



**MB AUSTRALIA PTY LTD (IN LIQUIDATION)**  
**ACN 115 512 993**  
FORMERLY TRADING AS MAX BRENNER AUSTRALIA  
REPORT TO CREDITORS

28 FEBRUARY 2023

PRIVATE AND CONFIDENTIAL

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Level 11, 1 Margaret Street  
Sydney NSW 2000  
Australia

TO THE CREDITOR AS ADDRESSED

Dear Sir/Madam

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

**ACN 115 512 993 ('the Company')**

I refer to my previous correspondence regarding the Liquidation of the Company.

Please find enclosed a report to creditors dated 28 February 2023.

This report should be read in conjunction with our previous reports which can be found at our website:

[https://www.bdo.com.au/en-au/insights/appointments/br/mb-australia-pty-ltd-\(in-liquidation\)-trading-as-max-brenner-australia](https://www.bdo.com.au/en-au/insights/appointments/br/mb-australia-pty-ltd-(in-liquidation)-trading-as-max-brenner-australia)

This report includes information on:

- ▶ Progress of the Liquidation including;
  - Update on the Mothership Proceedings;
  - Update on the Doody Street Litigation;
- ▶ Estimated return to creditors and timing of dividends;
- ▶ The Liquidators' receipts and payments; and
- ▶ The Liquidators' remuneration report.

If you have any queries in relation to the report, please contact Nathan Moxey of my office on (02) 9240 9987 or email [Nathan.moxey@bdo.com.au](mailto:Nathan.moxey@bdo.com.au).

Yours faithfully

**Andrew Sallway**

Joint and Several Liquidator

# ABBREVIATIONS USED

## Glossary of key terms

Term	Definition
ARITA	Australian Restructuring Insolvency & Turnaround Association
Assets	Assets of the Company which were sold to Opera pursuant to the Sale Agreement
ASIC	Australian Securities & Investments Commission
ATO	Australian Taxation Office
BAS	Business Activity Statement
BDO	BDO Business Restructuring Pty Ltd
Benchmark	Benchmark Patisserie Pty Ltd (In Liquidation)
CAANZ	Chartered Accountants Australia and New Zealand
Citadel	Citadel Group Properties Pty Ltd
CLS	Commercial List Statement in the Doody Street Litigation
CFA	Claims Funding Australia Pty Ltd
Commonwealth	Commonwealth of Australia (acting through the Attorney-General's Department)
Directors	Tamir Haikin and Lilach Haikin
Doody Street Litigation	Proceeding commenced by the Liquidators in the Supreme Court of New South Wales against defendants including the Wentworth Group in relation to various transactions between the Company and Wentworth Group including the transfer of the Property

Term	Definition
EOS	Estimated Outcome Statement
FEG	Fair Entitlement Guarantee
GST	Goods and Services Tax
Liquidators	Andrew Sallway and Helen Newman
Mothership Proceedings	A single proceeding commenced by the Liquidators in the Supreme Court of New South Wales in respect of multiple unfair preference claims and unreasonable related party transaction claims.
Opera	Max Brenner Australia Pty Limited, formerly known as Opera Developments Pty Ltd and formerly known as MB Chocolate Pty Ltd
PILN	Payment in Lieu of Notice
PPSR	Personal Property Securities Register
Property	The property located at 15-21 Doody Street, Alexandria, NSW
SGC	Superannuation Guarantee Charge
the Act	Corporations Act 2001 (Cth)
the Company	MB Australia Pty Ltd (In Liquidation) ACN 115 512 993
Wentworth Group or the Secured Creditor	Citadel Group Holdings Pty Ltd, Citadel Group Properties Pty Ltd, RS Family Holdings Pty Limited, Zajasam Pty Limited and Wentworth Capital Group Pty Ltd

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# DISCLAIMER

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

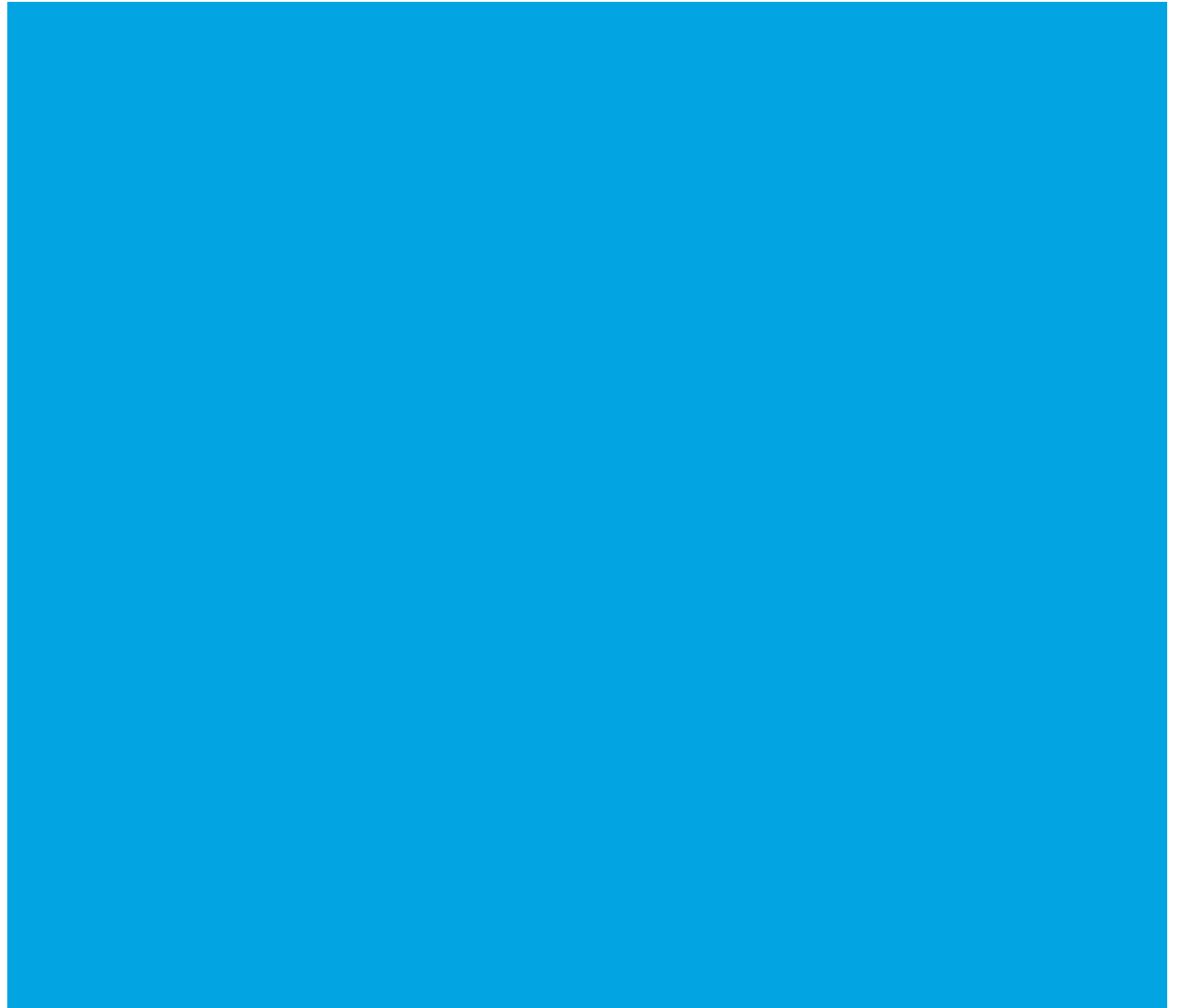
- a) When preparing this report and the accompanying documents, the Liquidators have relied on the available books and records, financial accounts and other documentation pertaining to the Company's affairs.
- b) When preparing this report and the accompanying documents, the Liquidators have relied on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

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SECTION 1

# EXECUTIVE SUMMARY

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# EXECUTIVE SUMMARY

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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:

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

## Investigations

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

## Estimated Return to Creditors

- ▶ Any dividend to priority and unsecured creditors of the Company is subject to further successful recoveries in the liquidation from the Mothership Proceedings and/or the Doody Street Litigation.
- ▶ The estimated range of returns to creditors is as follows:
  - Priority (employee) creditors 0 to 100 cents in the dollar
  - Unsecured creditors 0 to 27.9 cents in the dollar

## Meeting of Creditors

A meeting of creditors will be held via webinar and in person on 20 March 2023 at 10:00 AM (AEDT). For those wishing to attend in via webinar please contact Nathan Moxey of my office for webinar details

We enclose the Notice of Meeting of Creditors (Annexure A), Formal Proof of Debt (Annexure B) and Proxy Form (Annexure C). The proposal seeks creditor approval for the following:

- ▶ The Liquidators' retrospective remuneration for the period 16 October 2021 to 28 February 2022;
- ▶ The Liquidators' retrospective remuneration for the period 1 March 2022 to 24 February 2023; and
- ▶ The Liquidators' future remuneration for the period 25 February 2023 to 31 January 2024.

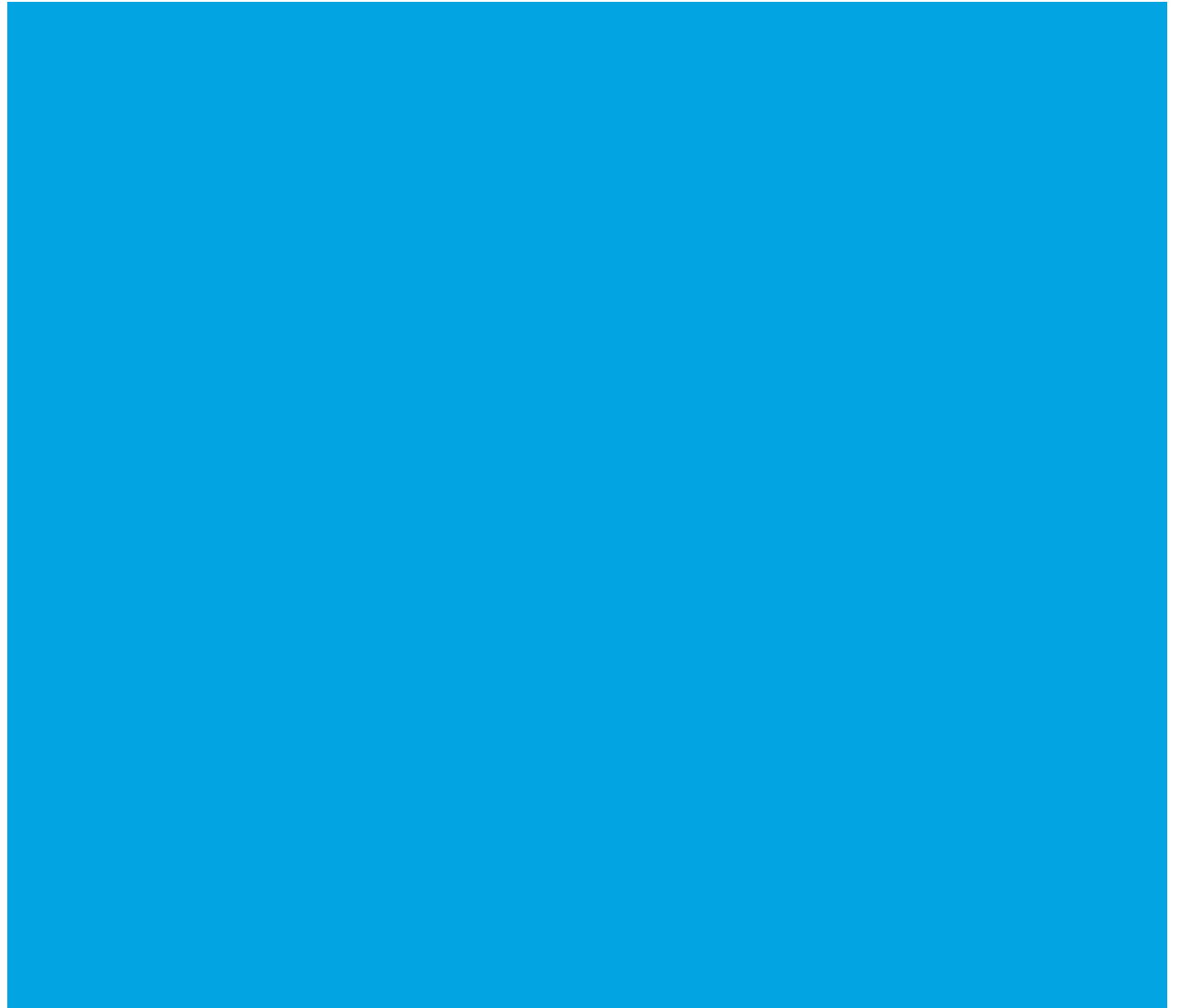
Creditors voting by proxy are required to complete and return the proxy form by 4:00PM (AEDT) on 17 March 2023 to Nathan Moxey of this office at [nathan.moxey@bdo.com.au](mailto:nathan.moxey@bdo.com.au).

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SECTION 2

# INVESTIGATIONS AND RECOVERY ACTIONS

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# INVESTIGATIONS AND RECOVERY ACTIONS

## Mothership Proceedings

### Unfair Preference Claims including Mothership Proceedings

As previously advised we have settled nine unfair preference claims totalling \$1,410,700.

There are six remaining unfair preference claims being pursued by the Liquidators. All six parties are director related parties.

Five of the six claims form the Mothership Proceedings. These proceedings continue to be funded by CFA as previously approved by creditors.

The five claims are listed below:

Parties to the Mothership Proceedings	Claim
Anita Gelato	\$150,830.29
The Fire Company	\$2,679,700.78
Chimney Cake	\$1,670,183.76
Arie Haikin	\$763,112.00
Wolf Peretz	\$170,000.00
<b>Total</b>	<b>\$5,433,826.83</b>

We provide the following update on the five Mothership Proceeding Defendants:

Area	Work Completed to date
Trial	<ul style="list-style-type: none"> <li>On 12 July 2022 orders were made that the proceeding be set down for final hearing on <b>15 to 19 and 23 to 26 of May 2023</b> and directed that the parties attend a mediation by 31 March 2023.</li> </ul>
Mediation	<ul style="list-style-type: none"> <li>On 7 December 2022, the defendants indicated that their preference would be to hold a private mediation. As a mediator could not be agreed upon between the defendants and the Liquidators', a single Court-annexed mediation with all parties provides the most suitable alternative.</li> <li><b>The date of mediation is set for 14 March 2023.</b></li> </ul>
Offers of Compromise	<ul style="list-style-type: none"> <li>On 23 November 2022 the Liquidators issued letters of compromise to some of the defendants, however, no response has been received to date.</li> </ul>
Next Steps	<ul style="list-style-type: none"> <li>Attend scheduled mediation between the Liquidators' and defendants on 14 March 2023.</li> <li>If no resolution reached at mediation attend trial in May 2023.</li> </ul>

The sixth and final preference payment being claimed is against Benchmark Patisserie, who was placed into liquidation on 13 December 2021. As previously advised to creditors, we have submitted a claim in the liquidation for \$2,705,941.17. The liquidator has advised that there will be no return to creditors in the liquidation of that company and the liquidation was finalised on 10 February 2023.

# INVESTIGATIONS AND RECOVERY ACTIONS

## Doody Street Litigation, Reports to ASIC, Bankruptcy of Tamir Haikin

### Doody Street Litigation

We have continued to progress the claim in relation to the transfer of the Property to the Wentworth Group. Please see below key actions since the last report to Creditors.

Area	Work Completed to date
Commercial List Statement/Amended Summons	<ul style="list-style-type: none"><li>▶ Orders were made on 2 June 2022 that the defendants were due to serve their expert and lay evidence on 26 August 2022. The defendants requested an extension to 7 October 2022 to serve their evidence and also sought a similar extension in relation to the defendants filing their Commercial List Response to the Liquidators' Amended Commercial List Statement ('ACLS')</li><li>▶ We received and granted a further extension on 12 October 2022 for the defendants to serve their pleading and lay evidence to 4 November 2022, the Further Amended Commercial List Response was served on 25 November 2022.</li><li>▶ On 24 November 2022, orders were made requiring the Wentworth defendants to serve their evidence by 12 December 2022. The Wentworth Defendants provided part of their evidence in the Doody Street Proceeding on 12 December 2022.</li><li>▶ On 14 December 2022, the defendants issued a letter indicating that they would propose an extension to 30 January 2023 to serve the balance of their evidence, and that the matter be listed for further directions on 10 February 2023. An extension was granted on 16 December 2022 and the Defendants provided the balance of their lay and expert evidence on 13 February 2023.</li><li>▶ <b>The next directions hearing is scheduled for 10 March 2023.</b></li></ul>
Mediation	<ul style="list-style-type: none"><li>▶ Mediation was attended by Wentworth, the Liquidators, their respective lawyers and the Commonwealth on 3 September 2021. No settlement was agreed. No further mediation has been proposed.</li></ul>
Next Steps	<ul style="list-style-type: none"><li>▶ The Doody Street Proceeding is next listed for directions on 10 March 2023.</li></ul>

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

### Reports to ASIC

We submitted a report to ASIC pursuant to Section 533 of the Act on 23 July 2021. This report is required to be submitted by liquidators to ASIC when a company is being wound-up and offences have been committed by directors. We reported to ASIC that the Directors had breached their duties and traded the Company whilst insolvent.

ASIC requested that the Liquidators prepare a supplementary report to ASIC on breaches committed by the Directors. This supplementary report was lodged with ASIC on 1 February 2023, we are yet to receive a response from ASIC.

### Bankruptcy of Tamir Haikin

The Bankruptcy Trustee has advised that he has objected to Mr Haikin's discharge from bankruptcy and as a result the **amended discharge date is now 24 December 2027.**

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SECTION 3

# ESTIMATED RETURN TO CREDITORS

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# ESTIMATED RETURN TO CREDITORS

The estimated return to creditors has been updated as follows:

Liquidation Return	High (c/\$)	Low (c/\$)
Secured Creditor	0.0 cents	0.0 cents
Employees (Preferential Creditors)	100.0 cents	0.0 cents
Unsecured Creditors	27.9 cents	0.0 cents

Please refer **Annexure D** for the full Estimated Outcome Statement ('EOS').

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

## Employee (Priority Claims)

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

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

	Claim to date \$	Liquidators' estimate \$
Wages and allowances (including bonuses)	1,070,960	1,071,703
Superannuation (incl SGC)	9,288,098	3,145,349
Leave (annual leave, loading, long service)	797,121	766,698
Redundancy and PILN	1,149,318	1,055,028
<b>Total (incl FEG advanced amounts)</b>	<b>12,305,497</b>	<b>6,038,778</b>

## Unsecured Creditors

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

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

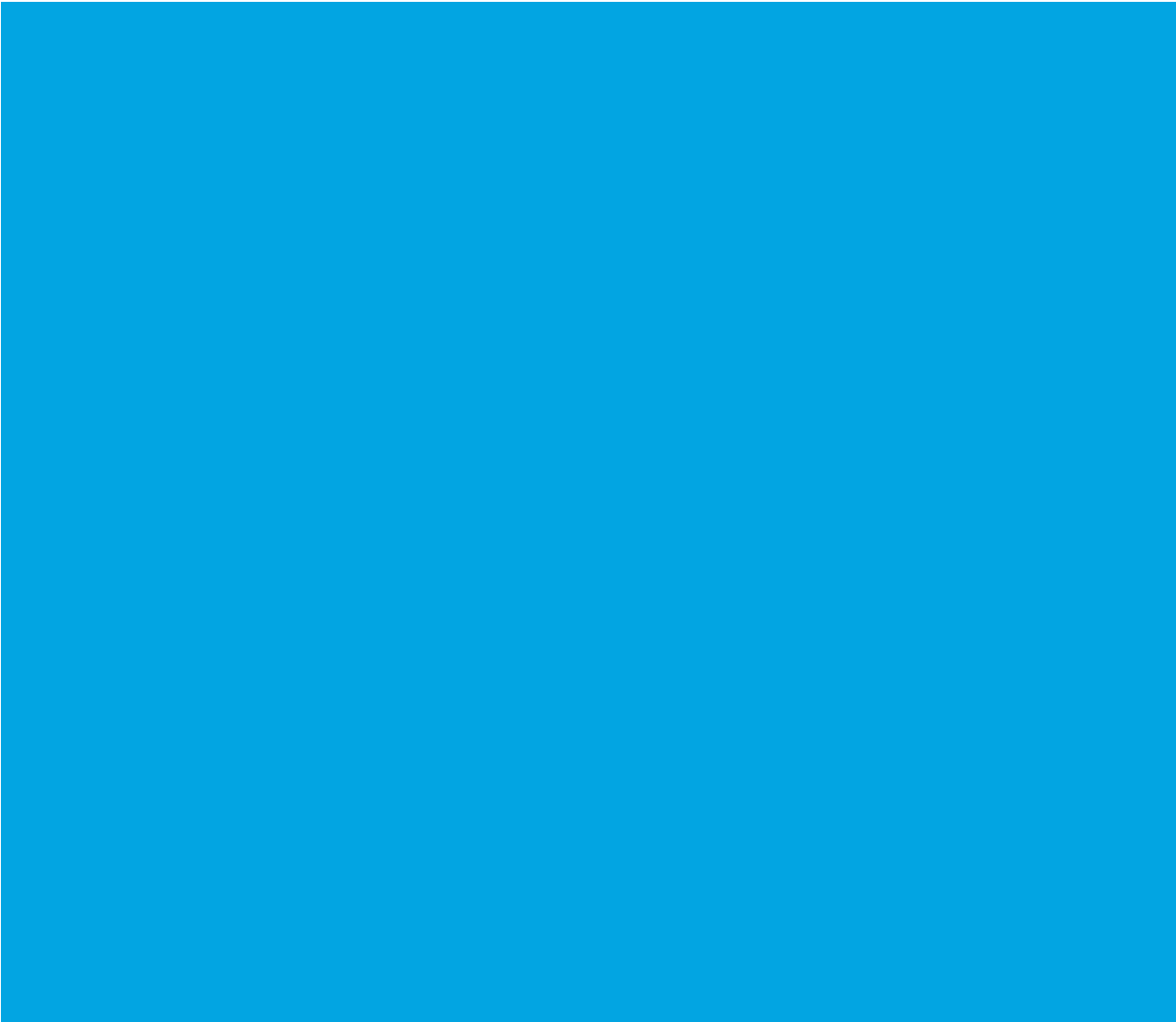
We have not formally adjudicated on any of the claims received or verified any of the information contained in the books and records to date.

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SECTION 4

# RECEIPTS AND PAYMENTS

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**Receipts and Payments Summary - MB Australia Pty Ltd (In Liquidation)**  
**18 October 2018 to 24 February 2023**

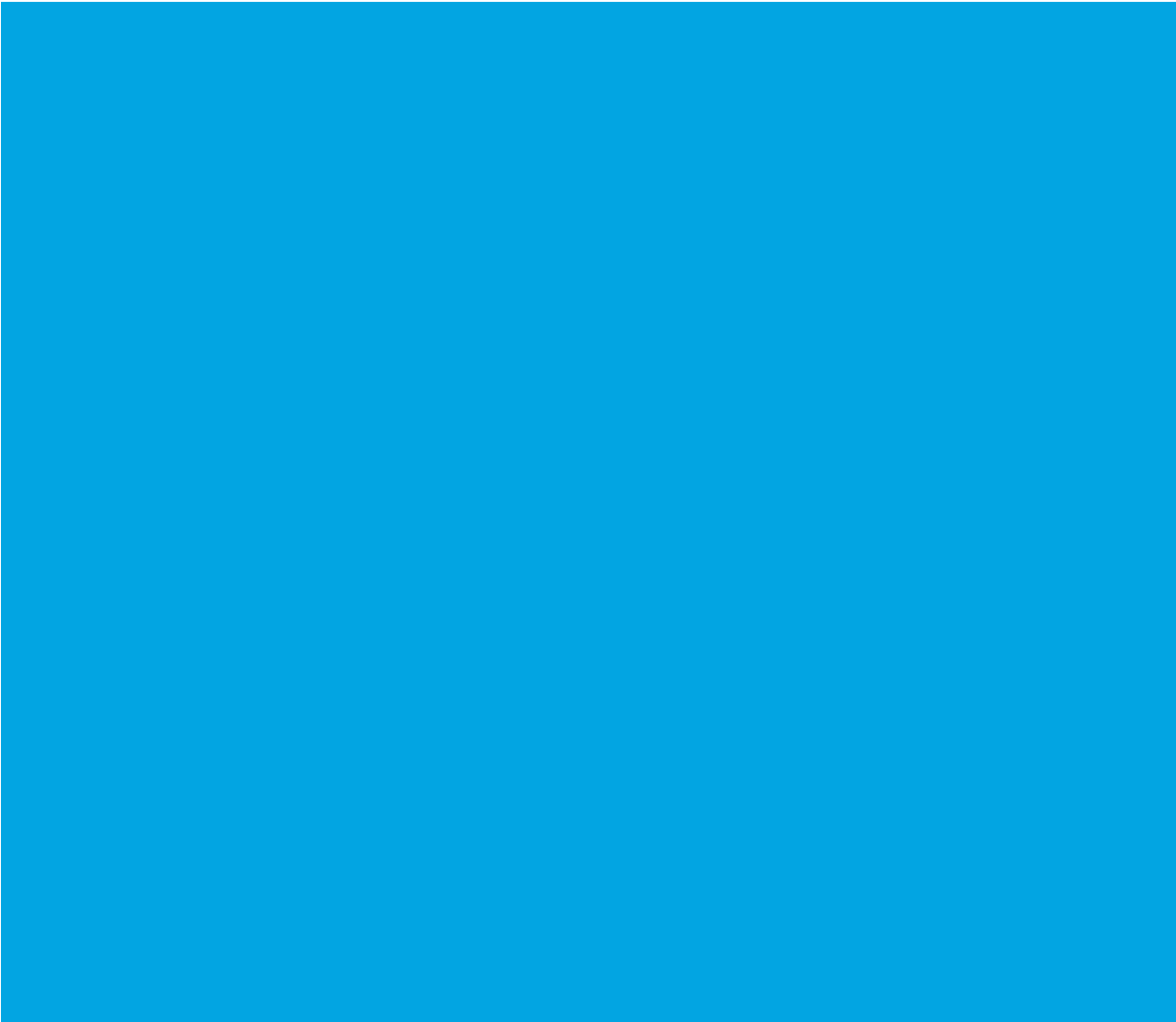
<b>Receipts</b>	<b>Amount (Incl. GST)</b>
Bank Guarantee	16,365.53
Contributions	954,317.54
Dividends Recoverable	13,878.37
FEG Funding	2,261,838.39
CFA Funding	1,021,002.38
ATO Refund	290,813.55
Interest Income	13,221.13
Incorrect Deposits	4,624.72
Lease Costs Refund	215.00
Legal Recoveries	1,412,700.00
Rental Refund	8,517.70
Sales	1,236,921.13
Bank Fee Refunds	29.27
Stock/Inventory on Hand	308,860.44
<b>TOTAL Receipts</b>	<b>7,543,305.15</b>
<b>Payments</b>	<b>Amount (Incl. GST)</b>
Administrators Lien	(117,477.43)
Administrators Stock	(260,271.44)
Agents Fees	(99,074.33)
Allowances	(2,900.39)
Appointee Disbursements	(42,309.30)
Appointee Fees	(583,960.17)
Assignment Costs	(6,912.78)
Bank Charges	(20,029.01)
Broker Fees	(6,088.50)
CFA GST Refunds	(44,466.00)
Cleaning Expenses	(25,656.64)
Contributions	(85,000.00)
FOI Application Fee	(60.00)
Freight Outwards	(5,641.61)
GST Paid	(82,955.00)
Hire Purchase Lease Equipment	(59,328.83)
Incorrect Deposits	(4,624.72)
Insurance	(21,123.39)
IT Expense	(45,614.91)
Legal Disbursements	(774,885.86)
Legal Fees	(2,973,731.41)
Meeting Costs	(7,611.52)
Merchant Fees	(19,767.96)
Motor Vehicle Expenses	(41.00)
Payroll Tax	(13,795.95)
PAYG Control (Paid)	(44,436.00)
Petitioning Creditor Costs	(216,884.43)
Policy Fees	(21.75)
Purchases (GST Free)	(68,420.03)
Purchases (GST Inclusive)	(192,356.66)
Refund of AMEX Sales	(14,526.68)
Refund of Delivery Sales	(29,481.15)
Rent & Rates	(390,898.55)
Repairs & Maintenance	(32,031.62)
Security Expenses	(627.00)
Stamp Duty	(1,033.24)
Stock/Inventory on Hand (Deposit from Sale Agreement)	(30,000.00)
Store Expenses (Music)	(1,057.91)
Subcontractors	(8,440.00)
Superannuation Control (Paid)	(33,978.90)
Utilities	(20,472.05)
Valuation Costs	(7,150.00)
Wages & Salaries (Net of PAYG, Superannuation and Payroll Tax)	(366,963.32)
<b>TOTAL Payments</b>	<b>(6,762,107.44)</b>
<b>Net Receipts and Payments</b>	<b>781,197.71</b>

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SECTION 5

# LIQUIDATORS REMUNERATION

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# LIQUIDATORS REMUNERATION

## Meeting of Creditors

### Appointees' Remuneration

To date, creditors and the Court have approved the Liquidators' remuneration to 15 October 2021 in the amount of \$1,202,511.25.

We are now seeking approval of our current remuneration and future fees as follows:

Period	Amount being sought (\$)
Resolution 1: 16 October 2021 to 28 February 2022	164,482.50
Resolution 2: 1 March 2022 to 24 February 2023	372,518.50
Resolution 3: 25 February 2023 to 31 January 2024	250,000.00
<b>TOTAL</b>	<b>787,001.00</b>

A significant portion of the remuneration relating to the Doody Street and Mothership Proceedings will be funded by the Attorney General's Department and CFA.

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

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

### Meeting of Creditors

A meeting of creditors will be held via webinar and in person on 20 March 2023 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). The proposal seeks creditor approval for the following:

- ▶ The Liquidators' remuneration for the period 16 October 2021 to 28 February 2022;
- ▶ The Liquidators' remuneration for the period 1 March 2022 to 24 February 2023; and
- ▶ The Liquidators' future remuneration for the period 25 February 2023 to 31 January 2024.

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.
- 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 17 March 2023 at 4:00PM (AEDT).

Should you have any queries in relation to the meeting please contact Nathan Moxey of this office on 9240 9987 or via email [nathan.moxey@bdo.com.au](mailto:nathan.moxey@bdo.com.au).

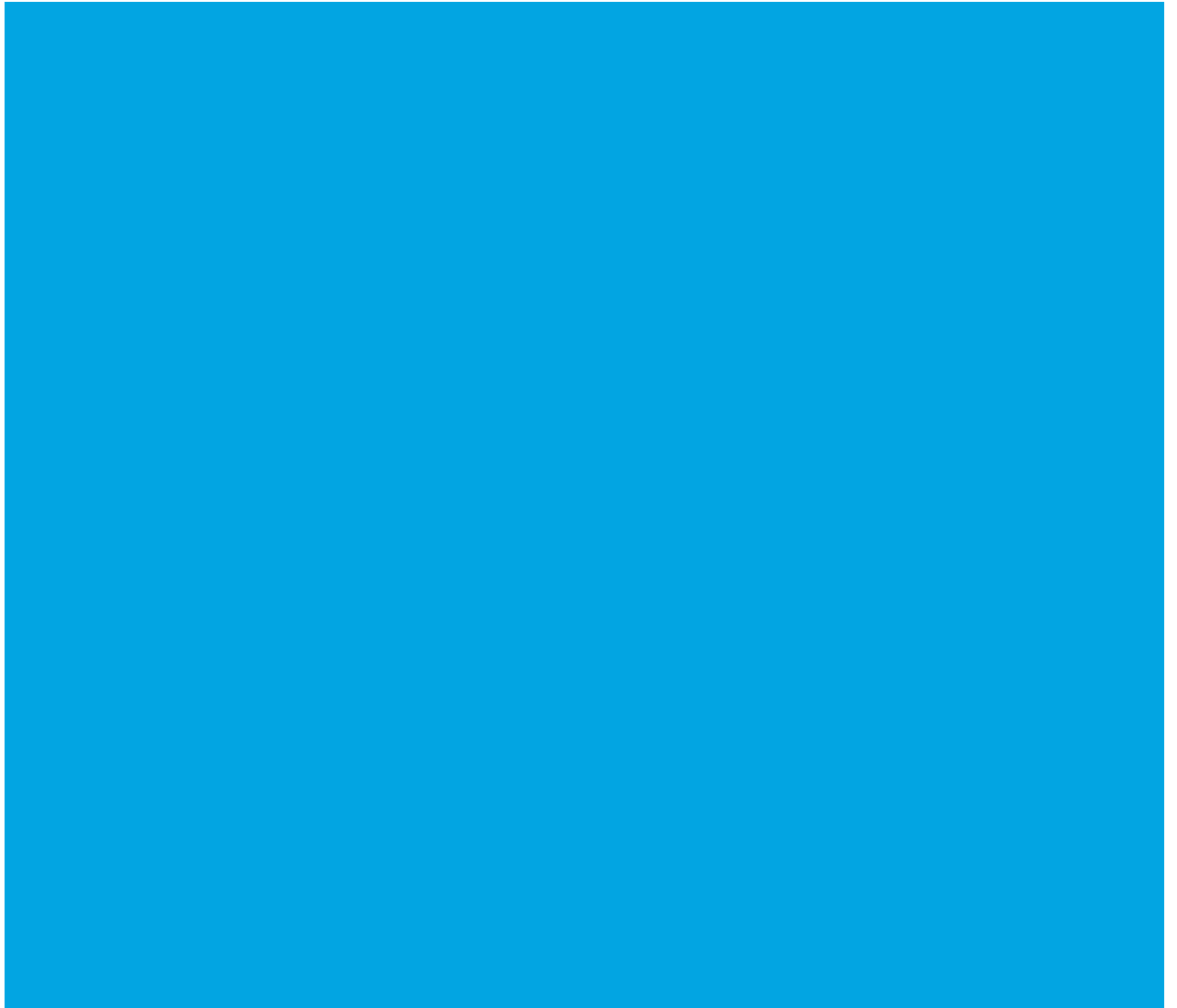


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SECTION 6

# CONCLUSION

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# CONCLUSION

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## Summary

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

Should any creditor require further information regarding the matters raised in this report, please do not hesitate to contact Nathan Moxey of this office on (02) 9240 9987 or [nathan.moxey@bdo.com.au](mailto:nathan.moxey@bdo.com.au).

## Further Information

The Australian Restructuring Insolvency and Turnaround Association (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).

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).

## Electronic Communications

If you would like to receive all communications electronically, please send an email to: [nathan.moxey@bdo.com.au](mailto:nathan.moxey@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 address or postal address.

## Commitment to Client Service

BDO's policy is to conduct files to the highest ethical and professional standards.

BDO adheres to the codes of conduct prescribed by the adheres to the codes of conduct prescribed by Chartered Accountants Australia & New Zealand, AFSA, ARITA and INSOL the International Federation of Insolvency Professionals.

If creditors have any questions, queries or complaints concerning the conduct of this administration please direct them to this office.

If you are dissatisfied with a decision made by the appointee, you may ask the appointee to review his 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 ASIC.

In an effort to improve our standards and the quality of information that you receive, we welcome your feedback. You can submit feedback anonymously in writing to this office or by email on [info@bdo.com.au](mailto:info@bdo.com.au).

SECTION 7

APPENDICES

Appendix
A - Notice of Meeting
B - Proof of Debt
C - Proxy Form
D - Estimated Outcome Statement (EOS)
E - Remuneration Report
F - ARITA Creditor Information Sheet



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# APPENDIX A

## Notice of Meeting

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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 on Monday, 20 March 2023 at 10:00 AM at BDO Level 11, 1 Margaret Street Sydney NSW 2000 and via webinar.

The purpose of this meeting is:

1. To approve the remuneration of the Liquidators, their partners and staff for the period 16 October 2021 to 28 February 2022 on a time basis in the amount of \$164,482.50 exclusive of GST and disbursements; and
2. To approve the remuneration of the Liquidators, their partners and staff for the period 1 March 2022 to 24 February 2023 on a time basis in the amount of \$372,518.50 exclusive of GST and disbursements;
3. To approve the remuneration of the Liquidators, their partners and staff for the period 1 February 2023 to 25 February 2024 on a time basis up to a maximum amount of \$250,000.00 exclusive of GST and disbursements;

Telephone conference facilities can be made available for creditors at the meeting. Creditors who wish to attend are requested to contact Nathan Moxey of this office on telephone number (02) 9240 9987, 48 hours prior to the meeting for login details to be provided. Creditors will not be entitled to vote at the meeting unless they have lodge particulars of their claim against the Company with us prior to the commencement of the meeting.

DATED this the 28th day of February 2023.



**Andrew Sallway**  
Joint and Several Liquidator

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## **APPENDIX B**

### Proof of Debt Form

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## 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
	\$ ¢	\$ ¢



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# APPENDIX C

## Proxy Form

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## 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 Monday, 20 March 2023 at 10:00AM (AEDT) at BDO, Level 11, 1 Margaret Street Sydney NSW 2000 and via webinar, 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><b>1. Liquidators' Remuneration</b></p> <p>To approve the remuneration of the Liquidators, their partners and staff for the period 16 October 2021 to 28 February 2022 on a time basis in the amount of \$164,482.50 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2020 and 1 July 2021. Such remuneration may be drawn as funds become available.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>2. Liquidators' Remuneration</b></p> <p>To approve the remuneration of the Liquidators, their partners and staff for the period 1 March 2022 to 24 February 2023 on a time basis in the amount of \$372,518.50 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2022. Such remuneration may be drawn as funds become available.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>3. Liquidators' Future Remuneration</b></p> <p>To approve the remuneration of the Liquidators, their partners and staff for the period 25 February 2023 to 31 January 2024 on a time basis up to a maximum amount of \$250,000.00 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2022 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"/>

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

Signed

Dated

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## APPENDIX D

### Estimated Outcome Statement (EOS)

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## Estimated Outcome Statement

	Low	High
<b>Liquidators' Rights of Action</b>		
Amount recovered by Liquidators to date	1,410,700	1,410,700
Bank Guarantees and Turnover Rent Adjustment	42,876	42,876
Mothership Proceeding	-	4,590,000
Claims against Directors	-	-
Doody Street Proceeding	-	20,000,000
<b>Total Recoveries Available for Distribution</b>	<b>1,453,576</b>	<b>26,043,576</b>
Petitioning Creditor Costs	(216,884)	(216,884)
Administrators' lien claim (shortfall)	(117,477)	(117,477)
Estimated Liquidator and Legal Fees	(5,826,449)	(5,776,449)
Less: Liquidator and Legal Fees Funded by the Purchaser	740,833	740,833
<b>Available for Priority Creditors</b>	<b>-</b>	<b>20,673,598</b>
<b>Priority Creditors</b>		
Wages	1,071,703	1,071,703
Superannuation (incl penalties and interest)	3,145,349	3,145,349
Annual and Long Service Leave	797,121	766,698
Retrenchment (PILN and Redundancy)	1,149,318	1,055,028
<b>Total Priority Creditors</b>	<b>6,163,491</b>	<b>6,038,778</b>
<b>Surplus/(shortfall) in Recoveries</b>	<b>(6,163,491)</b>	<b>14,634,819</b>
<b>Estimated Return to Priority Creditors (c/\$)</b>	<b>-</b>	<b>100.0</b>
<b>Unsecured creditors</b>		
Trade Creditors	17,522,287	17,522,287
Statutory Creditors	1,922,533	2,075,376
Secured Creditor Shortfall	32,917,366	32,917,366
Related Party Creditors	25,742,562	-
<b>Total Unsecured Creditors</b>	<b>78,104,748</b>	<b>52,515,029</b>
<b>Estimated Return to Unsecured creditors (c/\$)</b>	<b>-</b>	<b>27.9</b>

### Notes:

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

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**APPENDIX E**  
Remuneration Report

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## REMUNERATION REQUEST APPROVAL REPORT

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

### Part 1: Declaration

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

### Part 2: Executive Summary

To date, \$1,202,511.25 in remuneration has been approved. This remuneration report details approval sought for the following fees:

Period	Remuneration Report Reference	Amount (excl. GST and disbursements)
Past remuneration approved		\$1,202,511.25
Resolution 1: 16 October 2021 to 28 February 2022	(A & B)	\$164,482.50
Resolution 2: 1 March 2022 to 24 February 2023	(C & D)	\$372,518.50
Resolution 3: 25 February 2023 to 31 January 2024	(E)	\$250,000.00
Total cost of liquidation		<hr/> <b>\$1,989,512.25</b>

### Indemnities

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

### Part 3: Details of Remuneration

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

Resolution	Detailed <sup>1</sup>	Summary <sup>2</sup>
Resolution 1: 16 October 2021 to 28 February 2022	Schedule A	Schedule B
Resolution 2: 1 March 2022 to 24 February 2023	Schedule C	Schedule D
Resolution 3: 25 February 2023 to 31 January 2024	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

### Part 4: Statement of Remuneration Claim

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

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

**Resolution [2]:** ‘To approve the remuneration of the Liquidators, their partners and staff for the period 1 March 2022 to 24 February 2023 on a time basis fixed in the amount of \$372,518.50 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2022. 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 25 February 2023 to 31 January 2024 on a time basis up to the amount of \$250,000.00 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2022 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

At this point in time, the total remuneration for this Liquidation is \$1,989,512.25 excluding GST. This includes the current approval amount being sought of \$787,001.00.

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

- 1 January 2021 to 15 October 2021; and

- 16 October 2021 to 22 June 2022.

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

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

- Issued the Report to Creditors Dated 29 October 2021;
- Convened the Meeting of Creditors on 12 November 2021;
- Reconciling the Company’s super contributions in adjudicating upon the ATO’s SGC claim;
- Completion of a supplementary investigation report for ASIC;
- Reviewed the proofs of debt lodged by the Secured Creditor;
- Applied to the court for approval of remuneration for the period 1 January to 15 October 2021;
- Progressed investigations in respect to voidable transactions and insolvent trading;
- Attended settlement discussions for the some of the mothership defendants;
- Further progressed investigations into the transfer of the Doody Street Property;
- Continuation of Mothership Proceedings;
- Settled Unfair Preferences; and
- General communications with creditors.

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

### Part 5: Likely impact on dividends

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

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

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

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



Unsecured Creditors	27.9 cents	0.0 cents
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## Part 6: Statement of Disbursements Claim

Disbursements are divided into three types:

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

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

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

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

## Part 7: Report on Progress of the Liquidation

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

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

## Part 8: Summary of Receipts and Payments

A summary of the receipts and payments is enclosed in Section 4 of our creditors report.

## Part 9: Remuneration funded from External Sources

Name	Nature of indemnity or funding	Amount Drawn to Date
Attorney Generals' Department	<p>The agreed work includes the following:</p> <ul style="list-style-type: none"> <li>Public Examinations;</li> <li>Investigations into the financial affairs of the Company;</li> <li>Legal advice about potential claims available to the Company and/or the Liquidators;</li> <li>Taking others steps that are reasonably necessary to undertake the above work and preserve assets;</li> <li>The Doody Street Litigation.</li> </ul> <p>The Attorney General's Department has also agreed to provide the Liquidators with an indemnity for adverse costs orders in the Mothership Proceedings.</p>	<p>This funding agreement has been used to pay part of the Liquidators' remuneration (including remuneration the subject of the previous approval and remuneration the subject of the current request for approval), fees and disbursements.</p> <p>This funding agreement will include the Liquidators' remuneration for future remuneration approvals.</p>
CFA	<p>The funding agreement between the Liquidators and CFA provides funding for costs related to the Mothership Proceedings.</p> <p>The costs include the Liquidators' remuneration as well as other expenses such as legal fees.</p>	<p>This funding agreement has been used to pay part of the Liquidators' remuneration (including remuneration the subject of the previous approval and remuneration the subject of the current request for approval), legal fees and disbursements.</p> <p>The funding agreement will include future remuneration claims.</p>
Opera	<p>Creditors will recall that Opera purchased the Company's business from the Liquidators.</p> <p>Opera provided an indemnity to the Liquidators in respect of any trading expenses incurred during the Liquidation. The indemnity also funded the fees and disbursements of the Liquidators and their legal costs in respect of trading the business during the negotiation and completion of the Sale Agreement.</p> <p>This indemnity has been used to pay part of the Liquidators' past remuneration, fees, and disbursements.</p>	<p>This indemnity has been used to pay remuneration totalling \$331,119.75 (excluding GST) for the period 1 July 2019 to 30 June 2020.</p> <p>I do not anticipate relying on this indemnity in the future.</p>

## Part 10: Remuneration Methods

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

– **Time based / hourly rates**

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

– **Fixed Fee**

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

– **Percentage**

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

– **Contingency**

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

**Method chosen**

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

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

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

Attached is a table which details BDO Rates as at 1 July 2021 and 1 July 2022 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,

A handwritten signature in black ink, appearing to read 'AS' with a large, sweeping flourish at the end.

**Andrew Sallway**  
Joint and Several Liquidator

## Schedule A: Description of Work completed

Resolution 1: 16 October 2021 to 28 February 2022

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

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



## Schedule B: Summary of Work Completed

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

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



## Schedule C: Description of Work completed

Resolution 2: 1 March 2022 to 24 February 2023

	General Description	Includes
<b>Administration</b> <b>170.10 Hrs</b> <b>\$76,332.00</b>	Planning / Review	<ul style="list-style-type: none"> <li>Attended to all statutory requirements</li> <li>Liased with our solicitors on progress of liquidation</li> <li>Internal meetings on the status of liquidation</li> <li>External meetings with our solicitors</li> <li>External meetings with current litigation funders</li> </ul>
	Remuneration Application	<ul style="list-style-type: none"> <li>Liaising with solicitors in preparation of affidavit</li> <li>Review and amendment of Liquidator’s time entries and narrations</li> <li>Providing necessary supporting documentation for affidavit</li> <li>Review the affidavit for the application to court for remuneration</li> <li>Assisting Solicitors in compiling supporting information and providing further detail for application</li> <li>Assisting Solicitors with any ad hoc queries</li> </ul>
	Document Maintenance / File Review / Checklist	<ul style="list-style-type: none"> <li>File of documents</li> <li>File reviews</li> <li>Update checklists</li> </ul>
	Banking	<ul style="list-style-type: none"> <li>Bank account reconciliations</li> <li>Payments made to third parties</li> <li>Prepared monthly invoices for CFA and Commonwealth Funding</li> </ul>
	ASIC Forms & Other Statutory Lodgements	<ul style="list-style-type: none"> <li>Corresponded with ASIC regarding statutory forms</li> <li>Complete ASIC Form 5602 “Annual Administration Form”</li> <li>Completed BAS lodgements</li> </ul>

<b>Creditors</b> <b>70.10 Hrs</b> <b>\$36,177.00</b>	Creditor Enquiries	<p>Telephone conversations with creditors</p> <p>Receive and follow up creditor enquiries via telephone, email, and post</p> <p>Review and prepare correspondence to creditors and their representatives via email and post</p>
	Processing proofs of debt	<p>Receive and file PODs</p> <p>Correspond with the ATO regarding POD</p> <p>Update creditor claims on the file and MYOB</p> <p>Reviewing the proofs of debts issued by the ATO, the Wentworth Group of Companies and the Bankruptcy Trustee on behalf of the Estate of the Directors</p>
	Creditor Report	<p>Prepared report to creditors dated 10 March 2022</p> <p>Prepared report to creditors dated 21 February 2023</p> <p>Prepared Liquidators' remuneration report</p>
<b>Employees</b> <b>47.80 Hrs</b> <b>\$18,469.00</b>	Employee Enquiries	<p>Responded to ongoing employee queries including entitlements and superannuation</p> <p>Reviewed and withdrew application from Administrative Appeals Tribunal</p>
	Superannuation Guarantee	<p>Liaised with the Company's pre-appointment superannuation fund, REST Industry Super, for a reconciliation of employer contributions</p> <p>Reconciled ATO proof of debt with pre-appointment SGC contributions</p> <p>Issued the ATO with a request for an amended Proof of Debt</p>
<b>Investigations</b> <b>471.00 Hrs</b> <b>\$241,540.50</b>	Conducting investigation	<p>Review Legal Advice about potential claims available to the Company and/or the Liquidators</p> <p>Meetings with CFA and FEG to discuss progress of litigation</p> <p>Prepare monthly reports to the CFA and FEG</p> <p>Discussions with solicitors regarding Doody Street Litigation</p>

Liaising with the Bankruptcy Trustee of the Director regarding progress of Bankruptcy and replacement of Trustee

Further investigations into Company's books and records for additional potential unfair preference claims

Further investigations of additional Director Related transactions following review of Company books and records

Preparation of solvency evidence and liaising with lawyers on preparation of expert's solvency evidence

Attend directions hearings for Doody Street Litigation and Mothership Proceedings

Further review of Secured Creditors' claims

Finalise Investigations File Note



## Schedule D: Summary of Work Completed

### Resolution 2: Liquidators' Remuneration for the Period from 1 March 2022 to 24 February 2023

Staff	Staff Position	Hourly Rate	Total		Administration		Creditors		Employees		Investigations	
			Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Andrew Sallway	Partner	770.00	44.60	34,342.00	1.00	770.00	2.00	1,540.00	0.50	385.00	41.10	31,647.00
Andrew Sallway	Partner	710.00	23.00	16,330.00	8.00	5,680.00	2.00	1,420.00	-	-	13.00	9,230.00
Clayton Eveleigh	Partner	690.00	0.50	345.00	0.00	-	-	-	-	-	0.50	345.00
Fady Abi Abdallah	Partner	970.00	3.00	2,910.00	3.00	2,910.00	-	-	-	-	-	-
Joel Brown	Director	865.00	2.90	2,508.50	2.90	2,508.50	-	-	-	-	-	-
Jeff Marsden	Director	615.00	1.00	615.00	-	-	-	-	-	-	1.00	615.00
Tom Whitmarsh	Director	670.00	97.80	65,526.00	4.60	3,082.00	6.50	4,355.00	-	-	86.70	58,089.00
Tom Whitmarsh	Senior Manager	545.00	56.50	30,792.50	1.60	872.00	7.60	4,142.00	-	-	47.30	25,778.50
Liam Garland	Senior Manager	455.00	6.00	2,730.00	0.00	-	-	-	-	-	6.00	2,730.00
Ben Carney	Manager	540.00	21.80	11,772.00	21.80	11,772.00	-	-	-	-	-	-
Ben Carney	Manager	500.00	9.00	4,500.00	9.00	4,500.00	-	-	-	-	-	-
Ryan Davies	Assistant Manager	500.00	31.50	15,750.00	0.00	-	31.50	15,750.00	-	-	-	-
Ryan Davies	Assistant Manager	460.00	70.80	32,568.00	10.60	4,876.00	12.40	5,704.00	-	-	47.80	21,988.00
Bill Todd	Senior Accountant	450.00	156.50	70,425.00	39.50	17,775.00	0.50	225.00	22.10	9,945.00	94.40	42,480.00
Bill Todd	Senior Accountant	410.00	115.00	47,150.00	22.80	9,348.00	7.10	2,911.00	9.60	3,936.00	75.50	30,955.00
Kat Tran	Assistant Manager	365.00	2.00	730.00	-	-	-	-	-	-	2.00	730.00
Nathan Moxey	Assistant Analyst	330.00	44.80	14,784.00	7.40	2,442.00	-	-	2.10	693.00	35.30	11,649.00
Nathan Moxey	Graduate	260.00	69.50	18,070.00	35.10	9,126.00	0.50	130.00	13.50	3,510.00	20.40	5,304.00
Nathan Moxey	Graduate	235.00	2.30	540.50	2.30	540.50	-	-	-	-	-	-
Christian Hallgren	Graduate	260.00	0.50	130.00	0.50	130.00	-	-	-	-	-	-
Total			759.00	372,518.50	170.10	76,332.00	70.10	36,177.00	47.80	18,469.00	471.00	241,540.50
GST				37,251.85								
Total (incl. GST)				409,770.35								
Average hourly rate				490.80								

## Schedule E: Description Anticipated Work

Resolution 2: 25 February 2023 to 31 January 2024

	General Description	Includes
<b>Administration</b> <b>\$30,000</b>	Planning / Review	Liaise with our solicitors on progress of liquidation Internal meetings on the status of liquidation External meetings with our solicitors External meetings with litigation funders
	Correspondence	General correspondence with third parties General administrative tasks including filing and scanning records Internal meetings to discuss status of the administration
	Document Maintenance / File Review / Checklist	File of documents File reviews Update checklists
	Banking	Reconciling bank accounts Enter receipts and payments into Liquidators' accounting system Prepare monthly invoices for CFA and Commonwealth Funding
	ASIC Forms & Other Statutory Lodgements	Attend to all statutory requirements
<b>Creditors</b> <b>\$40,000</b>	General Creditor Enquiries	Correspond with creditors regarding the administration Receive and follow up creditor enquiries via telephone, email and post
	Processing proof of debts	Receive and file PODs Adjudicate on PODs for voting purposes

		Update creditor claims in register
	Unsecured Dividend	<p>Issue documentation to declare a dividend to unsecured creditors</p> <p>Calculate dividend and issue cheques</p> <p>Adjudicate on PODs</p> <p>Issue letters to creditors regarding proof of claims</p> <p>Issue letters to creditors formally accepting or rejecting claims</p> <p>Declare and distribute dividend to unsecured creditors</p>
<b>Employees</b> <b>\$30,000</b>	Employee Enquiries	Responded to ongoing employee queries including entitlements and superannuation
	Superannuation Guarantee	Liaise with the Company's pre-appointment superannuation fund, REST Industry Super, for a reconciliation of employer contributions
<b>Investigations</b> <b>\$150,000</b>	Conducting investigation	<p>Attend meetings with CFA and FEG to discuss progress of litigation</p> <p>Prepare monthly reports to the CFA and FEG</p> <p>Liaise with solicitors regarding Doody Street Litigation</p> <p>Liaising with the Bankruptcy Trustee of the Director regarding progress of Bankruptcy and replacement of Trustee</p> <p>Further investigations into Company's books and records for additional potential unfair preference claims</p> <p>Further investigations of additional Director Related transactions following review of Company books and records</p> <p>Attend directions hearings for Doody Street Litigation and Mothership Proceedings</p> <p>Attend Mediations for Doody Street Litigation and Mothership Proceedings</p> <p>Attend trial for Doody Street Litigation and Mothership Proceedings (if applicable)</p> <p>Further review of Secured Creditors' claims</p>

## Business Restructuring - Corporate Rates as at 1 July 2022

Title	Description	Hourly Rate (excl GST)
Partner	Registered Liquidator- Partner bringing specialist skills to administration or insolvency task.	770
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.	670
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.	590
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.	540
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.	500
Senior Accountant - Experienced	2-4 years, CA (or equivalent) would normally be commenced during this period. Required to control of small to medium sized jobs as well as performing some of the more difficult work on larger jobs.	450
Accountant	1-2 years, CA (or equivalent) would normally be commenced during this period. Required to control the fieldwork on small jobs and responsible for assisting complete fieldwork on medium to large jobs.	400
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.	330
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.	260
Executive Assistant/ Personal Assistant	Appropriate computer skills including machine usage	260

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

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

Title	Description	Hourly Rate (excl GST)
Partner	Registered Liquidator- Partner bringing specialist skills to administration or insolvency task.	710
Associate Director	Minimum of twelve years insolvency experience, at least five years at manager level, qualified accountant and capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in own right.	615
Senior Manager	More than 7 years' insolvency experience, more than 3 years as a manager, qualified accountant. Answerable to the appointee but otherwise responsible for all aspects of administration. Experienced at all levels and considered very competent. Control staff and their training.	545
Manager	6-7 years, qualified accountant, with well-developed technical and commercial skills. Should be constantly alert to opportunities to meet clients' needs and to improve the clients' future operation either by revenue enhancement or by reducing costs and improving efficiency. Controls 2-4 staff.	500
Assistant Manager	4-6 years, CA program (CA) complete. Will have had conduct of minor administrations and experience in control of 1-3 staff. Assists planning and control of medium to larger jobs.	460
Senior Accountant - Experienced	2-4 years, CA (or equivalent) would normally be commenced during this period. Required to control of small to medium sized jobs as well as performing some of the more difficult work on larger jobs.	410
Accountant	1-2 years, CA (or equivalent) would normally be commenced during this period. Required to control the fieldwork on small jobs and responsible for assisting complete fieldwork on medium to large jobs.	370
Graduate Accountant	0-1 years, Trainee undertaking a degree with an accounting major. Required to assist in day-to-day fieldwork under supervision of more senior staff.	300
Undergraduate Accountant	HSC or equivalent, plans to undertake at least part-time degree/diploma. Required to assist in administration and day-to-day fieldwork under supervision of more senior staff.	235
Executive Assistant/ Personal Assistant	Appropriate computer skills including machine usage	235

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



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## APPENDIX F

### ARITA Creditor Information Sheet

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# 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.

