

REPORT TO CREDITORS

MB Australia Pty Ltd (In Liquidation)
ACN 115 512 993 ('the Company')

Formerly trading as Max Brenner Australia

14 January 2021

Liquidators: Andrew Sallway
Helen Newman

Contact for Queries: Ben Gan
Contact Phone: 02 8264 6679
Contact Email: Ben.Gan@bdo.com.au

MEETING OF CREDITORS

MEETING DATE: 29 January 2021

MEETING TIME: 11:00AM (AEDT)





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ABBREVIATIONS USED

Abbreviation	Description
AEDT	Australian Eastern Domestic 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 Business Restructuring Pty Ltd
CAANZ	Chartered Accountants Australia and New Zealand
Citadel	Citadel Group Properties Pty Ltd
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
Funder	Commonwealth of Australia (acting through the Attorney-General's Department)
GST	Goods and Services Tax
Liquidators	Andrew Sallway 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
Former 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) 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 Form
D	Summary of Key Terms of the Funding Agreement
E	Estimated Outcome Statement
F	Receipts and Payments
G	Remuneration Report
H	ARITA Creditor Information Sheet



1. EXECUTIVE SUMMARY

This report should be read in conjunction with our previous reports dated:

- 14 November 2018;
- 17 January 2019;
- 4 September 2019;
- 26 August 2020; and
- 23 December 2020.

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 4 August 2020, Nicholas Martin ceased as a Joint and Several Liquidator of the Company.
- 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. On 17 April 2020 Mr Gothard and Mr Parbery retired as Receivers of the Company.

Employees

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

Outstanding Entitlements	Amount (\$)
Wages and allowances (including bonuses)	1,070,960.00
Superannuation (including SGC)	9,124,646.72
Leave (annual leave, leave loading and long service leave)	797,121.00
Redundancy and PILN	1,149,318.00
Total employee entitlements (Including FEG Advanced Amounts)	12,142,045.72

- We note there was an increase to 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 clearing houses and requested further information from the ATO to reconcile all contributions made by the Company. It is our opinion that the value of their claim is c. \$2.5m. We intend on writing to the ATO partially rejecting their claim.
- We have completed our verification of outstanding employee entitlements under the FEG scheme. Monies have now been paid to employees by FEG, FEG now stands in the place of the respective

employees for their priority, should a dividend be paid. FEG has distributed entitlements to 365 employees in the amount of \$1,974,833.25, there will be no further increase to FEG's claim for employee entitlements as the timeframe for employees to claim with FEG has now ended.

Unsecured creditors

- To date, we have received 70 proofs of debt totalling \$17,590,575 from unsecured creditors. This excludes claims by:
 - The ATO for \$1,922,533 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.

Investigations

- Our investigations into the Uncommercial Transaction Claim surrounding the transfer of the Property are progressing under funding provided by the Commonwealth of Australia (acting through the Attorney-General's Department). Our investigations have included the conduct of a Public Examination during April 2020. The Liquidators are now seeking creditor approval to enter into a new Funding Agreement to further progress the Uncommercial Transaction Claim. Further details are found in section 4 of this report; and
- We have identified and commenced claims against six (6) parties whom had received payments that presented characteristics of unfair preferences. We have reached a settlement with the two parties resulting in \$1.1m of recoveries. The remaining four claims are ongoing, please refer to section 3.1.1 for further details.

Return to creditors

- The declaration and distribution of a dividend to priority and unsecured creditors of the Company is subject to further 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	25.3 cents	0.0 cents
Employees (Preferential Creditors)	100.0 cents	0.0 cents
Unsecured Creditors	25.3 cents	0.0 cents

Meeting of creditors

- A meeting of creditors will be held via webinar on Friday, 29 January 2021 at 11:00AM (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 new Funding Agreement with the Commonwealth of Australia (acting through the Attorney-General's Department) pursuant to section 477(2B) of the Act. The purpose for this Funding Agreement is to fund the next stage of our investigations and to further pursue the Uncommercial Transaction Claim. The Funding Agreement is further discussed at Section 4.



- Due to the COVID-19 pandemic and consistent with the government policy on gatherings, it is not appropriate to hold a physical meeting of Creditors. Accordingly the meeting will be held as a webinar. Details of the meeting can be obtained by contacting Ben Gan of this office.
- At the meeting, we will be seeking approval of our additional remuneration for the following periods:
 - 1 July 2020 to 31 December 2020 for \$94,866.50 (excluding GST and disbursements); and
 - 1 January 2021 to 31 December 2021 for \$250,000.00 (excluding GST and disbursements).

Please refer to Section 7 of this report for further information on the costs of the Liquidation.

- Creditors voting by proxy are required to complete and return the proxy form by 4:00PM (AEDT) on Thursday, 28 January 2021 to Ben Gan of this office at ben.gan@bdo.com.au.

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 update of the investigations conducted to date;
- Approve the Liquidators entering into a Funding Agreement;
- Approve the remuneration of the Liquidators; and
- Advise you of the likelihood of a dividend being paid in the liquidation.

3. INVESTIGATIONS AND RECOVERY ACTIONS

The key focus of the liquidation since our last report has been investigating rights of action available to the Liquidators for the benefit of creditors.

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.

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

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

3.1 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 investigations into the Company's affairs to identify any potential recovery actions available to the Liquidators.

3.1.1 Unfair Preferences

An unfair preference is a payment made to an unsecured creditor of the company in the six months preceding the statutory "relation-back day", being the date that the winding up application was filed in respect of the Company (or in the four years preceding the "relation-back day" 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; and
- 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.

Should we determine that the payments present a preferential nature, 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.

Six (6) parties have received payments which represent a payment which is preferential in nature.

We provide the following update on unfair preferences claims:

Party	Claim	Status
Australian Taxation Office	\$1,618,601.00	Settlement of \$1,000,000 was received on 2 December 2019.
Queensland Office of State Revenue	\$117,583.00	Settlement of \$100,000 was received on 1 October 2019.
Revenue NSW	\$357,623.00	Without prejudice discussions with Revenue NSW are ongoing. A settlement has not yet been achieved.

The remaining three (3) parties have defended the claim. We intend to commence proceedings against these parties in the near future.

As previously advised, further transactions totalling \$664,650 that have the characteristics of unfair preference payments have been identified and are summarised as follows:

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

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

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

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

3.1.2 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 in previous reports, the Supreme Court of Queensland ordered that the Company be wound up on 17 October 2018. In those proceedings, Justice Dalton held that the continuation of the administration was not in the best interests of creditors (i.e. the test in section 440A of the Act had not been satisfied) based on two reasons:

1. The termination of the licence agreement between Max Brenner Industries Ltd and the Company on 17 October 2018 and its effect on the Company's ability to trade and any potential sale of the Company's assets; and
2. The need for the sale of the Property to be investigated by the Liquidators of the Company.

In relation to the second reason, her Honour noted that:

"[t]here is some material before the Court which certainly shows a case for investigation as to whether or not that sale was at an undervalue at a time when the [Company] was insolvent. The material before the Court is to the effect that that under value might be in the vicinity of around \$20 million. So it certainly is something that needs to be investigated."

Our investigations indicated that the Property was transferred to the Secured Creditor on 24 November 2017.

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

Progress on claim

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

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

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

1. Citadel will provide the Liquidators with fourteen (14) days' prior written notice of its entry into:
 - (a) any agreement for the sale or other disposition of any interest in the Property, or any transaction or dealing which creates or confers an interest in the Property (including without limitation the entry into a contract for the sale of land or any other form of sale agreement or transfer, the entry into any option agreement, or the grant of any security by mortgage). Such written notice is to be given to the Liquidators' solicitors and is to include notice of the terms of the sale or other disposition; or
 - (b) any transaction involving a refinance of the current facility or any other financier, or any replacement mortgage or security as part of any refinance of the current facility, and Citadel will provide the Liquidators with evidence of the identity of the financier and the terms of the finance, including those terms which evidence the amount(s) which will be secured by any security provided by Citadel over the Property.

2. In the event that the Property is sold for any reason, Citadel will, independently of and in addition to and without limiting the terms of the undertaking in paragraph 1:
 - (a) provide written notice to the Liquidators of the sale of the Property and the estimated proceeds of sale; and
 - (b) hold the net proceeds of sale remitted to Citadel (after repayment of bank debt secured by first mortgage on the Property and any agent costs and other selling costs) in a separate bank account for a period of fourteen (14) days after provision of the written notice referred to in paragraph 2(a), and will not deal with or in any way dispose of such proceeds of sale within that fourteen (14) day period.

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

To commence the substantive action in relation to the Uncommercial Transaction Claim, we are seeking further funding from the Funder. Please refer to Section 4 of this report for further information.

If creditors have any further information which would assist our investigations, we request that this information is provided to the Liquidators in writing. Should any creditor wish to consider funding the potential action, please contact this office.

3.1.3 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. These transactions are subject to the Funding Agreement entered into with the Funder.

We will investigate these payments further and commence action to recover these amounts if it is deemed commercially viable and if funding is available. Please refer to Section 3.2.1 regarding the Directors' personal position.

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.

3.1.4 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 are investigating loans from two parties which may be unfair. These transactions are subject to the Funding Agreement entered into with the Funder.

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

3.2 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 (sections 588GA or 588GAA 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 whilst insolvent from 30 June 2016 if not earlier. A claim will be made in the Bankruptcy of the Directors.

3.2.1 Directors' Personal Position

As detailed in our report to creditors dated 26 August 2020, we previously advised of the Bankruptcy status of the Directors of the Company. On 23 December 2019 Tamir and Lilach Haikin were declared bankrupt pursuant to a debtors petition. The Directors Bankruptcy reference is NSW 4497/19/2.

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.

We have been in contact with the Bankruptcy Trustee and have registered the Company as a creditor in the Bankruptcy. The first meeting of Creditors in the Bankruptcy was held on 3 February 2020. We attended the first meeting to formally note our intention to submit a claim in the bankruptcy.

We provided a high level update to the Bankruptcy Trustee on investigations to date and provided our most recent report to creditors.

The Bankruptcy trustee has requested a copy of the Directors Loan account from the books and records of the Company and copies of the AMEX statements. These have been provided to the Trustee.



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.

On 29 October 2020, the Bankruptcy Trustee notified the Liquidators of the current position of the Bankruptcy with no funds currently available. Therefore, any dividend as a result of the Bankruptcy at this stage is unlikely. We will continue to liaise with the Bankruptcy Trustee should there be any further progress.

If creditors have any information which would assist our or the Bankruptcy Trustee's investigations, we request that this information is provided to the Liquidators or the Bankruptcy Trustee 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.

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

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

4. FUNDING FOR FURTHER INVESTIGATIONS

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

- Public Examinations;
- Investigations into the financial affairs of the Company;
- Legal advice about potential claims available to the Company and/or the Liquidators; and
- Taking others steps that are reasonably necessary to undertake the above work and preserve assets.

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

We will be asking creditors to approve a resolution authorising the Liquidators to enter into a further amendment to 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.

Please find attached at Annexure D 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).

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



5. LIKELIHOOD OF DIVIDEND

Please refer to the Estimated Outcome Statement enclosed at Annexure E. 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	25.3 cents	0.0 cents
Employees (Preferential Creditors)	100.0 cents	0.0 cents
Unsecured Creditors	25.3 cents	0.0 cents

A return to Employees (Preferential Creditors) and ordinary unsecured creditors of the Company is contingent on substantial recoveries from the voidable transactions discussed in section 3 of this report.

6. RECEIPTS AND PAYMENTS

Please refer to Annexure F for a summary of receipts and payments as at 31 December 2020.

7. COSTS OF THE LIQUIDATION

Liquidators Remuneration

To date, creditors have approved the Liquidators' total remuneration to 30 June 2020 in the amount of \$767,302.25. In our report to creditors dated 26 August 2020 we advised that no additional remuneration would be sought following 30 June 2020 until such time that the Liquidators and the Funder were satisfied with the progress of the uncommercial transaction claim.

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

- Retrospective remuneration for the period 1 July 2020 to 31 December 2020 in the amount of \$94,886.50; and
- Prospective remuneration for the period 1 January 2021 to 31 December 2021 in the amount of \$250,000.

A portion of the \$250,000 will be paid by the Funder should the new Funding Agreement be approved by creditors or the Court.

Indemnities

On 19 October 2018, Opera provided an indemnity to the Liquidators in respect of any trading expenses incurred during the Liquidation. Creditors will recall that Opera purchased the business from the Liquidators. 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. This indemnity has been used to pay \$331,119.75 (excluding GST) of my remuneration for the period 1 July 2019 to 30 June 2020. I do not anticipate relying on this indemnity in the future.

At the meeting of Creditors on 19 September 2019 an amount of \$250,000 was approved for the period 1 August 2019 to 30 June 2020. The Liquidators only incurred \$232,493.50 of time costs and as such are unable



to draw on the remaining \$17,506.50. The amount of \$232,493.50 included an amount of \$77,483.50 that was indemnified by the Funder.

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

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.

Former Administrators' Remuneration

At the meeting of creditors held on 19 September 2019, creditors approved the remuneration of the former Administrators'. In our report to creditors dated 26 August 2020, we previously advised the former Administrators' expected shortfall of costs and remuneration was c. \$120,000. Pursuant to Section 556 (1) (c) of the Act the Former Administrators hold a lien over the recoveries in any relation to any shortfall. We can confirm that the shortfall was \$117,477.43 which was transferred to the former Administrators' on 7 September 2020. No further liabilities are outstanding to the former Administrators.

8. MEETING OF CREDITORS

A meeting of creditors to consider this update, approved the Funding Agreement and our remuneration will be held as follows:

Meeting Details	
Date	Friday, 29 January 2021
Time	11:00 AM (AEDT)
Attendance	Via Webinar

Due to the COVID-19 pandemic and consistent with the government policy on gatherings, it is not appropriate to hold a physical meeting of Creditors. Accordingly the meeting will be held as a webinar. Details of the meeting can be obtained by contacting Ben Gan of this office.

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 Thursday, 28 January 2021 at 4:00PM (AEDT).

Should you have any queries in relation to the meeting please do not hesitate to contact Ben Gan of our office on 02 8264 6679 or via email ben.gan@bdo.com.au.



9. MATTERS OUTSTANDING

We will proceed with the liquidation, including:

- Hold the next meeting of creditors on Friday, 29 January 2021;
- Further liaise with the ATO in relation to reconciling the actual claim for outstanding employee superannuation contributions;
- Reporting to the corporate insolvency regulator, ASIC, pursuant to section 533 of the Act;
- Continue our investigations with respect to the Unfair Preferences, Unreasonable Director Related Transaction and issuing demand letters to any relevant party. If applicable, commence legal proceedings to pursue recovery if funding is available;
- Continue 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 Employees (Preferential Creditors) (or to FEG in relation to amounts advanced to priority (employee) creditors); 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.

10. 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. Attached at Annexure H is the ARITA Guide for Creditors.

ASIC provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at www.asic.gov.au.

11. DISCLAIMER

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

- a) When preparing this report and the accompanying documents, the Liquidators have relied on the available books and records, financial accounts and other documentation pertaining to the Company's affairs.
- b) When preparing this report and the accompanying documents, the Liquidators have relied on the advice of the Company's officers and/or senior management.
- c) The Liquidators have not conducted an audit of the books and records, financial accounts and other documentation pertaining to the Company's affairs.
- d) Whilst the Liquidators have endeavoured to verify the accuracy or otherwise of the records, the financial accounts and other documentation pertaining to the Company's affairs and the advice of



the Company's officers, the Liquidators give no warranty as to the accuracy, completeness or reliability of same.

- e) The Liquidators undertake no responsibility arising in any way whatsoever to any person for errors or omissions however caused by way of this report, or accompanying documents.

12. 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. 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.

13. 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. 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

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 on 29 January 2021 at 11:00am via webinar.

The purpose of this meeting is:

1. To approve the remuneration of the Liquidators, their partners and staff for the period 1 July 2020 to 31 December 2020 on a time basis up to a maximum amount of \$94,886.50 exclusive of GST and disbursements;
2. To approve the remuneration of the Liquidators, their partners and staff for the period 1 January 2021 to 31 December 2021 on a time basis in the amount of \$250,000 exclusive of GST and disbursements; and
3. To approve that the Liquidators can enter into a further funding agreement pursuant to Section 477 of the Corporations Act.

Telephone conference facilities can be made available for creditors at the meeting. Creditors who wish to attend are requested to contact Ben Gan of this office on telephone number (02) 8264 6679, 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 14th day of January 2021.



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 creditor¹)

for (insert amount of claim in words)

	dollars and	
		cents

Particulars of the debt are (give details of claim²):

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 following³:

3. ⁴I 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 29 January 2021 at 11:00am 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
1. Liquidators' Remuneration To approve the remuneration of the Liquidators, their partners and staff for the period 1 July 2020 to 31 December 2020 on a time basis fixed in the amount of \$94,886.50 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2020. Such remuneration may be drawn as funds become available.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Liquidators' Remuneration To approve the remuneration of the Liquidators, their partners and staff for the period 1 January 2021 to 31 December 2021 on a time basis in the amount of \$250,000 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2020 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.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Approval of Funding Agreement 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.	<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’

Summary of Key Terms of Third Amendment Deed to Funding Agreement

	Components	Summary
Parties and Effective Date		
1.	Company	MB Australia Pty Ltd (In Liquidation)
2.	Liquidators	Andrew Sallway and Helen Newman
3.	Funder	The Commonwealth of Australia (acting through the Attorney-General's Department)
Funding for Agreed Work		
4.	Agreed Work	The Liquidators agreed to undertake the following further Agreed Work with funding from the Funder: <ul style="list-style-type: none"> Pursue recovery actions arising from uncommercial transactions entered into prior to the Company being wound up.
5.	Adverse Costs	The Funder is obliged to pay any adverse costs order that may be made against the Company or the Liquidators in the recovery actions, unless the costs order is the result of fraud, negligence or malicious, wilful or reckless default by the Liquidators or where the Court orders the Liquidators to be personally liable for the costs order. (The Liquidators note that, having regard to the Funder's obligation to pay any adverse costs order, the Liquidators anticipate that it is unlikely for the Liquidators to be ordered to provide security for costs).
Repayment		
6.	Repayment obligation	There is an obligation to repay the funding amount if the funded work results in the recovery of any moneys. The Liquidators will otherwise distribute any moneys recovered in accordance with Subdivision D in Part 5.6 of the Corporations Act. 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.
Participation by the Funder		
7.	Control	Generally speaking, the Liquidators have control over the Agreed Work. However, under the Agreement, the Funder is entitled, among other things: <ul style="list-style-type: none"> to be informed of the progress of the Agreed Work on a regular basis and upon request; 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 to participate in key meetings (including settlement discussions).
Term of Agreement		
8.	Term	The Amendment Deed: <ul style="list-style-type: none"> Will become operative on the date on which all parties have signed the Deed; and (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.

‘ANNEXURE E’

MB Australia Pty Ltd (In Liquidation)

Estimated Outcome Statement

	Low	High
Circulating assets		
Cash at Bank on appointment	-	-
Stock	270,360	270,360
Total Circulating Assets	270,360	270,360
Remuneration and Costs (Circulating)		
Administrators' Lien Claim	(270,360)	(270,360)
Liquidators' Remuneration (Circulating)	(183,357)	(183,357)
Liquidators' Costs (Circulating)	-	-
Legal Fees (Circulating)	-	-
Net Circulating Assets Available	(183,357)	(183,357)
Priority Creditors		
Wages	1,070,960	1,070,960
Superannuation	9,124,647	9,124,647
Annual and Long Service Leave	797,121	797,121
Retrenchment (PILN and Redundancy)	1,149,318	1,149,318
Total Priority Creditors	12,142,046	12,142,046
Surplus/(shortfall) in circulating assets	(12,142,046)	(12,142,046)
Estimated Return to Priority Creditors (c/\$)	-	-
Circulating assets available for creditors	Nil	Nil
Non-Circulating assets		
Plant and Equipment and Fixed Assets	1	1
Total Non-Circulating Assets	1	1
Remuneration and Costs (Non-Circulating)		
Legal Fees (Non-circulating)	(26,000)	(26,000)
Liquidators' Remuneration (Non-circulating)	(34,269)	(34,269)
Total Costs Attributable to Non-Circulating Assets	(60,269)	(60,269)
Surplus Non-Circulating assets available	(60,268)	(60,268)
Secured Creditor		
Secured Creditor Claim: Wentworth Group	32,917,366	32,917,366
Estimated return to secured creditor (c/\$)	0.0	0.0
Total Assets available to creditors	Nil	Nil
Potential recoveries		
Bank Guarantees and Turnover Rent Adjustment	42,876	42,876
Preference Payments	1,250,000	1,450,000
Director Related Transaction	-	-
Uncommercial Transactions (net of costs)	-	20,000,000
Total Recoveries Available for Distribution	1,292,876	21,492,876
Petitioning Creditor Costs	(216,884)	(216,884)
Administrators' lien claim (shortfall)	(117,477)	(117,477)
Estimated Liquidator and Legal Fees	(1,881,456)	(2,656,456)
Net Shortfall from Circulating Non-Circulating Assets	(243,625)	(243,625)
Less: Liquidator and Legal Fees Funded by the Purchaser	759,313	759,313
Available for Priority Creditors	-	19,017,746
Priority Creditors		
Wages	1,070,960	1,070,960
Superannuation (incl penalties and interest)	2,510,005	2,510,005
Annual and Long Service Leave	797,121	797,121
Retrenchment (PILN and Redundancy)	1,149,318	1,149,318
Total Priority Creditors	5,527,404	5,527,404
Surplus/(shortfall) in Recoveries	(5,527,404)	13,490,342
Estimated Return to Priority Creditors (c/\$)	-	100.0
Unsecured creditors		
Trade Creditors	17,522,287	17,522,287
Statutory Creditors	1,922,533	1,922,533
Secured Creditor Shortfall	32,917,366	8,117,366
Related Party Creditors	25,742,562	25,742,562
Total Unsecured Creditors	78,104,748	53,304,748
Estimated Return to Unsecured creditors (c/\$)	-	25.3

‘ANNEXURE F’

MB Australia Pty Ltd (In Liquidation)
Summary of Receipts and Payments - as at 31 December 2020

Receipts	Amount (\$)
Bank Guarantee	16,366
Contributions	954,318
Dividend Received	13,878
FEG Funding	577,598
GST Refund	107,715
Interest Income	2,296
Legal Recoveries	1,100,000
Sales	1,236,921
Stock/Inventory on Hand	308,860
Total Receipts	4,317,952

Payments	Amount (\$)
Administrators Lien	392,276
Appointee Disbursements	11,775
Appointee Fees	476,041
Bank Charges	16,647
Broker Fees	6,089
Cleaning Expenses	25,657
Contributions	85,000
Employee Allowances	2,900
FOI Application Fee	60
Freight Outwards	5,642
GST Paid	54,983
Hire Purchase Lease Equipment	59,329
Insurance	21,123
IT Expense	12,526
Legal Disbursements	121,091
Legal Fees	1,048,579
Merchant Fees	19,768
Motor Vehicle Expenses	41
PAYG Control	44,436
Petitioning Creditor Costs	216,884
Policy Fees	22
Purchases (GST Free)	68,420
Purchases (GST Inclusive)	192,357
Refund of Delivery Sales	29,481
Rent & Rates	382,381
Repairs & Maintenance	32,032
Security Expenses	627
Stamp Duty	1,033
Stock/Inventory on Hand (Deposit from Sale Agreement)	30,000
Store Expenses (Music)	1,058
Subcontractors	8,440
Utilities	20,472
Valuation Costs	7,150
Wages & Salaries (Net of PAYG, Superannuation and Payroll Tax)	366,963
Total Payments	3,761,282
Net Receipts and Payments	556,670

‘ANNEXURE G’



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, \$767,302.25 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		\$767,302.25
Resolution 1: 1 July 2020 to 31 December 2020	(A & B)	\$94,886.50
Resolution 2: 1 January 2021 to 31 December 2021	(C)	\$250,000.00
Total approval sought		\$344,866.50
Total approval for liquidation		\$1,112,188.75

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 \$331,119.75 (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 H of this report and located in my report dated 4 September. As at the date of this report, the indemnity totals \$77,483.50 (excluding GST).

The indemnified amounts are 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 totalling \$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 ¹	Summary ²
Resolution 1: 1 July 2020 to 31 December 2020	Schedule A	Schedule B
Resolution 2: 1 January 2021 to 31 January 2021	Schedule C	N/A

Notes:

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

Part 4: Statement of Remuneration Claim

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

Resolution [1]: 'To approve the remuneration of the Liquidators, their partners and staff for the period 1 August 2020 to 31 December 2020 on a time basis fixed in the amount of \$94,886.50 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2020. 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 January 2021 to 31 January 2021 on a time basis in the amount of \$250,000 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2020 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, we estimate that the total remuneration for this Liquidation will be \$1,112,188.75, excluding GST. This includes the current approval amount being sought of \$344,886.50.

In our previous creditors' report on 26 August 2020, we notified creditors that we would not be seeking remuneration approval from creditors following 1 July 2020 until such time that the Liquidators and the



Funder were satisfied with the progress of the uncommercial transaction claim. We now seek remuneration approval from creditors for the period 1 July 2020 to 31 December 2020.

We also seek approval for our future remuneration to progress the liquidation for the period 1 January 2021 to 31 January 2021. An explanation of tasks remaining to be completed, including our estimated costs to complete those tasks, to support our current remuneration approval request in Schedule C.

In preparing this remuneration approval report, we have made our best estimate at what we believe the liquidation will cost to complete and we do not anticipate that we will have to ask creditors to approve any further remuneration. 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.

Although we have proposed \$250k to progress the liquidation for the next 12 months, matters that may affect the progress and the cost of the Liquidation include:

- Further issues surrounding Company's secured creditor;
- Continued dealings with creditor queries;
- Further pursuit of identified preference payments and voidable transactions;
- Additional time that may be required to resolve the uncommercial transaction claim;
- Complications with adjudications on the proofs of debt; and
- The dividend process.

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 (High) (c/\$)	Liquidation (Low) (c/\$)
Secured Creditor	25.3 cents	0.0 cents
Employees (Preferential Creditors)	100.0 cents	0.0 cents
Unsecured Creditors	25.3 cents	0.0 cents

Part 6: Statement of Disbursements Claim

Disbursements are divided into three types:

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

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

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

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

Part 7: Report on Progress of the Liquidation

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

We are continuing 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 \$331,119.75 (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 H of this report and located in my report dated 4 September. As at the date of this report, the indemnity totals \$77,483.50 (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. 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 draw on any fee approval for any shortfall.

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 2020 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) or alternatively a copy can be obtained if you contact this office.

Yours faithfully,



Andrew Sallway
Joint and Several Liquidator

Schedule A: Description of Work completed

Resolution 1: 1 July 2020 to 31 December 2020

	General Description	Includes
Administration 50.10 Hrs \$ 21,616.50	Planning / Review	Attended to all statutory requirements Liaised with our solicitors on progress of liquidation Internal meetings on the status of liquidation
	Correspondence	General correspondence with third parties
	Document Maintenance / File Review / Checklist	File of documents File reviews Update checklists
	Banking	Bank account reconciliations Corresponded with St George and NAB regarding specific transactions and account details Payments made to third parties
	ASIC Forms & Other Statutory Lodgements	Corresponded with ASIC regarding statutory forms Completed BAS lodgements Complete ASIC form 5602
Creditors 68.80 Hrs \$ 28,236.00	Creditor Enquiries	Telephone conversations with creditors Receive and follow up creditor enquiries via telephone, email and post 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 on the file and MYOB
	Creditor Report	<p>Prepare report to creditors dated 26 August 2020</p> <p>Prepared update to creditors dated 23 December 2020</p> <p>Draft report to creditors for January 2021</p> <p>Prepared Liquidators' remuneration report</p>
<p>Employees</p> <p>23.50 Hrs</p> <p>\$ 10,331.50</p>	Employee Enquiries	Responded to ongoing employee queries including entitlements and superannuation
	Superannuation Guarantee	<p>Liaised with the Company's pre-appointment superannuation fund for a reconciliation of employer contributions</p> <p>Reconciled ATO proof of debt with pre-appointment SGC contributions</p>
<p>Investigations</p> <p>68.90 Hrs</p> <p>\$ 34,702.50</p>	Conducting investigation	<p>Review Legal Advice about potential claims available to the Company and/or the Liquidators</p> <p>Meetings with the Funder to discuss progress of litigation</p> <p>Meetings with the Funder regarding the amendments to the Funding Agreement and proposed new Agreement</p> <p>Prepare monthly reports to the Funder</p> <p>Discussions with solicitors regarding uncommercial transaction claim</p> <p>Prepare information pack for the valuation of the Doody Street Property</p> <p>Discussions on valuation of Doody Street Property</p> <p>Attended court regarding lapsing notice on caveat</p> <p>Prepared an updated Liquidators' Estimated Outcome Statement</p> <p>Dealings with the Secured Creditor regarding the Caveat placed on the property</p>
	ASIC reporting	<p>Prepared statutory investigation reports</p> <p>Liaise with ASIC</p>



Schedule B: Summary of Work Completed

Resolution 1: Liquidators' Remuneration for the Period from 1 July 2020 to 31 December 2020

Staff	Staff Position	Hourly Rate	Total		Administration		Creditors		Employees		Investigations	
			Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Andrew Sallway	Appointee	665.00	29.70	19,750.50	2.20	1,463.00	3.00	1,995.00	6.50	4,322.50	18.00	11,970.00
Ben Carney	Manager	465.00	10.00	4,650.00	10.00	4,650.00	-	-	-	-	-	-
Tom Whitmarsh	Manager	465.00	98.20	45,663.00	24.40	11,346.00	29.50	13,717.50	1.20	558.00	43.10	20,041.50
Ben Gan	Accountant	345.00	69.40	23,943.00	9.50	3,277.50	36.30	12,523.50	15.80	5,451.00	7.80	2,691.00
Daniel Maras	Assistant Accountant	220.00	4.00	880.00	4.00	880.00	-	-	-	-	-	-
Total			211.30	94,886.50	50.10	21,616.50	68.80	28,236.00	23.50	10,331.50	68.90	34,702.50
GST				9,488.65								
Total (Incl. GST)				104,375.15								
Average hourly rate				449.06								

Schedule C: Description of Anticipated Work

Resolution 2: 1 January 2021 to 31 December 2021

	General Description	Includes
Administration \$15,000	Planning / Review	Attend to all statutory requirements Discuss the status of liquidation
	Correspondence	General correspondence with third parties
	Document Maintenance / File Review / Checklist	File of documents File reviews Update checklists Complete monthly BAS statements
	Banking	Bank account reconciliations Correspond with St George and NAB regarding specific transactions and account details
	ASIC Forms	Correspond with ASIC regarding statutory forms
Creditors \$60,000	Creditor Enquiries	Telephone conversations with creditors Receive and follow up creditor enquiries via telephone, email and post 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 on MYOB

	Creditor Report	<p>Finalise report to creditors</p> <p>Prepare and finalise Liquidators' remuneration report</p>
	Creditor Meeting	<p>Convene and hold meeting of creditors on 29 January 2021</p> <p>Prepare meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors and notice of meeting</p> <p>Review and approve proofs and proxies, attendance register etc. at the meeting</p> <p>Respond to stakeholder queries and questions immediately following meeting</p> <p>Prepare and lodge the minutes of the meeting with the ASIC</p>
Employees \$5,000	Employee Enquiries	Responded to ongoing employee queries
Investigations \$130,000	Conducting investigation	<p>Finalise new Funding Agreement with the Funder (subject to the approval of creditors)</p> <p>Continue discussions with parties whom have received preferential payments</p> <p>Consult solicitors on next steps in progressing uncommercial transaction claim</p> <p>Commence legal proceedings against outstanding preferential claims (if required)</p> <p>Attend mediation for Uncommercial Transaction Claim (if required)</p> <p>Issue monthly reports to Funder</p> <p>Prepare investigation file for Solvency Report</p> <p>Prepare insolvent trading claim against the Directors</p> <p>Public examinations (if further required)</p> <p>Attend to signed transcripts of the Directors</p> <p>Investigations into the financial affairs of the Company</p>

	ASIC reporting	Prepare statutory investigation reports Lodge with ASIC a report pursuant to Section 533 of the Corporations Liaise with ASIC
Dividend \$40,000	Dividend	Preparation of correspondence to creditors advising of intention to declare dividend Advertisement of intention to declare dividend Obtain clearance from ATO to allow distribution of company's assets Preparation of dividend calculation Preparation of correspondence to creditors announcing declaration of dividend Advertise announcement of dividend Preparation of distribution Preparation of dividend file

Business Restructuring - Corporate Rates as at 1 July 2020

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 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.