



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

23 OCTOBER 2023

PRIVATE AND CONFIDENTIAL

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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 23 October 2023.

This report should be read in conjunction with our previous reports, which can be found on 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.

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

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.

SECTION 1

EXECUTIVE SUMMARY



EXECUTIVE SUMMARY

Item	BDO comment
Doody Street litigation	<p>Following our investigations into the transfer of the Property, the Liquidators commenced the Doody Street Litigation with funding provided by the Commonwealth of Australia (acting through the Attorney-General's Department).</p> <p>Subject to creditor approval pursuant to s477(2B) of the Act, the Liquidators and the Defendants have agreed in principle to a settlement in the litigation.</p>
Mothership proceedings	<p>The Liquidators' commenced Mothership Proceedings against 10 defendants.</p> <p>These proceedings related to various liquidators' rights of action, including unfair preference payments and unreasonable director-related transactions.</p> <p>As previously advised, all active defendants' claims were settled before the final hearing scheduled for May 2023. Two of the Mothership Defendants were placed in liquidation during the proceedings.</p>
Dividend to creditors	<p>The estimated range of returns to creditors is as follows:</p> <ul style="list-style-type: none">▶ Priority (employee) creditors (ex. retrenchment) 99 to 100 cents in the dollar▶ Priority (employee) creditors (retrenchment) 0 to 47 cents in the dollar▶ Unsecured creditors 0 cents in the dollar
Meeting of creditors	<p>A meeting of creditors will be held via webinar on Monday, 6 November 2023 at 10:00 am (AEDT). For those wishing to attend, please contact Nathan Moxey of my office for webinar details</p> <p>We enclose the Notice of Meeting of Creditors (Annexure A), Formal Proof of Debt (Annexure B) and Proxy Form (Annexure C). The Liquidators will be seeking creditor approval of the following resolutions:</p> <ol style="list-style-type: none">1. The Liquidators' remuneration for the period 1 June 2023 to 30 September 2023; and2. The Liquidators' executing a deed of settlement in relation to the Doody Street Proceedings pursuant to s477(2B) of the Act. <p>Creditors voting by proxy are required to complete and return the proxy form by 4:00 pm (AEDT) on 3 November 2023 to Nathan Moxey of this office at nathan.moxey@bdo.com.au.</p>

SECTION 2

INVESTIGATIONS AND RECOVERY ACTIONS

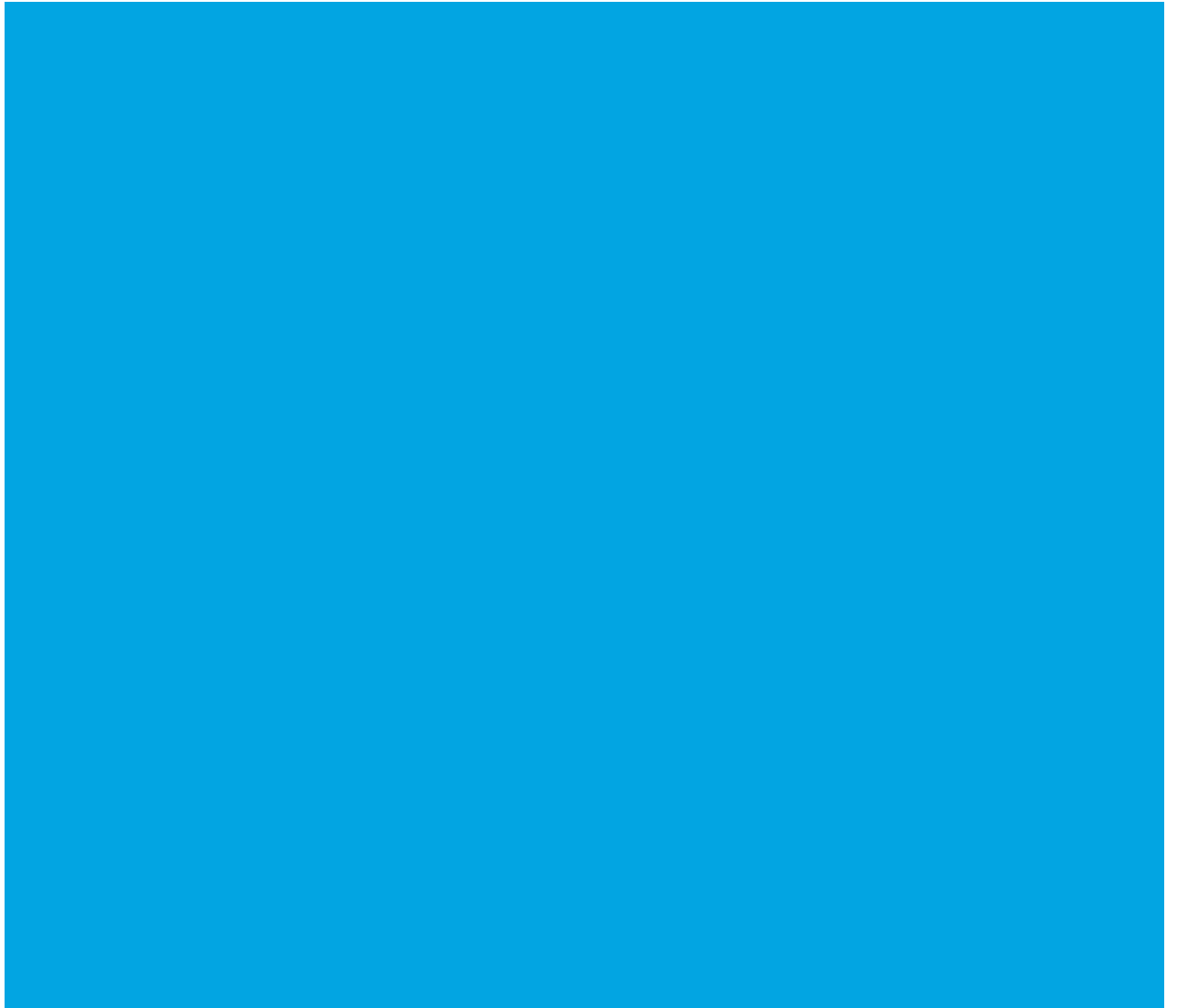


INVESTIGATIONS AND RECOVERY ACTIONS

Area	BDO comment
Doody Street litigation	<p>The Doody St Proceedings against Wentworth were funded by the Commonwealth as previously approved by Creditors.</p> <p>A first mediation was attended by Wentworth, the Liquidators, their respective lawyers and the Commonwealth on 3 September 2021. No settlement was agreed.</p> <p>A second mediation was held on 25 July 2023 for the purpose of resolving the Doody Street Litigation before further considerable costs were incurred in preparing for the final hearing. Following the mediation, the Liquidators and Wentworth entered a deed of settlement.</p> <p>As the terms of the settlement with Wentworth provided for settlement payments over a twelve-month period, the Liquidators require creditor approval to enter the arrangement pursuant to s477(2B) of the Act. A resolution in relation to this matter will be proposed to creditors at the creditor meeting to be held on 6 November 2023.</p> <p>Included in Annexure E is a disclosure to creditors in relation to the Doody Street settlement.</p>
Mothership proceedings	<p>The Mothership Proceedings were funded by CFA as previously approved by Creditors.</p> <p>These proceedings related to various liquidators' rights of action, including unfair preference payments and unreasonable director related transactions. All active claims in the Mothership Proceedings have been settled.</p> <p>The Liquidators settled a total of 13 unfair preference claims amounting to \$2,205,700.</p> <p>Having regard to the quantum of the settlements and the terms of the funding agreement with CFA for the Mothership Proceedings, there will be no benefit to any class of creditors from the Mothership Proceedings settlements.</p>
Reports to ASIC	<p>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 directors have committed offences. We reported to ASIC that the Directors had breached duties and traded the Company whilst insolvent.</p> <p>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 still yet to receive a response from ASIC in relation to the supplementary report.</p>
Bankruptcy of Tamir Haikin	<p>Throughout the liquidation of the Company, a number of creditors have contacted the Liquidators, expressing disappointment with the limited investigations undertaken by the bankruptcy trustee of Tamir Haikin. The bankruptcy trustee has responded by explaining that he has limited funding to undertake any meaningful investigations.</p> <p>As a consequence, the Liquidators approached FEG, who agreed to provide limited funding to appoint a replacement bankruptcy trustee to undertake these investigations. The meeting to replace the incumbent trustee was held on 7 June 2023. The resolution relating to the replacement of the trustee was not passed. The liquidators do not propose to take any further actions in relation to the bankruptcy.</p>

SECTION 3

ESTIMATED RETURN TO CREDITORS



ESTIMATED RETURN TO CREDITORS

The estimated return to creditors has been updated as follows:

Liquidation Return	Low (c/\$)	High (c/\$)
Secured Creditor	0.0 cents	0.0 cents
Employees (Excl. PILN and Retrenchment)	99.3 cents	100.0 cents
Employees (PILN and Retrenchment)	0.0 cents	46.6 cents
Unsecured Creditors	0.0 cents	0.0 cents

Please refer to **Annexure D** for the full Estimated Outcome Statement.

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 liaised with the Company's pre-appointment superannuation fund, REST Industry Super, obtaining records detailing all employee contributions 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. Once the reconciliation has been completed, we expect the ATO will update their proof of debt. This matter has a direct impact on the estimated return to preferential creditors.

No changes have been made to the below estimates since our last report to creditors.

	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
Total (incl FEG advanced amounts)	12,305,497	6,038,778

Unsecured Creditors

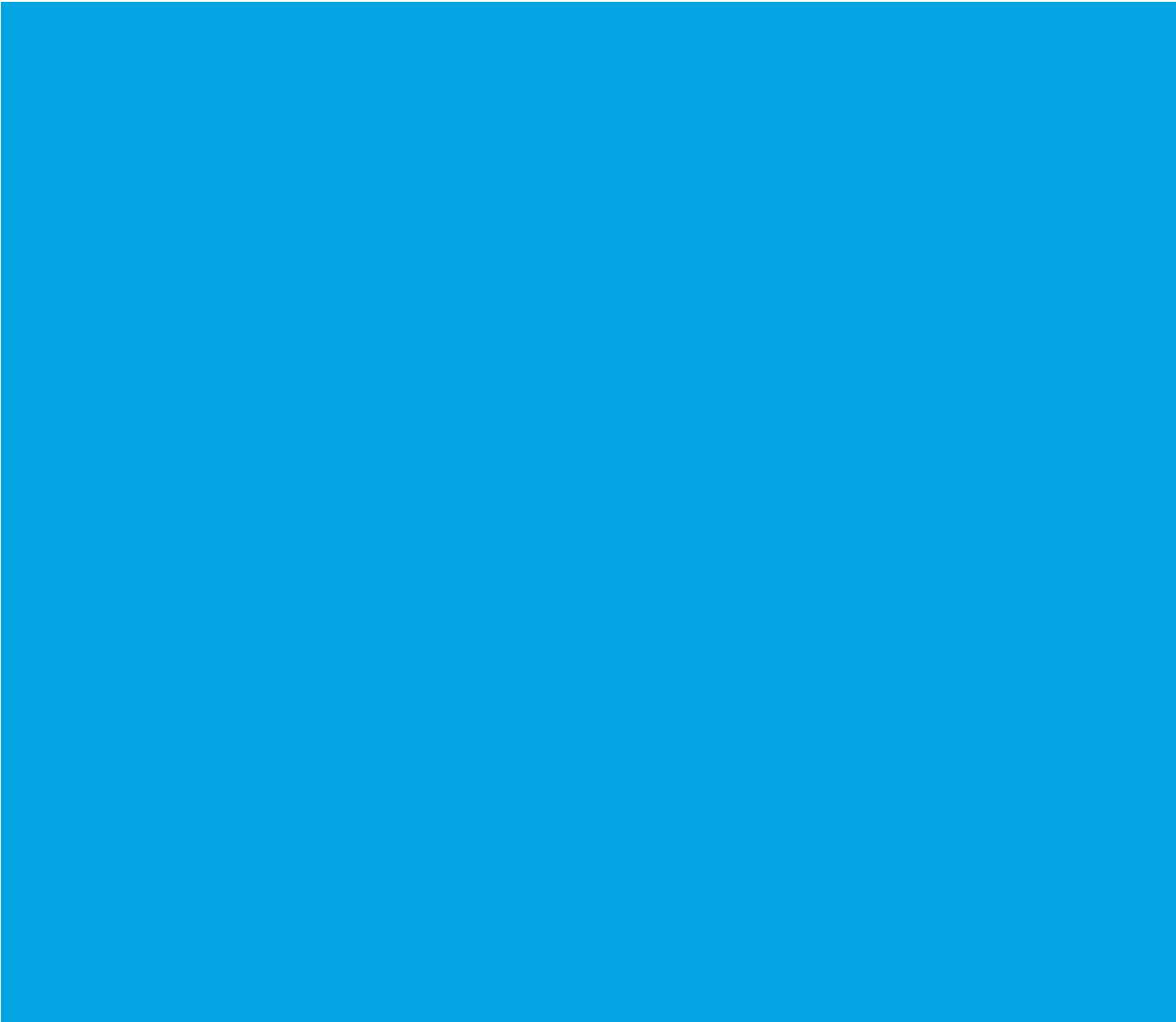
Unsecured creditors have lodged 72 proofs of debt, totalling \$17,522,287. This excludes claims by:

- ▶ 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.

SECTION 4

RECEIPTS AND PAYMENTS



Receipts and Payments Summary - MB Australia Pty Ltd (In Liquidation)**18 October 2018 to 23 October 2023****23-Oct-23**

Receipts	Amount (Incl. GST)
Bank Guarantee	16,365.53
Contributions	954,317.54
Dividends Recoverable	13,878.37
FEG Funding	2,567,278.77
CFA Funding	1,428,484.61
ATO Refund	353,248.55
Interest Income	38,721.26
Incorrect Deposits	4,624.72
Lease Costs Refund	215.00
Legal Recoveries	1,993,950.00
Rental Refund	8,517.70
Sales	1,236,921.13
Bank Fee Refunds	29.27
Stock/Inventory on Hand	308,860.44
TOTAL Receipts	8,925,412.89

Payments	Amount (Incl. GST)
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	(840,705.84)
Assignment Costs	(6,912.78)
Bank Charges	(22,738.96)
Bankruptcy Trustee Costs	(3,464.37)
Broker Fees	(6,088.50)
CFA GST Refunds	(129,862.00)
Cleaning Expenses	(25,656.64)
Contributions	(85,000.00)
FOI Application Fee	(60.00)
Freight Outwards	(5,641.61)
GST Paid	(62,887.00)
Hire Purchase Lease Equipment	(59,328.83)
Incorrect Deposits	(4,624.72)
Insurance	(21,123.39)
IT Expense	(56,425.71)
Legal Disbursements	(944,351.95)
Legal Fees	(3,533,014.51)
Meeting Costs	(7,611.52)
Merchant Fees	(19,767.96)
Motor Vehicle Expenses	(41.00)
Payroll Tax	(13,795.95)
PAYG Control (Paid)	(74,126.00)
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)
Reimbursement of Funder Costs	(711,950.00)
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	(19,910.00)
Wages & Salaries (Net of PAYG, Superannuation and Payroll Tax)	(366,963.32)
TOTAL Payments	(8,584,315.42)
Net Receipts and Payments	341,097.47

SECTION 5

LIQUIDATORS REMUNERATION



LIQUIDATORS REMUNERATION

To date, creditors and the Court have approved the Liquidators' remuneration to 31 May 2023 in the amount of \$1,848,234.25.

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

Period	Amount being sought (\$)
Resolution 1: 1 June 2023 to 30 September 2023	94,454.50
TOTAL	94,454,50

We note that a significant portion of the remuneration relating to the Doody Street and Mothership Proceedings has been funded by the Attorney General's Department and CFA.

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

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

SECTION 6

MEETING OF CREDITORS



MEETING OF CREDITORS

A meeting of creditors will be held via webinar on 6 November 2023 at 10:00 am (AEDT).

We enclose the Notice of Meeting of Creditors (**Annexure A**), Formal Proof of Debt (**Annexure B**) and Proxy Form (**Annexure C**). The Liquidators will be seeking creditor approval of the following resolutions:

- ▶ The Liquidators' remuneration for the period 1 June 2023 to 30 September 2023; and
- ▶ The Liquidators' executing a deed of settlement in relation to the Doody Street Proceedings pursuant to s477(2B) of the Act.

Further meeting information, including notice of the 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 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 a 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 on how you wish your vote to be cast. If you do this, the chairperson must cast your vote as directed.

Proof of debt and proxy forms are included with the notice of the 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 3 November 2023 at 4:00 pm (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.

SECTION 7

CONCLUSION



CONCLUSION

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.

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.

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.

Electronic Communications

If you would like to receive all communications electronically, please send an email to: 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.

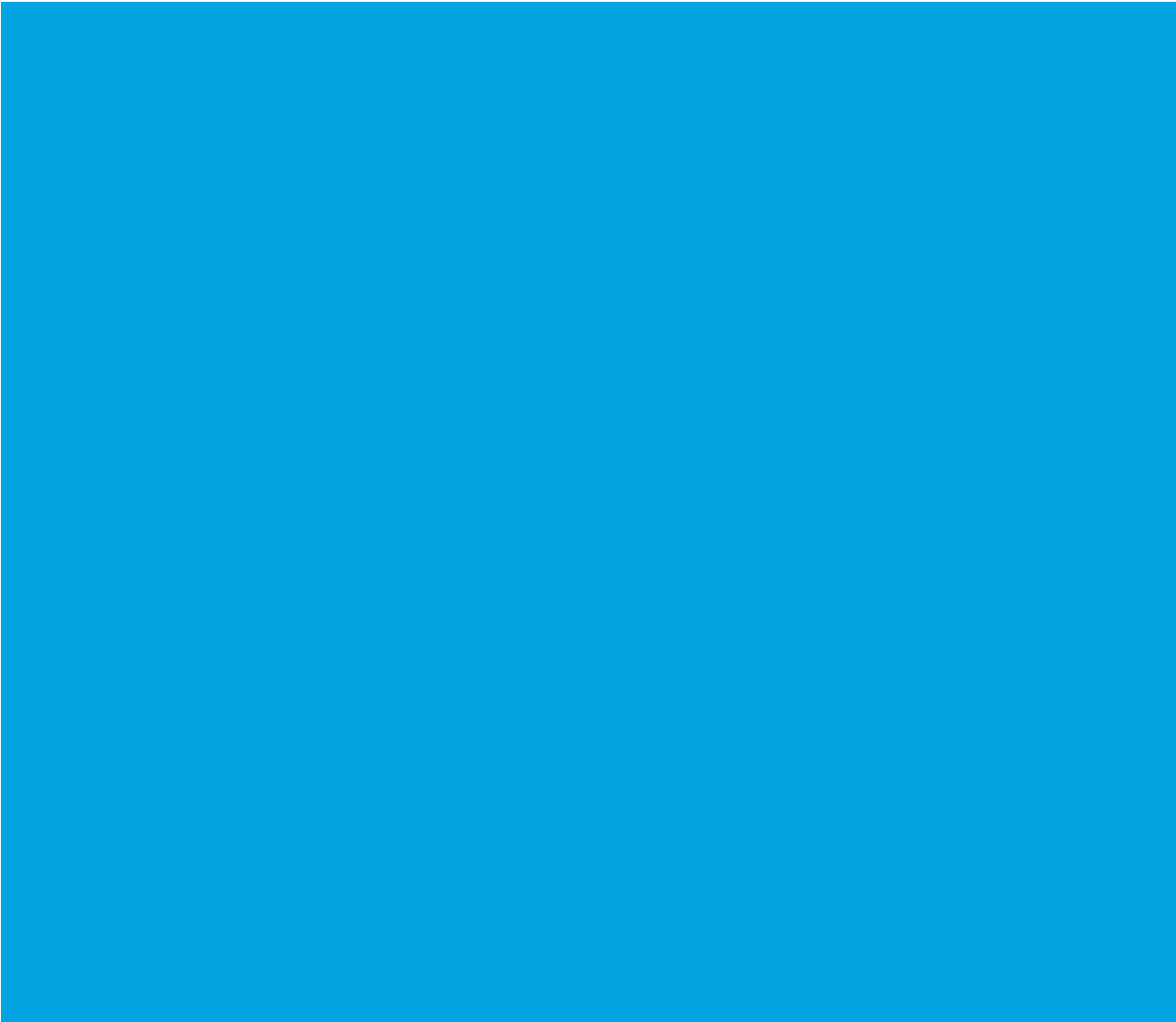
In the event that you are not satisfied with our handling of your query you may refer your complaint to the ASIC.

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.

SECTION 8

ANNEXURES

Annexure
A - Notice of Meeting
B - Proof of Debt Form
C - Proxy Form
D - Estimated Outcome Statement (EOS)
E - Doody Street Proceedings - Creditor Disclosure
F - Remuneration Report
G - ARITA Information Sheet



ANNEXURE 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, 6 November 2023, at 10:00 am (AEDT) via webinar.

The purpose of this meeting is:

1. To approve the remuneration of the Liquidators, their partners and staff for the period 1 June 2023 to 30 September 2023 on a time basis in the amount of \$94,454.50 exclusive of GST and disbursements; and
2. To approve of the Liquidators' executing a deed of settlement in relation to the Doody Street Proceedings pursuant to s477(2B) of the Act.

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 via email on Nathan.Moxey@bdo.com.au, 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 lodged particulars of their claim against the Company with us prior to the commencement of the meeting.

DATED this the 23rd day of October 2023.



Andrew Sallway
Joint and Several Liquidator

ANNEXURE 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 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

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, 6 November 2023 at 10:00AM (AEDT) 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>1. Liquidators' Remuneration</p> <p>To approve the remuneration of the Liquidators, their partners and staff for the period 1 June 2023 to 30 September 2023 on a time basis in the amount of \$94,454.50 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2022 and 1 July 2023. Such remuneration may be drawn as funds become available.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>2. Doody Street Deed of Settlement</p> <p>Pursuant to section 477(2B) of the Corporations Act 2001 (Cth), entry into the deed of settlement dated 26 September 2023 between the liquidators of MB Australia Pty Ltd, MB Australia Pty Ltd, Citadel Group Properties Pty Ltd, Wentworth Capital Group Pty, RS Family Holdings Pty Ltd, Zajasam Pty Ltd, Citadel Group Holdings Pty Ltd and Messrs Jamie Schwarz and Glenn Wein, be approved, nunc pro tunc.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

Signed

Dated

ANNEXURE D

Estimated Outcome Statement (EOS)

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MB Australia Pty Ltd (In Liquidation)

Estimated Outcome Statement

	Low	High
Liquidators' Rights of Action		
Liquidators' Actual and Estimated Recoveries	11,205,700	11,205,700
Bank Guarantees and Turnover Rent Adjustment	42,876	42,876
Total Recoveries Available for Distribution	11,248,576	11,248,576
Petitioning Creditor Costs	(216,884)	(216,884)
Estimated Liquidator and Legal Fees	(6,307,832)	(6,307,832)
Less: Liquidator and Legal Fees Funded by the Purchaser	869,318	869,318
Available for Priority Creditors	5,475,700	5,475,700
Priority Creditors		
Wages	1,062,441	1,071,703
Superannuation (incl penalties and interest)	3,672,297	3,145,349
Annual and Long Service Leave	776,962	766,698
Total Priority Creditors (excl. retrenchment)	5,511,699	4,983,751
Estimated Return to Priority Creditors (excl. retrenchment) (c/\$)	99.3	100.0
Surplus/(shortfall) in Recoveries	(35,999)	491,949
Retrenchment (PILN and Redundancy)	1,357,964	1,055,028
Estimated Return to Priority Creditors (PILN and Redundancy) (c/\$)	-	46.6
Surplus/(shortfall) Available for Unsecured Creditors	(1,393,963)	(563,078)
Unsecured creditors		
Trade Creditors	17,522,287	17,522,287
Statutory Creditors	1,922,533	2,075,376
Related Party Creditors	25,742,562	-
Total Unsecured Creditors	45,187,382	19,597,663
Estimated Return to Unsecured creditors (c/\$)	-	-

ANNEXURE E

Doody Street Settlement - Disclosure to Creditors

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IN THE MATTER OF MB AUSTRALIA PTY LIMITED (IN LIQUIDATION) (“COMPANY”)

Disclosure to creditors

SUPREME COURT OF NEW SOUTH WALES PROCEEDING NUMBER 2020/00328334 (“DOODY STREET PROCEEDING”)

1. On 17 October 2018, the Supreme Court of Queensland made orders that the Company be wound up under section 459A of the *Corporations Act 2001* (Cth) (“**Act**”) and that the liquidators be appointed jointly and severally as liquidators of the Company (“**Liquidators**”).
2. In that proceeding, the Honourable Justice Dalton dismissed an application by the then administrators of the Company to adjourn the winding up application in respect of the Company on the basis that the continuation of the voluntary administration was not in the best interests of creditors (i.e. the test in section 440A of the Act had not been satisfied). Her Honour indicated two key reasons for denying the administrators’ application in this regard, namely:
 - (a) 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
 - (b) the need for the circumstances giving rise to the Company transferring its interest in its major asset, being the property situated at 15-21 Doody Street Alexandria NSW 2015 (“**Doody Street Property**”), in late 2017 at a potential undervalue to be properly investigated by a liquidator (“**Doody Street Property Transfer**”).
3. 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.”
4. During the course of the liquidation, the Liquidators and their advisors have therefore spent a significant amount of time reviewing and investigating the transaction that gave rise to the Doody Street Property Transfer. From those investigations, the Liquidators formed the view that they should progress certain voidable transaction claims for the benefit of creditors in relation to, among other things, the transactions which ultimately gave rise to the Doody Street Property Transfer between the Company and Citadel Group Properties Pty Ltd, Wentworth Capital Group Pty, RS Family Holdings Pty Ltd, Zajasam Pty Ltd, Citadel Group Holdings Pty Ltd and Messrs Jamie Schwarz and Glenn Wein (the “**Citadel Group**”).
5. The Liquidators approached litigation funders to discuss the prospect of funding to further investigate the Doody Street Property Transfer and, if appropriate, to commence proceedings in respect of the transactions between the Company and the Citadel Group. The Commonwealth of Australia (acting through the Attorney-General’s Department) agreed to fund the liquidators in this regard.
6. In December 2019, the Supreme Court of NSW made orders on the terms sought by the Liquidators for the production of documents and summons for public examinations pursuant to sections 596A and 596B of the Act, which orders were necessary to assist the Liquidators in their investigations of the Doody Street Property Transfer. Public examinations were conducted by the Liquidators in March and April 2020 pursuant to the summonses for examination, including of Messrs Jamie Schwartz and Glenn Wein.

7. On 18 November 2020, the Liquidators commenced the Doody Street Proceeding against, among others, the Citadel Group.
8. On 3 September 2021, the Liquidators and the Citadel Group agreed to attend a private mediation to seek to resolve the Doody Street Proceeding. The parties did not reach an agreement to settle the Doody Street Proceeding at that mediation.
9. During the period from 4 September 2021 and 24 July 2023, the Liquidators progressed the Doody Street Proceeding, including through the preparation and service of considerable lay and expert evidence in chief, and review and critique of voluminous lay and expert evidence served on behalf of the Citadel Group.
10. On 25 July 2023, the Liquidators and the Citadel Group attended a further mediation to seek to resolve the Doody Street Proceeding before further considerable costs were to be incurred in the preparation of the Liquidators' evidence in reply and the preparation for final hearing in the Doody Street Proceeding.
11. As a consequence of that mediation, the Liquidators and the Citadel Group have entered into a deed of settlement and release to give effect to the agreed terms of settlement of the Doody Street Proceeding ("**Deed of Settlement**"). The Deed of Settlement is subject to the Liquidators obtaining approval under section 477(2B) of the Act (discussed further below).
12. The content of the negotiation in and as part of the mediation, and the terms of the Deed of Settlement are largely required to be kept confidential. The Liquidators are however permitted to make certain disclosures to creditors of the Company, including to confirm that:
 - (a) the settlement includes terms for payment and/or the guarantee of payment by the Citadel Group of a settlement sum to be paid by instalments over a period of 12 months (i.e. to around September 2024);
 - (b) as a result of the settlement and other recoveries obtained or expected to be obtained by the Liquidators, and assuming that the settlement sum is paid in full:
 - (i) priority creditors in the winding up of the Company are likely to receive a dividend of the following:

	Estimated Return c/\$
Wages	99.3 to 100.00
Superannuation	99.3 to 100.00
Annual and Long Service Leave	99.3 to 100.00
Retrenchment (PILN and Redundancy)	0 to 46.6

- (ii) unsecured creditors in the winding up of the Company are unlikely to receive a dividend;
- (c) the Citadel Group will not receive a dividend in the winding up of the Company (including any portion of the sum which they have agreed to pay in settlement of the Doody Street Proceeding);
- (d) as part of the terms of settlement, the Liquidators will receive the benefit of undertakings given by the Citadel Group to the Supreme Court of NSW that:

- (i) the Citadel Group will not further encumber the Doody Street Property if that dealing would result that, or have the effect of, the value of the Citadel Group's net equity in the Doody Street Property would become less than the balance of the unpaid settlement sum as at the relevant time; and
 - (ii) if the Citadel Group disposes of the Doody Street Property, they are required to notify the Liquidators in advance of completion of that disposal, and to pay into their solicitor's trust account from the proceeds of that disposal the balance of the unpaid settlement sum as at the relevant time; and
 - (e) if the Citadel Group defaults under their payment obligations under the Deed of Settlement, the Liquidators may reinstate the Doody Street Proceeding, or otherwise take action to recover the balance of the unpaid settlement sum.
- 13. As referred to above, as the obligations of the parties to the Deed of Settlement, and in particular the obligation of the Citadel Group to pay and/or guarantee payment of the settlement sum, extend beyond three months, the Liquidators are required under section 477(2B) of the Act to obtain approval from the creditors of the Company, or from the Court, to enter into the Deed of Settlement.
- 14. Accordingly, the liquidators seek approval from the creditors of the Company that:

"Pursuant to section 477(2B) of the Corporations Act 2001 (Cth), entry into the deed of settlement dated 26 September 2023 between the liquidators of the Company, the Company, Citadel Group Properties Pty Ltd, Wentworth Capital Group Pty, RS Family Holdings Pty Ltd, Zajasam Pty Ltd, Citadel Group Holdings Pty Ltd and Messrs Jamie Schwarz and Glenn Wein, be approved, *nunc pro tunc*."
- 15. The Liquidators consider that the entry into the Deed of Settlement, which provides for obligations extending beyond the period of three months, should be approved by the creditors for the following reasons:
 - (a) the Deed of Settlement allows the Liquidators to pay a dividend in line with the above to priority creditors in the winding up of the Company;
 - (b) the Deed of Settlement represents a bona fide settlement of the Doody Street Proceeding by the Liquidators and the Liquidators consider that the settlement, the terms of which extend beyond three months, to be in the interests of the Company's creditors, having regard to:
 - (i) the considerable time and cost which would otherwise be spent on the further prosecution of the Liquidators' claims in the Doody Street Proceeding; and
 - (ii) the inherent risks associated with proceeding to final hearing in the Doody Street Proceeding;
 - (c) the obligations under the Deed of Settlement are unlikely to unduly extend the duration of the liquidation;
 - (d) if the Citadel Group defaults under their payment and/or guarantee of payment of the unpaid portion of the settlement sum under the Deed of Settlement between now and September 2024, the Liquidators may elect, in their absolute discretion, to:

- (i) reinstate the Doody Street Proceeding or commence a fresh proceeding to seek the same or similar relief to that set out in the Liquidators' pleadings in the Doody Street Proceeding; or
 - (ii) enforce the terms of the Deed of Settlement and recover, on an unopposed basis, the balance of the unpaid settlement sum as at the relevant time; and
- (e) the creditors' approval of the Liquidators' entry into the Deed of Settlement if the Liquidators entry into the Deed of Settlement is not approved by the creditors of the Company, the Liquidators will incur the costs of applying to the Court to obtain approval from the Court under section 477(2B) of the Act, to enter into the Deed of Settlement.

ANNEXURE F

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, \$1,848,234.25 in remuneration has been approved. This remuneration report details the approval sought for the following fees:

Period	Remuneration Report Reference	Amount (excl. GST and disbursements)
Past remuneration approved		\$1,848,234.25
Resolution 1: 1 June 2023 to 30 September 2023	(A & B)	\$94,454.50
Total costs of the liquidation to 30 September 2023		<u>\$1,992,688.75</u>

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 claim is summarised in the following schedules:

Resolution	Detailed ¹	Summary ²
Resolution 1: 1 June 2023 to 30 September 2023	Schedule A	Schedule B

Notes:

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

Part 4: Statement of Remuneration Claim

Creditors are being asked to pass the following resolutions at the creditors meeting to be held on 6 November 2023:

Resolution [1]: ‘To approve the remuneration of the Liquidators, their partners and staff for the period 1 June 2023 to 30 September 2023 on a time basis fixed in the amount of \$94,454.50 exclusive of GST and disbursements calculated in accordance with the hourly rates prescribed by BDO as at 1 July 2022 and 1 July 2023. Such remuneration may be drawn as funds become available.’

Detail of the work completed has been included in **Schedules A and C**.

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 and superannuation claimed by the ATO.

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

Liquidation Return	Low (c/\$)	High (c/\$)
Employees (excl. PILN and Redundancy)	99.3 cents	100.0 cents
Employees (PILN and Redundancy)	0.00 cents	46.6 cents
Unsecured Creditors	0.00 cents	0.00 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.

The Liquidators are claiming no internal disbursements at the upcoming creditor meeting.

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 the 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 have progressed the liquidations to a stage where all active claims in the Mothership Proceedings have been settled and, subject to creditor approval, settled the outstanding claim in relation to the Doody St Litigation.

Subject to creditor approval of the Doody St Settlement, the primary task prior to proceeding with any distribution will be finalising outstanding issues in relation to the ATO claim for superannuation and residual tasks surrounding the receipting of settlement payments.

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
<p>Attorney Generals' Department</p>	<p>The agreed work includes the following:</p> <ul style="list-style-type: none"> • Public Examinations; • Investigations into the financial affairs of the Company; • Legal advice about potential claims available to the Company and/or the Liquidators; • Taking other steps that are reasonably necessary to undertake the above work and preserve assets; • The Doody Street Litigation. <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>CFA</p>	<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>Opera</p>	<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 that details BDO Rates as at 1 July 2022 and 1 July 2023, 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 in considering 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,

A handwritten signature in black ink, appearing to read 'Andrew Sallway', written in a cursive style.

Andrew Sallway
Joint and Several Liquidator

Schedule A: Description of Work Completed

Resolution 1: 1 June 2023 to 30 September 2023

	General Description	Includes
Administration 23.40 Hrs \$10,943.50	Planning / Review	Attended to all statutory requirements Liaised with our solicitors on progress of liquidation Internal meetings on the status of liquidation
	Document Maintenance / File Review / Checklist	File of documents File reviews Update checklists
	Banking	Bank account reconciliations Payments made to third parties Prepared monthly invoices for CFA and Commonwealth Funding
	ASIC Forms & Other Statutory Lodgements	Corresponded with ASIC regarding statutory forms Completed BAS lodgements
Creditors 24.80 Hrs \$11,942.50	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	Receive and file PODs Correspond with the ATO regarding POD Update creditor claims on the file and MYOB
	Creditor Report	Prepared and issued the report to creditors dated 5 June 2023 Prepared Liquidators' remuneration report

Employees 5.40 Hrs \$1,888.50	Employee Enquiries	Responded to ongoing employee queries including entitlements and superannuation
	Superannuation Guarantee	Internal and external discussions regarding the ATOs superannuation claim and the steps to progress the matter
Investigations 97.40 Hrs \$69,680.00	Conducting investigation and the Doody St Litigation	Meetings with CFA and FEG to discuss progress of litigation
		Prepare monthly reports to CFA and FEG
		Discussions with solicitors regarding Doody Street Litigation
		Liaising with the Bankruptcy Trustee of the Director regarding progress of Bankruptcy and replacement of Trustee
		Attendance at meeting to replace the Bankruptcy Trustee of the Director
		Conducting analysis in respect of various components of the Liquidators evidence for the Doody Street Litigation in preparation for the mediation
		Attend mediation for the Doody Street Litigation
Review correspondence received from the Liquidator of Chimney Cake and assess the likelihood of a return in the liquidation		



Schedule B: Summary of Work Completed

Resolution 1: Liquidators' Remuneration for the Period from 1 June 2023 to 30 September 2023

Staff	Staff Position	Hourly Rate	Total		Administration		Creditors		Employees		Investigations	
			Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Andrew Sallway	Partner (Appointee)	900.00	37.30	33,570.00	-	-	-	-	-	-	37.30	33,570.00
David McCourt	Partner	900.00	2.50	2,250.00	-	-	-	-	-	-	2.50	2,250.00
Helen Newman	Partner (Appointee)	775.00	0.30	232.50	-	-	-	-	-	-	0.30	232.50
Andrew Sallway	Partner (Appointee)	770.00	11.50	8,855.00	2.00	1,540.00	3.00	2,310.00	-	-	6.50	5,005.00
Tom Whitmarsh	Director	685.00	31.50	21,577.50	0.60	411.00	1.90	1,301.50	0.30	205.50	28.70	19,659.50
Tom Whitmarsh	Director	670.00	9.10	6,097.00	-	-	3.90	2,613.00	-	-	5.20	3,484.00
Ben Carney	Senior Manager	600.00	6.20	3,720.00	6.20	3,720.00	-	-	-	-	-	-
Ben Carney	Manager	540.00	2.10	1,134.00	2.10	1,134.00	-	-	-	-	-	-
Andrew Dias	Manager	525.00	0.50	262.50	0.50	262.50	-	-	-	-	-	-
Ryan Davies	Assistant Manager	500.00	2.70	1,350.00	-	-	2.70	1,350.00	-	-	-	-
James Thomson	Senior Analyst	400.00	1.00	400.00	-	-	-	-	-	-	1.00	400.00
Nathan Moxey	Graduate Analyst	330.00	41.90	13,827.00	10.50	3,465.00	13.00	4,290.00	5.10	1,683.00	13.30	4,389.00
Christian Hallgren	Graduate Analyst	330.00	0.50	165.00	0.30	99.00	-	-	-	-	0.20	66.00
Christian Hallgren	Assistant Analyst	260.00	3.90	1,014.00	1.20	312.00	0.30	78.00	-	-	2.40	624.00
Total			151.00	94,454.50	23.40	10,943.50	24.80	11,942.50	5.40	1,888.50	97.40	69,680.00
GST				9,445.45								
Total (incl. GST)				103,899.95								
Average hourly rate				625.53								

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 Analyst	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
Analyst	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 Analyst	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 Analyst	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 2023

Title	Description	Hourly Rate (excl GST)
Partner	Registered Liquidator- Partner bringing specialist skills to administration or insolvency task.	900
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.	685
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.	600
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 Analyst	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
Analyst	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 Analyst	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 Analyst	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.	330
Executive Assistant/ Personal Assistant	Appropriate computer skills including machine usage	260

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

ANNEXURE G

ARITA 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.

