346.5	-	-	-	-	-	-	-	-	20.1	9,346.5	-	-
Ben Carney	Manager	465	16.8	7,812.0	16.8	7,812.0	-	-	-	-	-	-	-	-	-	-
Tom Whitmarsh	Assistant Manager	425	127.7	54,272.5	8.5	3,612.5	1.3	552.5	20.2	8,585.0	0.6	255.0	43.3	18,402.5	53.8	22,865.0
Kani Zhang	Senior Accountant	385	0.5	192.5	0.5	192.5	-	-	-	-	-	-	-	-	-	-
Julia Mayne	Senior Accountant	385	55.0	21,175.0	1.0	385.0	-	-	0.4	154.0	-	-	53.6	20,636.0	-	-
Ben Gan	Accountant	345	94.4	32,568.0	24.2	8,349.0	-	-	19.5	6,727.5	21.6	7,452.0	5.9	2,035.5	23.2	8,004.0
Scott McMurdo	Graduate Accountant	220	16.5	3,630.0	3.0	660.0	-	-	2.0	440.0	-	-	11.5	2,530.0	-	-
<b>Total</b>			<b>386.6</b>	<b>165,920.50</b>	<b>54.0</b>	<b>21,011.00</b>	<b>3.3</b>	<b>1,882.50</b>	<b>51.4</b>	<b>22,091.00</b>	<b>22.7</b>	<b>8,039.50</b>	<b>155.5</b>	<b>66,932.00</b>	<b>99.7</b>	<b>45,964.50</b>
Previously Approved Fees			50,000.00													
Gross Total			115,920.50													
GST			11,592.05													
Total (Incl. GST)			127,512.55													
Average Hourly Rate			429.18													

\* 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 \$9,291.50 (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 2: 1 July 2019 to 31 July 2019

	General Description	Includes
<b>Administration</b> 3.50 Hrs \$ 1,531.50	Planning / Review	Attended to all statutory requirements Discussed the status of liquidation
	Correspondence	General correspondence with third parties
	Document Maintenance / File Review / Checklist	Filed documents Filed reviews Updated checklists
	Banking	Bank account reconciliations
	ASIC Forms	Corresponded with ASIC regarding statutory forms
<b>Creditors</b> 1.30 Hrs \$ 704.50	Creditor Enquiries	Telephone conversations with creditors and suppliers Received and followed up creditor enquiries via telephone, email and post  Reviewed and prepared correspondence to creditors and their representatives via email and post  Correspondence with the secured creditor regarding litigation funding
<b>Employees</b> 9.70 Hrs \$ 3,506.50	Employee Enquiries	Responded to ongoing employee queries Organised PAYG Payment Summaries for employees Liaised with employees regarding missing and invalid TFNs
	Conducting investigation	Continued investigations into parties who have received unfair preference payments  Lodged claims for unfair preferences

<p>Investigations</p> <p>6.70 Hrs</p> <p>\$ 3,415.50</p>	<p>ASIC reporting</p>	<p>Prepared statutory investigation reports</p> <p>Liaised with ASIC</p>
<p>Trade On</p> <p>0.30 Hrs</p> <p>\$ 139.50</p>	<p>Payroll and Land Tax</p>	<p>Liaised with OSR Queensland in relation to review letter</p>



## Schedule D: Calculation of Remuneration

Resolution 2: Liquidators' Remuneration for the Period from 1 July 2019 to 31 July 2019

Staff	Position	Hourly Rate	Total		Administration		Creditors		Employees		Investigations		Trade On	
			Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Andrew Sallway	Partner (Appointer)	665.0	2.5	1,662.50	-	-	0.5	332.5	0.5	332.5	1.5	997.5	-	-
Ben Carney	Manager	465.0	2.1	976.50	2.1	976.5	-	-	-	-	-	-	-	-
Tom Whitmarsh	Manager	465.0	6.9	3,208.50	0.6	279.0	0.8	372.0	-	-	5.2	2,418.0	0.3	139.5
Ben Gan	Accountant	345.0	10.0	3,450.00	0.8	276.0	-	-	9.2	3,174.0	-	-	-	-
<b>Total</b>			<b>21.5</b>	<b>9,297.50</b>	<b>3.5</b>	<b>1,531.50</b>	<b>1.3</b>	<b>704.50</b>	<b>9.7</b>	<b>3,506.50</b>	<b>6.7</b>	<b>3,415.50</b>	<b>0.3</b>	<b>139.50</b>
	Write-off			-										
	GST			929.75										
	<b>Total (Incl. GST)</b>			<b>10,227.25</b>										
	Average Hourly Rate			432.44										

## Schedule E: Description of Work to be completed

Resolution 3: 1 August 2019 to 30 June 2020

	General Description	Includes
Administration \$15,000	Planning / Review	Attend to all statutory requirements Liaise with our solicitors (if required) Discuss the status of liquidation
	Correspondence	General correspondence with third parties
	Document Maintenance / File Review / Checklist	File of documents File reviews Update checklists
	Insurance	Correspondence with our broker Arthur J. Gallagher ('AJG') Cancel insurance policies where appropriate Identify any further potential issues that required attention of insurance specialists Correspond with AJG regarding ongoing insurance requirements
	Banking	Bank account reconciliations Correspond with St George and NAB regarding specific transactions and account details
	ASIC Forms	Correspond with ASIC regarding statutory forms
Assets \$10,000	General	Correspond with lawyers regarding outstanding completion steps for the Business Sale Agreement
	Leases	Liaise with Landlords regarding lease/license agreements Liaise with lawyers regarding assignment of leases



<b>Creditors</b> \$65,000	Creditor Enquiries	Telephone conversations with creditors and suppliers Receive and follow up creditor enquiries via telephone, email and post  Maintain creditor enquiry register  Review and prepare correspondence to creditors and their representatives via email and post
	Processing proofs of debt	Prepare correspondence to potential creditors inviting lodgement of POD  Receive and file PODs  Correspond with the ATO regarding POD  Update creditor claims in register
	Creditor Report	Prepare third report to creditors  Prepared Liquidators' remuneration report
	Creditor Meeting	Convene and hold the third meeting of creditors on 19 September 2019  Prepare meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors and notice of meeting  Review and approve proofs and proxies, attendance register etc. at the meeting  Respond to stakeholder queries and questions immediately following meeting  Prepare and lodge the minutes of the meeting with the Australian Investments & Securities Commission (ASIC)
<b>Employees</b> \$5,000	Employee Enquiries	Respond to ongoing employee queries
<b>Investigations</b> \$115,000	Conducting investigation	Letters of demand to be sent to creditors who have received unfair preference payments  Review the Company's pre-appointment bank statements for further preferences and voidable transactions

		<p>Prepare investigation file</p> <p>Prepare insolvent trading file note</p> <p>Lodge the investigation with ASIC</p> <p>Public examinations</p> <p>Investigations into the financial affairs of the Company</p> <p>Legal Advice about potential claims available to the Company and/or the Liquidators</p> <p>Taking others steps that are reasonably necessary to undertake the above work and preserve assets.</p>
	ASIC reporting	<p>Prepare statutory investigation reports</p> <p>Liaise with ASIC</p>
Trade On \$5,000.00	Leases	<p>Finalise assignment of leases to purchaser</p> <p>Finalise all remaining items and completion steps of sale agreement</p>
	Trade On Management	<p>Terminate all remaining services and supplies</p>
Dividend \$35,000	Dividend	<p>Preparation of correspondence to creditors advising of intention to declare dividend</p> <p>Advertisement of intention to declare dividend</p> <p>Obtain clearance from ATO to allow distribution of company's assets</p> <p>Preparation of dividend calculation</p> <p>Preparation of correspondence to creditors announcing declaration of dividend</p> <p>Advertise announcement of dividend</p> <p>Preparation of distribution</p> <p>Preparation of dividend file</p>

## Part 5: Statement of Remuneration Claim

Creditors are being asked to pass the following resolutions at the upcoming creditors meeting:

Resolution [1]: 'To approve the additional remuneration of the Liquidators, their partners and staff for the period 18 January 2019 to 30 June 2019 on a time basis fixed in the amount of \$115,920.50 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2018. Such remuneration may be drawn as funds become available.'

Resolution [2]: 'To approve the remuneration of the Liquidators, their partners and staff for the period 1 July 2019 to 31 July 2019 on a time basis fixed in the amount of \$9,297.50 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2019. Such remuneration may be drawn as funds become available.'

Resolution [3]: 'To approve the remuneration of the Liquidators, their partners and staff for the period 1 August 2019 to 30 June 2020 on a time basis up to a maximum amount of \$250,000 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2019 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.'

## Total Remuneration Reconciliation

We previously estimated that the Liquidators' remuneration for the period 18 January 2019 to 30 June 2019 to be \$50,000 as provided in my initial remuneration notice.

The level of remuneration sought for this period is more than the estimate of \$50,000 (GST exclusive) provided in my second report to creditors dated 17 January 2019. This is due to the following:

- Dealings with initial utility issues, particularly cancellation and transfer of services to the new owner;
- Extensive delays and issues with reassigning all leases to new owner;
- Issues with PPSR parties;
- Delays in completing the sale agreement;
- Delays in lodging PAYG payment summaries due to incorrect TFNs provided;
- Advanced settlements of preference payments;
- Seek funding for Uncommercial Transaction;
- Extensive correspondence with Creditors; and
- Issues surrounding the transfer of funds from pre-appointment NAB account.

In preparing this remuneration approval report, we have made our best estimate at what we believe the Liquidation will cost up to the conclusion of the liquidation. However, should the liquidation not proceed as expected, we will advise creditors and we may seek approval of further remuneration and provide details on why the remuneration has changed.

Matters that may affect the progress and the cost of the Liquidation include:

- Further delays in the assignment of leases;
- Further issues surrounding Company's secured creditor;
- Continued dealings with creditor queries;
- Pursuit of identified preference payments and uncommercial transactions; and
- Delays in receipt of final supplier invoices from trading period.

## 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

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 by the Supreme Court of Queensland.

We are continuing to undertake further investigations into the potential voidable transactions mentioned in this report and will update creditors should further findings arise.

## Part 8: Summary of Receipts and Payments

A summary of the receipts and payments is attached as Annexure D.

## Part 9: Remuneration funded from External Sources

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. As at the date of this report, the indemnity totals \$267,455.25 (excluding GST).

We have engaged with the Fair Entitlements Guarantee ('FEG') in performing a verification of employee entitlements on their behalf as the Company has been placed into liquidation. Remuneration payments received in relation to the Fair Entitlements Guarantee Act 2012 are considered a separate arrangement involving a limited or partial funding agreement. Where higher fees are incurred than the amount covered by the funding agreement there is no restriction in the administration being charged for the shortfall on the basis that all remuneration claimed is necessary and properly incurred. As at the date of this report, the indemnity totals \$152,900 (excluding GST).

While the money received under the funding arrangement is not subject to creditor approval and can be paid directly to the practitioner, any shortfall must be approved as per the requirements of any other remuneration in the administration.

Our professional fees for work undertaken in the liquidation for the period 17 October 2018 to the date of this report has been invoiced to the Department of Jobs and Small Business for verifying employee entitlements via FEG. We do not expect to require approval for any shortfall from creditors.

## 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 2018 and 1 July 2019 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

## Business Restructuring - Corporate Rates as at 1 July 2018 & 1 July 2019

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 F’**





# Remuneration Report

MB Australia Pty Ltd (In Liquidation)  
ACN 115 512 993 (MBA)

18 March 2019



McGrathNicol



This remuneration report provides you with information to assist you to make an informed decision regarding the approval of the Former Administrators' proposed remuneration in relation to the administration of MBA for the period 30 September 2018 to 17 October 2018.

The report has the following information:

1	Background.....	3
2	Declaration .....	4
3	Executive Summary.....	4
4	Remuneration.....	4
4.1	Retrospective remuneration.....	4
4.2	Estimated future remuneration .....	5
4.3	Total remuneration reconciliation.....	5
4.4	Likely impact on dividends .....	6
5	Disbursements.....	6
5.1	External disbursements .....	7
6	Summary of receipts and payments.....	7
7	Queries.....	7
	Schedule A – Resolution 1: from 30 September 2018 to 17 October 2018.....	8
	Schedule B – Summary of receipts and payments .....	18

# 1 Background

Barry Kogan, Jason Preston and Katherine Sozou (the **Former Administrators**) were appointed Joint and Several Administrators of MBA on 30 September 2018 by resolution of the directors, pursuant to Section 436A of the Corporations Act 2001 (**the Act**).

Subsequently, Andrew Sallway, Helen Newman and Nicholas Martin of BDO were appointed Liquidators of MBA (**the Liquidators**) on 17 October 2018 pursuant to an order made by the Supreme Court of Queensland. This appointment had the effect of ceasing the Administration of MBA and the Liquidators took control of MBA.

Whilst the period of appointment of the Former Administrators was short, a significant volume of work was required given the scale of the business and relevant issues. In particular, the Former Administrators were responsible for trading 37 Australia-wide chocolate retail outlets whilst simultaneously conducting a sale campaign, attending two court hearings, undertaking investigations and convening a meeting of creditors and the committee of inspection.

The Former Administrators considered that a going concern sale would provide a better outcome for creditors, and in particular the employees, than would otherwise be achieved through an immediate wind-down of the business and liquidation of its perishable stock.

An urgent review of the MBA business resulted in the closure of 17 unprofitable stores, leaving a profitable store footprint, and a going concern sale program was embarked on.

This appointment involved staff across the restructuring, forensic and transaction services divisions of McGrathNicol.

The eventual purchaser of the business was identified as a result of the sale campaign undertaken by the Former Administrators, resulting in the continued employment of the c.275 transferring employees.

The primary tasks that were undertaken by the Former Administrators and their staff included the following:

- securing MBA's books and records, including forensic imaging of electronic records;
- trading the business and ongoing daily monitoring of performance;
- engaging with management to obtain information pertinent to the rationalisation of stores;
- exiting underperforming stores and preserving profitable stores;
- engaging with employees regarding the Administration and addressing queries;
- engaging with landlords and seeking to negotiate extensions of rent free periods;
- engaging with critical suppliers to ensure the business could viably continue to trade;
- holding a first meeting of creditors and committee of inspection, and lodging minutes of the meeting with the Australian Securities and Investments Commission (**ASIC**);
- stabilising the business for a sale campaign which included the following:
  - conducting a public sale campaign for the business which included responses from 40 interested parties, of which 17 parties signed confidentiality agreements to allow them access to the data room;
  - contacting potential interested parties from existing buyer networks to solicit their interest in the business;
  - liaising with management to obtain information required by prospective purchasers;
  - establishing a data room and addressing ongoing queries of prospective purchasers;
  - receiving three expressions of interest (**EOIs**) from interested parties that provided non-binding offers and notice from up to 10 other parties that they intended to submit EOIs; and
  - identifying the eventual purchaser of the business.
- preparing affidavits for, and attending to, court processes in respect of the winding up proceedings on foot against MBA;
- liaising with the Department of Jobs and Small Business and employees;

- reviewing employee files and MBA books and records to understand employment details, and liaising with payroll staff on an ongoing basis;
- preparing an employee entitlement model, reconciling pre-administration and post-administration entitlements, and paying employee entitlements;
- responding to queries and receiving documentation from secured and unsecured creditors;
- liaising with Max Brenner Industries Limited (**the Licensor**) and their legal advisers;
- carrying out investigations including reviewing the sale and purchase transaction in relation to MBA's head office in Alexandria (**the Property Transaction**). These investigations were included but not limited to:
  - holding a meeting with the director;
  - reviewing company records and seeking legal advice;
  - obtaining copies of valuation reports previously prepared for the property;
  - undertaking searches of publically available records;
  - writing to the relevant counterparts to the Property Transaction.
  - appointing an independent expert valuer to prepare a valuation report.

## 2 Declaration

We, Barry Kogan, Katherine Sozou, and Jason Preston of McGrathNicol, have undertaken a proper assessment of this remuneration claim for our former appointment as Administrators of MBA 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 this matter.

## 3 Executive Summary

To date, no remuneration or internal disbursements have been approved or paid to the Former Administrators for the Voluntary Administration of MBA.

This remuneration report details approval sought for the following remuneration:

Approval sought	Report Reference	Amount (ex GST)
<b>Remuneration</b>		
Retrospective	Schedule A	\$740,125.50
<b>Total Remuneration</b>		<b>\$740,125.50</b>

Please refer to the report section reference detailed in the above table for full details of the calculation and composition of the remuneration for which approval is sought.

## 4 Remuneration

### 4.1 Retrospective remuneration

We request that the following resolution be passed to approve our retrospective remuneration. Details to support this resolution are included at Schedule A. This resolution will be put to the meeting of creditors convened by the Liquidators, BDO, rather than the Former Administrators.

Retrospective remuneration resolution	Appointment Type	Amount (ex GST)
Resolution 1: 30 September 2018 – 17 October 2018	Administration	\$740,125.50
<b>Total retrospective remuneration resolution</b>		<b>\$740,125.50</b>

## Resolution 1: from 30 September 2018 to 17 October 2018

*"That the remuneration of the Former Administrators of MBA for the period 30 September 2018 to 17 October 2018, calculated at hourly rates as detailed in the Initial Remuneration Notice dated 4 October 2018, is determined in the sum of \$740,125.50, exclusive of GST."*

We will arrange for fees to be drawn from funds currently held pursuant to the Former Administrators' statutory and equitable lien over the property of MBA, or other funds that become available to the Former Administrators from indemnities provided or funds to be transferred from the Liquidators.

The table contained at Schedule A sets out the time charged to each major task area by staff members working on the administration for the period 30 September 2018 to 17 October 2018, which is the basis of Resolution 1. More detailed descriptions of the tasks performed within each task area, matching the amounts below, are also contained at Schedule A.

## 4.2 Future remuneration

As you are aware, Andrew Sallway, Helen Newman and Nicholas Martin of BDO were appointed liquidators of MBA on 17 October 2018 pursuant to an order made by the Supreme Court of Queensland. This appointment had the effect of ceasing the Administration.

Following this time, the Former Administrators have continued to perform necessary work in relation to MBA in order to finalise the Administration, attending to both operational and statutory tasks as well as providing briefings and handover support to the Liquidators. I note that a separate application will be made to Court for the approval of fees incurred beyond 17 October 2018 once all matters have been finalised. We anticipate the amount of remuneration for work completed after 17 October 2018 to be between \$200,000 and \$250,000 (ex GST).

Matters that may affect the progress and the cost of finalising the administration, include:

- liaising with and making payments to suppliers for liabilities incurred during the period of our appointment;
- realising outstanding amounts owed to the Former Administrators pursuant to their statutory and equitable lien; and
- the Court process.

For the purposes of this remuneration report, creditors are only requested to approve remuneration for the period 30 September 2018 to 17 October 2018.

Creditors will be provided details of our remuneration in advance of Court applications.

## 4.3 Total remuneration reconciliation

At this point in time, we estimate that our total remuneration for the administration will be approximately \$940,125.50 to \$990,125.50 (excluding GST), as shown in the table below.

Remuneration type	Low estimate Amount (ex GST)	High estimate Amount (ex GST)
Past remuneration approved	Nil	Nil
Current remuneration approval being sought from creditors:		
Retrospective remuneration approval (refer to section 4.1)	\$740,125.50	\$740,125.50

Remuneration type	Low estimate Amount (ex GST)	High estimate Amount (ex GST)
Estimated future remuneration approval to be sought from Court:		
Future remuneration to completion	\$200,000.00	\$250,000.00
<b>Estimated total remuneration</b>	<b>\$940,125.50</b>	<b>\$990,125.50</b>

We have revised our estimated future remuneration range to reflect our current estimate of total remuneration for the administration. The original estimate provided in our Initial Remuneration Notice dated 4 October 2018, estimated total remuneration of between \$500,000 and \$750,000 (excluding GST).

The estimated addition to the range is in recognition of the fact that the Former Administrators made a commercial decision to continue trading the business while undertaking a going concern sale process, and attended to creditor legal proceedings concerning the winding up of MBA.

The MBA business was subsequently sold to a party that was involved in the Former Administrators' sale process.

#### 4.4 Likely impact on dividends

It is both reasonable and appropriate for a provider of professional services to be remunerated for the provision of their services.

An external administrator is entitled to be remunerated for necessary work that is properly performed by the external administrator in relation to the external administration.

The work performed by the Former Administrators protects and generates any funds that may ultimately be available to be distributed for the benefit of creditors and other stakeholders. In addition to this work, the Former Administrators have undertaken work required by the Corporations Act, such as advertising their appointment and holding the first meeting of creditors.

The impact of the approval sought in this report upon the Former Administrators' remuneration is that the remuneration will then be paid from available funds, comprising funds recovered in the course of the administration of MBA. The remuneration will be paid from those funds prior to the payment to most other stakeholders in the administration. This order of priority of payment is prescribed by the Corporations Act.

While payment of the remuneration, as a consequence of being afforded a statutory priority, will diminish the net funds that may otherwise have been available for a dividend to certain classes of creditor, it is noted that in order for funds to be available and distributed to any stakeholder, including creditors, work must necessarily be undertaken by the external administrator.

## 5 Disbursements

Disbursements are divided into three types:

- Externally provided professional services - these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- Externally provided non-professional costs - these are recovered at cost. Examples of externally provided non-professional costs are travel, accommodation and search fees.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying, printing and data storage, 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. Details of the basis of recovery of each of these costs is discussed below.

We have undertaken a proper assessment of disbursements claimed for the administration, in accordance with the law and applicable professional standards. We are satisfied that the disbursements claimed are necessary and proper.

## 5.1 External disbursements

External disbursements may be paid directly from an Administrator's bank account, in which case they are included in summarised form in the Summary of Receipts and Payments (refer to section 6) and are not itemised here.

Other external disbursements are paid for by McGrathNicol and are recovered from the Administrator's bank account. Creditors are not required to approve these types of disbursements, but details are provided to account to creditors, including the basis of charging for these types of disbursements. Creditors are entitled to question the incurring of the disbursements and can challenge the disbursements in Court.

The following external disbursements have been paid by McGrathNicol and relate to the administration from the date of appointment, being 30 September 2018 to 17 October 2018. To the extent that this has not already occurred, these amounts will be shortly reimbursed to McGrathNicol at cost from funds under our control.

MB Australia Pty Ltd (In Liquidation)	
Disbursement	Value (\$)
Computer - consumables	610
Creditor meeting room hire	1,500
Electronic reference materials	242
Fuel cards	485
Merchant fees	8
Motor vehicle insurance	1,272
Motor vehicle registration	1,076
<b>Total disbursements</b>	<b>5,193</b>

## 6 Summary of receipts and payments

A summary of the receipts and payments for the period 30 September 2018 to 28 February 2019 is included at Schedule B to this report.

## 7 Queries

If you have any queries regarding the information in this report, please contact Emmanuel Hart of my staff on (02) 9248 9907 or by email on [ehart@mcgrathnicol.com](mailto:ehart@mcgrathnicol.com).

You can also access information that may assist you on the following websites:

- ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors)
- ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for "fees of insolvency practitioner").

Dated: 18 March 2019



Barry Kogan  
*Former Administrator*

## Schedule A – Resolution 1: from 30 September 2018 to 17 October 2018

MB Australia Pty Ltd (In Liquidation) - Retrospective remuneration summary 30 September 2018 to 17 October 2018

	Rate \$/hr (ex GST)	Total		Assets		Creditors		Employees		Trade on		Investigations		Statutory and Administration	
		hrs	\$ (ex GST)	hrs	\$ (ex GST)	hrs	\$ (ex GST)	hrs	\$ (ex GST)	hrs	\$ (ex GST)	hrs	\$ (ex GST)	hrs	\$ (ex GST)
Barry Kogan	690	87.5	60,375	15.0	10,350.00	40.0	27,600.00	5.0	3,450.00	235	16,215.00	2.5	1,725.00	1.5	1,035.00
Jonathan Henry	690	68.0	46,920	45.0	31,050.00	-	-	-	-	230	15,870.00	-	-	-	-
Andrew Pressl	690	61.7	42,573	61.7	42,573.00	-	-	-	-	-	-	-	-	-	-
Kathy Sozou	690	37.5	25,875	1.0	690.00	23.5	16,215.00	3.5	2,415.00	5.0	3,450.00	2.0	1,380.00	2.5	1,725.00
Rosemary Winser	640	1.6	1,024	-	-	-	-	-	-	-	-	-	-	1.6	1,024.00
Rajiv Goyal	600	134.0	80,400	25.2	15,120.00	55.6	33,360.00	-	-	40.8	24,480.00	-	-	12.4	7,440.00
Christopher Johnson	600	92.0	55,200	8.0	4,800.00	5.3	3,180.00	21.9	13,140.00	54.6	32,760.00	0.9	540.00	1.3	780.00
Richard O'Kane	600	72.7	43,620	-	-	14.4	8,640.00	24.7	14,820.00	8.5	5,100.00	10.1	6,060.00	15.0	9,000.00
Matthew Hutton	600	6.0	3,600	-	-	-	-	-	-	6.0	3,600.00	-	-	-	-
Damien Pasfield	600	0.8	480	0.8	480.00	-	-	-	-	-	-	-	-	-	-
Doug Kay	515	70.4	36,256	-	-	41.9	21,578.50	1.0	515.00	5.0	2,575.00	16.9	8,703.50	5.6	2,884.00
Zlatan Bojadzic	465	121.8	56,637	37.9	17,623.50	-	-	-	-	79.4	36,921.00	-	-	4.5	2,092.50
Hemma Acharya	465	40.0	18,600	-	-	-	-	-	-	-	-	-	-	40.0	18,600.00
Grace Chessman	465	6.6	3,069	-	-	6.6	3,069.00	-	-	-	-	-	-	-	-
Dominic Steer	465	3.0	1,395	-	-	3.0	1,395.00	-	-	-	-	-	-	-	-
Mulyadi Wijaya	465	0.5	233	-	-	-	-	-	-	-	-	0.5	232.50	-	-
Richard Woolf	465	2.9	1,349	-	-	2.9	1,348.50	-	-	-	-	-	-	-	-
Lauren Gordon	465	0.9	419	-	-	0.3	139.50	-	-	-	-	-	-	0.6	279.00
Joshua Crick	425	111.1	47,218	2.5	1,062.50	25.9	11,007.50	3.0	1,275.00	78.0	33,150.00	-	-	1.7	722.50
Scott Rogers	425	62.6	26,605	-	-	0.3	127.50	-	-	42.5	18,062.50	16.0	6,800.00	3.8	1,615.00
Aleksandra Pejaska	425	1.3	553	-	-	1.3	552.50	-	-	-	-	-	-	-	-
Emmanuel Hart	425	101.7	43,223	2.9	1,232.50	11.4	4,845.00	4.7	1,997.50	76.3	32,427.50	-	-	6.4	2,720.00
Stefan Marić	425	107.4	45,645	0.3	127.50	9.5	4,037.50	86.5	36,762.50	5.5	2,337.50	-	-	5.6	2,380.00
Olivia Houston	425	105.8	44,965	-	-	10.5	4,462.50	88.0	37,400.00	2.8	1,190.00	-	-	4.5	1,912.50
Calypso Lowrey	425	8.3	3,528	-	-	1.2	510.00	0.3	127.50	-	-	3.0	1,275.00	3.8	1,615.00
Pelin Dundar	425	3.5	1,488	-	-	3.0	1,275.00	-	-	0.5	212.50	-	-	-	-
Michael May	425	3.1	1,318	-	-	3.1	1,317.50	-	-	-	-	-	-	-	-
Stuart Ball	425	0.2	85	-	-	-	-	0.2	85.00	-	-	-	-	-	-
James Smith	330	111.3	36,729	83.3	27,489.00	17.1	5,643.00	-	-	10.9	3,597.00	-	-	-	-
Chloe Miller	330	7.2	2,376	-	-	7.2	2,376.00	-	-	-	-	-	-	-	-
Angus Cooke	330	5.6	1,848	-	-	4.6	1,518.00	-	-	-	-	-	-	1.0	330.00
Tom Flannery	330	2.9	957	-	-	2.9	957.00	-	-	-	-	-	-	-	-
Alexander Woolcott	330	1.8	594	-	-	1.8	594.00	-	-	-	-	-	-	-	-
Various	Various	14.7	4,973	0.3	126.0	3.1	573.00	-	-	-	-	-	-	11.3	4,274.00
<b>Total (ex GST)</b>		<b>1,456.4</b>	<b>740,125.50</b>	<b>283.9</b>	<b>152,724.00</b>	<b>296.4</b>	<b>156,321.50</b>	<b>238.8</b>	<b>111,987.50</b>	<b>462.3</b>	<b>231,948.00</b>	<b>51.9</b>	<b>26,716.00</b>	<b>123.1</b>	<b>60,428.50</b>
<b>Average hourly rate</b>			<b>508.19</b>		<b>537.95</b>		<b>527.40</b>		<b>468.96</b>		<b>501.73</b>		<b>514.76</b>		<b>490.89</b>





The below table sets out a detailed description of work undertaken on the administration for the period 30 September 2018 to 17 October 2018, which is the basis of Resolution 1.

**Resolution 1: from 30 September 2018 to 17 October 2018**

Task Area	General Description	Includes
Assets 283.9 hours \$152,724.00	Sale of business	<ul style="list-style-type: none"> <li>▪ Prepare, review and place advertisements for sale of business</li> <li>▪ Maintain expressions of interest register</li> <li>▪ Receive, review and document expressions of interest received in the business</li> <li>▪ Initiate contact with potential interested parties from existing networks</li> <li>▪ Liaise with interested parties in relation to sale of business</li> <li>▪ Prepare, issue and review returned confidentiality agreements</li> <li>▪ Prepare and issue information memorandum to parties completing confidentiality agreements</li> <li>▪ Liaise with legal advisor as required in relation to offer terms and conditions</li> <li>▪ Liaise with data room vendor and establish data room for sale of business process</li> <li>▪ Liaise with management in relation to collation of online data room, review and catalogue documents being submitted to data room</li> <li>▪ Respond to queries from interested parties</li> <li>▪ Liaise with parties in relation to offers received, fully understand conditions attaching and requirements to progress</li> <li>▪ Liaise with and provide regular updates to licensor in relation to sale process</li> <li>▪ Meet with interested parties to discuss sale of business process and offer terms</li> <li>▪ Model estimated financial outcomes and preparation of comparative analysis based on offers received and comparison of Deed of Company Arrangement vs Liquidation</li> <li>▪ Corresponding with the Licensor regarding ongoing license arrangements.</li> </ul>

Task Area	General Description	Includes
	Cash at bank	<ul style="list-style-type: none"> <li>▪ Secure MBA's bank accounts and arrange cash sweeps</li> <li>▪ Liaise with financial service providers (e.g. American Express) to recover outstanding receipts, close accounts and cancel credit cards no longer required</li> <li>▪ Reconcile cash daily</li> <li>▪ Liaise with MBA finance department in relation to accounting of cash</li> <li>▪ Prepare and review receipts and payments</li> <li>▪ Maintain systems in relation to control of cash post-administration</li> </ul>
	Plant and Equipment	<ul style="list-style-type: none"> <li>▪ Explore and review fixtures, fittings and equipment sale options</li> </ul>
	Assets subject to specific charges and security interests (other than claims for retention of title)	<ul style="list-style-type: none"> <li>▪ Conduct searches of the Personal Property Securities (<b>PPS</b>) register, collate results and review security interests</li> <li>▪ Receive, review and respond to claims from creditors with registered security interests in relation to their secured goods</li> <li>▪ Liaise with creditors with registered security interests in relation to their secured goods</li> <li>▪ Review validity of registered security interests</li> <li>▪ Review and understand underlying security agreements in relation to PPS registrations</li> <li>▪ Liaise with creditors in relation to provision of additional information as required</li> <li>▪ Reference MBA's records regarding secured assets, their location and value</li> <li>▪ Reconcile inventory in MBA records against PPS claims</li> <li>▪ Receive, review and respond to claims from secured parties</li> </ul>
	Stock	<ul style="list-style-type: none"> <li>▪ Request stocktakes and review of same</li> <li>▪ Inspect and identify stock in warehouse</li> <li>▪ Review and understand stock valuation, valuation methodology and estimate realisable value</li> </ul>

Task Area	General Description	Includes
	Leasing	<ul style="list-style-type: none"> <li>▪ Hold initial discussions with all landlords, advising them of the Administrators' appointment, initial strategy for the administration and their rights as landlords pursuant to the leases</li> <li>▪ Issue correspondence to all landlords and other lessees, formally advising of appointment and intention to exercise property rights</li> <li>▪ Review all leasing documentation and prepare schedule of leased assets</li> <li>▪ Prepare, review and effect rental payments</li> <li>▪ Liaise with landlords in relation to store closure dates and vacation of premises</li> <li>▪ Issue formal notice of not exercising property rights on vacation of sites</li> </ul>
Creditors 296.4 hours \$156,321.50	Creditor enquiries and requests for information	<ul style="list-style-type: none"> <li>▪ Prepare initial correspondence to creditors and their representatives</li> <li>▪ Receive and respond to creditor enquiries via telephone and email</li> <li>▪ Monitor, review and respond to enquires received from creditors via functional mailboxes</li> <li>▪ Make creditor information available on McGrathNicol website</li> </ul>
	Retention of Title (ROT) Claims	<ul style="list-style-type: none"> <li>▪ Receiving and reviewing ROT documentation from creditors</li> </ul>
	Secured creditor reporting	<ul style="list-style-type: none"> <li>▪ Liaise with secured creditors and their legal advisors</li> <li>▪ Provide updates to secured creditors in relation to administration strategy and estimated financial outcome throughout administration</li> <li>▪ Respond to secured creditor queries</li> <li>▪ Prepare updates to secured creditor</li> <li>▪ Notify PPSR registered creditors of appointment</li> </ul>
	Licensor reporting	<ul style="list-style-type: none"> <li>▪ Extensively liaise with the Licensor and their legal advisors</li> <li>▪ Provide updates to the Licensor in relation to administration strategy and estimated financial outcome throughout the administration</li> </ul>

Task Area	General Description	Includes
	Creditor legal proceedings	<ul style="list-style-type: none"> <li>▪ Preparing affidavits for court proceedings in the proposed winding up of the Company</li> <li>▪ Liaising with suppliers to determine support for Administration process</li> <li>▪ Corresponding with plaintiff's lawyers regarding proceedings</li> <li>▪ Corresponding with legal advisers regarding proceedings</li> <li>▪ Corresponding with the plaintiff regarding the proceedings</li> </ul>
	Deal with proof of debt forms (PODs)	<ul style="list-style-type: none"> <li>▪ Receive and review PODs from creditors</li> <li>▪ Enter PODs into creditors listing</li> <li>▪ Print and file PODs for first meeting of creditors</li> </ul>
	Meeting of Creditors	<ul style="list-style-type: none"> <li>▪ Prepare and send meeting notices</li> <li>▪ Advertise notice of meeting</li> <li>▪ Prepare meeting file</li> <li>▪ Prepare meeting presentation</li> <li>▪ Chair meeting, organise creditor registration and other meeting issues</li> <li>▪ Prepare and lodge minutes of meeting with ASIC</li> <li>▪ Respond to stakeholder queries and questions following the meeting</li> </ul>
	COI meeting – 15 October 2018	<ul style="list-style-type: none"> <li>▪ Prepare and send meeting notices</li> <li>▪ Advertise notice of meeting</li> <li>▪ Prepare meeting file</li> <li>▪ Chair meeting</li> <li>▪ Prepare and lodge minutes of meeting(s) with ASIC</li> </ul>

Task Area	General Description	Includes
Employees 238.8 hours \$111,987.50	Employee queries	<ul style="list-style-type: none"> <li>▪ Receive, prepare correspondence and respond to employee enquiries</li> <li>▪ Receive and respond to telephone enquiries by employees</li> <li>▪ Monitor, review and respond to enquires received from employees via functional mailbox</li> <li>▪ Prepare letters to employees advising of administration process ahead of first meeting of creditors</li> <li>▪ Prepare Frequently Asked Questions document to address employee queries</li> </ul>
	Calculation of entitlements	<ul style="list-style-type: none"> <li>▪ Review employee files and MBA's books and records to understand employment details</li> <li>▪ Review awards and employee contracts to assist with calculation of employee entitlements</li> <li>▪ Reconcile superannuation outstanding and calculate total amounts owed</li> <li>▪ Liaise with payroll staff on an ongoing basis</li> <li>▪ Prepare employee entitlement model, calculate and reconcile pre and post appointment entitlements</li> </ul>
	FEG	<ul style="list-style-type: none"> <li>▪ Liaising with FEG regarding estimated employee entitlement liability position in the event of liquidation and overall employee entitlement position</li> </ul>

Task Area	General Description	Includes
	Other employee issues	<ul style="list-style-type: none"> <li>▪ Arrange payment of post appointment payroll for store staff and branch managers</li> <li>▪ Prepare employee termination letters (both store staff and branch managers) as required</li> <li>▪ Prepare employee separation certificates</li> <li>▪ Correspond with Centrelink in relation to paid parental leave employees</li> <li>▪ Correspond with Department of Home Affairs in relation to sponsored employees</li> <li>▪ Correspond with Child Support department</li> <li>▪ Correspond with WorkCover regarding open claims</li> <li>▪ Liaising with legal advisers regarding determination of whether Elite Luxury International Pty Ltd or MBA are the rightful employer of numerous staff</li> </ul>

Task Area	General Description	Includes
Trade on 462.3 hours \$231,948.00	Management of all aspects of trade on	<ul style="list-style-type: none"> <li>▪ Continue to liaise with service providers to ensure continued support and provision of services</li> <li>▪ Continue to liaise with management to assist with trading of business and information for forecasting</li> <li>▪ Prepare and issue media releases</li> <li>▪ Facilitate meetings with staff, management to discuss trading strategy</li> <li>▪ Review of key financial information required for trading, including current cash flow forecast and related information</li> <li>▪ Corresponding with suppliers to establish new accounts and secure ongoing supply of services</li> <li>▪ Liaise with third party asset vendors and facilitate the collection of assets following store closures</li> <li>▪ Prepare and authorise receipt and payment vouchers</li> <li>▪ Establishing purchase order protocols for ongoing trading including authorising purchase orders and maintaining purchase order register</li> <li>▪ Monitor, review, consider and respond to enquires received from customers, employees and suppliers by email and telephone</li> <li>▪ Monitor daily sales results and cash flow position</li> <li>▪ Detailed analysis of store performance and financial metrics to support decision making for store rationalisation and sale process</li> <li>▪ Implementing store rationalisation plan to prepare the business for sale, including preparing and conducting store closures</li> <li>▪ Liaising with landlords and agents in relation to rent free periods and site vacations</li> <li>▪ Liaise with management and staff</li> </ul>

Task Area	General Description	Includes
	Process receipts and payments	<ul style="list-style-type: none"> <li>Enter receipts and payments into accounting system</li> <li>Maintain financial control processes for wages, payroll, payments, purchase orders and document retention matters</li> </ul>
	Prepare budgets and financial reports	<ul style="list-style-type: none"> <li>Prepare, review, update and monitor cash flow forecast as part of EOS</li> <li>Continually evaluate trading position</li> </ul>
	Project Management	<ul style="list-style-type: none"> <li>Internal meetings to assess and discuss progress of administration, work stream planning, resourcing and developing action plans</li> <li>Maintenance of running action lists, allocation of tasks and ensuring compliance with all matters</li> </ul>
Investigations 51.9 hours \$26,716.00	Conduct investigations	<ul style="list-style-type: none"> <li>Send initial request to directors for Report as to Affairs (<b>RATA</b>) and provide extension regarding same</li> <li>Obtain forensic images of electronic company books and records</li> <li>Review electronic company books and records</li> </ul>
	Investigate the Property Transaction	<ul style="list-style-type: none"> <li>Conduct investigations and interviews of the director in respect of the Transaction</li> <li>Liaise with creditors regarding background information to the Transaction</li> <li>Reviewing numerous valuation and sale documents provided by valuers and legal advisors</li> <li>Write to various stakeholders concerning the Property Transaction</li> <li>Seek legal advice in respect of the transaction</li> <li>Contact valuer in relation to the Property Transaction</li> </ul>



Task Area	General Description	Includes
Statutory and Administration 123.1 hours \$60,428.50	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>▪ Conduct regular internal file maintenance and checklist reviews</li> <li>▪ Maintain physical and electronic engagement files</li> <li>▪ Create and update checklists and task assignments</li> <li>▪ Ensure all relevant information is available for download on McGrathNicol website, and outdated information is removed</li> <li>▪ Maintain functional mailbox for employee, creditor, and supplier queries</li> <li>▪ Monitor, review and respond to queries received from function mailboxes</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>▪ Correspond with insurer regarding ongoing insurance requirements</li> <li>▪ Review insurance placements on-foot with management, review documentation and provide to broker</li> <li>▪ Review broker's recommendations, and place cover</li> <li>▪ Liaising with management on policies/systems already in place</li> <li>▪ Review WorkCover policies, collate wage declaration information and submit to various WorkCover bodies</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>▪ Review daily bank statements</li> <li>▪ Perform bank account reconciliations</li> <li>▪ Correspond with bank regarding specific transfers</li> <li>▪ Review and approve payments</li> </ul>
	ATO and other statutory reporting	<ul style="list-style-type: none"> <li>▪ Attend to statutory lodgements required by ASIC</li> </ul>
	Books and records	<ul style="list-style-type: none"> <li>▪ Review list of books and records stored at off-site storage facility</li> <li>▪ Consider records at site required to be retained, and arrange for inventory and storage of required records</li> <li>▪ Continue to forensic image all MBA server data, retrieve back-ups from system, and ensure data is securely stored</li> <li>▪ Secure data to assist with Former Administrators' investigations</li> </ul>

## Schedule B – Summary of receipts and payments

Summary receipts and payments for the period 30 September 2018 - 28 February 2019	
Particulars	Amount (\$)
<b>Receipts</b>	
Sales	2,154,901
Supplier refund	15,675
Returned funds	633
Interest income	182
<b>Total receipts</b>	<b>2,171,391</b>
<b>Payments</b>	
Advertising	(7,619)
Bank charges	(140)
Cleaning expenses	(32,348)
Creditor meeting room hire	(1,000)
Customer refunds	(97)
Data room charges	(747)
Employee allowances - Computer	(75)
Employee allowances - Telephone	(715)
Employee reimbursements	(4,139)
Freight	(7,482)
Insurance	(1,300)
IT expenses	(4,386)
Legal fees	(100,000)
Media management fee	(14,621)
Merchant fees	(30)
Overdraft offset withdrawal	(51,525)
Pest control expenses	(7,106)
Rent and rates	(76,706)
Repairs and maintenance	(2,881)
Rostering services	(1,482)
Security expenses	(627)
Subcontractors	(5,000)
Superannuation	(72,392)
Telephone and fax	(11,286)
Trade supplies	(274,281)
Utilities	(14,245)
Vehicle lease costs	(780)
Wages and salaries	(769,032)
PAYG withheld	65,584
<b>Total payments</b>	<b>(1,396,459)</b>
<b>Net receipts/(payments)</b>	<b>774,933</b>

# **‘ANNEXURE G’**

## 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)
<b>Administrator's residual lien claim</b>	<b>(270,360)</b>	<b>(270,360)</b>
<b>Circulating assets available for creditors</b>	<b>Nil</b>	<b>Nil</b>
<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>Secured Creditor</b>		
Secured Creditor Claim: Wentworth Group	32,917,366	32,917,366
<b>Estimated return to secured creditor (c/\$)</b>	<b>0.0</b>	<b>0.0</b>
<b>Total Assets available to creditors</b>	<b>Nil</b>	<b>Nil</b>
<b>Potential recoveries</b>		
Bank Guarantees and Turnover Rent Adjustment	26,627	42,876
Preference Payments	100,000	2,086,332
Director Related Transaction	-	893,454
Uncommercial Transactions (net of costs)	-	20,000,000
<b>Total Recoveries Available for Distribution</b>	<b>100,000</b>	<b>22,979,786</b>
FEG Costs (Incl Liq Rem)	(352,000)	(352,000)
Petitioning Creditor Costs	(216,884)	(216,884)
Administrators' lien claim (shortfall)	(336,884)	(336,884)
Estimated Liquidator and Legal Fees	(437,626)	(397,626)
<b>Available for Priority Creditors</b>	<b>Nil</b>	<b>21,676,392</b>
<b>Priority Creditors</b>		
Wages	1,070,960	1,070,960
Superannuation	2,267,671	2,267,671
Annual and Long Service Leave	797,121	797,121
Retrenchment (PILN and Redundancy)	1,149,318	1,149,318
<b>Total Priority Creditors</b>	<b>5,285,070</b>	<b>5,285,070</b>
<b>Surplus/(shortfall) in Recoveries</b>	<b>Nil</b>	<b>16,391,322</b>
<b>Estimated Return to Priority Creditors (c/\$)</b>	<b>Nil</b>	<b>100.0</b>
<b>Unsecured creditors</b>		
Trade Creditors	10,769,493	14,207,084
Statutory Creditors	4,190,204	4,190,204
Related Party Creditors	25,742,562	25,742,562
Shortfall in Secured Creditor claim	7,520,315	27,520,315
<b>Total Unsecured Creditors</b>	<b>48,222,573</b>	<b>71,660,165</b>
<b>Estimated Return to Unsecured creditors (c/\$)</b>	<b>Nil</b>	<b>22.9</b>

#### Notes:

- Amounts reported above are exclusive of GST
- The former Administrators have a lien for The Costs from stock at appointment
- The Uncommercial Transaction is net of costs

**‘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.

# **‘ANNEXURE I’**



## Summary of Key Terms of Funding Agreement

Components		Summary
<b>Parties and Effective Date</b>		
1.	<b>Company</b>	MB Australia Pty Ltd (In Liquidation) (Receivers Appointed)
2.	<b>Liquidators</b>	Andrew Salloway, Helen Newman and Nicholas Martin
3.	<b>Funder</b>	The Commonwealth of Australia (acting through the Attorney-General's Department ABN 92 661 124 436)
<b>Funding for Agreed Work</b>		
4.	<b>Agreed Work</b>	<p>The Liquidators agreed to undertake, and the funder agrees to fund, the following Agreed Work:</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> </ul>
<b>Repayment</b>		
5.	<b>Repayment obligation</b>	<p>There is an obligation to repay any amount that is funded plus interest at the base interest rate, as defined in section 8AAD of the <i>Taxation Administration Act 1953</i> (Cth), if the funded work results in the recovery of any moneys.</p> <p>The Liquidators will otherwise distribute the any moneys recovered in accordance with Subdivision D in Part 5.6 of the Corporations Act.</p> <p>In the absence of fraud, negligence or wilful default, the Liquidators will not be personally liable to the Funder if there is a shortfall in repayments of payments and interest owing to the Funder.</p>
<b>Participation by the Funder</b>		
6.	<b>Control</b>	<p>Generally speaking, the Liquidators have control over the Agreed Work.</p> <p>However, under the Agreement, the Funder is entitled, among other things:</p> <ul style="list-style-type: none"> <li>• to be informed of the progress of the Agreed Work on a regular basis and upon request;</li> <li>• to be consulted by the Liquidators in relation to any material issues arising from the conduct of the Agreed Work, including in relation to any proposed discontinuance of a legal proceeding and any settlement negotiations; and</li> <li>• to participate in key meetings (including settlement discussions).</li> </ul>
7.	<b>Right of first refusal</b>	Where the Agreed Work does not include the conduct of litigation, the Funder has a "right of first refusal" in respect of any proceedings which the Liquidators might commence in the future - that is, the Liquidators must notify the Funder of any proposal to commence such proceedings and must invite the Funder to fund the proposed proceedings.
<b>Term of Agreement</b>		
8.	<b>Term</b>	<p>The Agreement:</p> <ul style="list-style-type: none"> <li>• Will become operative on the date on which all parties have signed the Funding Agreement; and</li> <li>• (subject to the Funder's early termination rights and the survival of certain specified clauses in the Agreement) will terminate when all Payments (and interest payable) are repaid in full to the Funder.</li> </ul>