



Specialty Mens Apparel Pty Ltd

Trading as "Ed Harry"

ACN 149 766 307

(Administrators Appointed)

Administrators' report to creditors

Date: 5 April 2019

Brendan Richards
and Gayle Dickerson

Joint and Several
Administrators

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Restructuring Services
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Glossary

ACN	Australian Company Number
Act	Corporations Act 2001 (Commonwealth)
ACDT	Australian Central Daylight Time
Administrators	Brendan Richards and Gayle Dickerson of KPMG
AJ Gallagher	Arthur J. Gallagher & Co (Aus) Limited
All PAAP	All present and after acquired property
AQR warehouse	Warehouse at third party, Australia Quick Response Pty Ltd
ARITA	Australian Restructuring, Insolvency and Turnaround Association
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
Azurium	Azurium Advisory and Consulting
BDO or Auditor	BDO Audit (SA) Pty Ltd
c.	Circa
c/\$	Cents in the dollar distribution
CBA	Commonwealth Bank of Australia
COD	Cash on delivery
Company or Ed Harry	Specialty Mens Apparel Pty Ltd (Administrators Appointed) Trading as "Ed Harry"
Court	Supreme Court of Victoria
Directors	David John Clark, Adrian Lee Crowley, Anthony Shane Hawkins and John Sinclair Read
DIRRI	Declaration of Independence, Relevant Relationships and Indemnities
DOCA	Deed of Company Arrangement
ERV	Estimated Realisable Value
FAQs	Frequently Asked Questions
FEG	Fair Entitlements Guarantee Scheme
FOB	Freight on Board
FY15	The Company's financial statements as at 30 June 2015
FY16	The Company's financial statements as at 30 June 2016
FY17	The Company's financial statements as at 30 June 2017
FY18	The Company's financial statements as at 30 June 2018
YTD FY19	The Company's management accounts as at 31 December 2018
GST	Goods and services tax
Hilco	Hilco Merchant Australia Pty Ltd
HQ or Head Office	Company's head office located at 125 Port Road, Hindmarsh SA 5007
HR	Human resources
IPR	Insolvency Practice Rules (Corporations) 2016
IT	Information Technology
k	Thousands
m	Millions
Management	Key management staff of the Company

Marketlend & Tyndall	Marketlend Pty Ltd ACN 602 720 856 and Tyndall Capital Pty Ltd ACN 154 750 268
PAYG	Pay As You Go withholding tax
PILN	Payment in Lieu of Notice
PMSI	Purchase money security interest
PPE	Property, plant and equipment
PY	Prior year
PPSR	Personal Property Securities Register
ROCAP	Report On Company Activities and Property
VA	Voluntary Administration
WHS	Workplace Health & Safety
3PL	Third party logistics

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1. Executive summary

On 15 January 2019 Brendan Richards and Gayle Dickerson of KPMG were appointed as joint and several Administrators of the Company.

The Administrators are required to investigate and report to creditors on the Company's business, property, affairs and financial circumstances, and form an opinion and make a recommendation on three options available to creditors under the Act. These are:

- 1 end the voluntary administration and return the Company to the Directors' control;
- 2 approve a deed of company arrangement through which the Company will pay all or part of its debts and then be free of those debts; or
- 3 wind up the Company and appoint a liquidator.

This is a statutory report by the Administrators' to creditors of the Company setting out our findings and recommendations.

It is our opinion that it is in the best interests of creditors of the Company to wind up the Company and appoint a liquidator. This opinion is based on our preliminary conclusion that the Company is insolvent, there was no interest in a sale of the business and no DOCA proposal has been submitted during the administration. The Administrators ceased trading from 24 March 2019 following the completion of a stock realisation program. The managed wind down of operations over an extended period resulted in a materially better outcome for creditors. Priority creditors and secured creditors are expected to be paid out in full by May 2019 and unsecured creditors are expected to receive a dividend of c. 12 c/\$ in a liquidation during the second half of 2019. This time frame could be delayed if there is any litigation in respect of the adjudication of proofs of debt. As a result, the Administrators' opinion is that it is in the best interests of creditors that the Company be wound up. Refer to sections 7 to 10 of this report for further details.

The second meeting of creditors, to consider the future of the Company, will be held at **12:00pm ACDT (local Adelaide time) on Tuesday, 23 April 2019 at the offices of KPMG, Adelaide.**

A notice of the meeting is attached.

Creditors who wish to attend and/or vote are required to lodge a formal proof of debt and proxy form with this office by no later than 12:00pm ACDT on 18 April 2019. Proxy forms lodged in respect to the first meeting cannot be used for voting at the second meeting. Further details of the meeting are set out in this report and appendices.

Teleconference facilities are available for creditors who are unable to attend in person. Creditors who wish to attend by teleconference should contact our office by email at edharry@kpmg.com.au by no later than 12:00pm ACDT on 18 April 2019, so that teleconference details may be provided.

Brendan Richards

Brendan Richards
Joint & Several Administrator

Gayle Dickerson

Gayle Dickerson
Joint & Several Administrator

2. Introduction

2.1 Appointment of Administrators

Appointment on 15 January 2019

Brendan Richards and Gayle Dickerson of KPMG were appointed joint and several Voluntary Administrators of the Company on 15 January 2019.

Our appointments were made by the Directors of the Company pursuant to section 436A of the Corporations Act 2001 (*Cth*) ("the Act"). Section 436A of the Act prescribes that a company may, by writing, appoint an administrator if the board has resolved to the effect that, in the opinion of the directors voting, the company is insolvent, or is likely to become insolvent at some future time and an administrator of the company should be appointed.

The Administrators, both registered liquidators, consented, prior to their appointment, to act as administrators of the Company.

2.2 Purpose of this report

This report is prepared to assist creditors of the Company in their decisions concerning the future of the Company.

This report has been prepared pursuant to section 75-225(3) of the Insolvency Practice Rules (Corporations) 2016 ("IPR") and provides information about the Company's business, property, affairs and financial circumstances.

The purpose of this report is to provide creditors with sufficient information to make an informed decision at the second meeting about the Company's future and the options available to them. The information provided by the Administrators, including opinions expressed, will assist you. However, you are not obliged to accept our recommendation. We recommend that creditors seek independent advice as to options available and also review the information sheets provided by ASIC, attached to this report and available on the ASIC web site at <http://asic.gov.au/regulatory-resources/insolvency>.

2.3 Objective of Voluntary Administration

Voluntary administration is a statutory process under the Act, available to companies in financial difficulties, designed to resolve a company's future direction.

The objective of the Voluntary Administration process is to provide for the business, property and affairs of an insolvent company to be administered in a way that:

- maximises the chances of the company as a whole, or as much of the business as possible, continuing in existence; or
- results in a better return for the company's creditors and members than would result from an immediate winding up of the company.

An independent qualified person (the voluntary administrator) takes control of the company to try to work out a way to save either the company or its business or otherwise maximise returns for creditors.

A voluntary administrator is usually appointed by a company's directors, after they decide that the company is insolvent or likely to become insolvent.

The effect of the appointment of a voluntary administrator is to provide a company with 'breathing space' while the company's future is resolved. While a company is in voluntary administration unsecured creditors cannot begin, continue, or enforce their claims against the company without the administrator's consent or the court's permission.

Two meetings of creditors must be held during the voluntary administration. The voluntary administrator must call the first creditors' meeting within eight business days after the voluntary administration begins. A second creditors' meeting is usually held about five weeks after the company goes into voluntary administration to decide on the best option for the company's future.

Following an application to the Court, the Administrators were granted an extension to the convening period on 1 February 2019, which allowed for the second meeting of creditors to be held at a later date. Refer to section 2.5 of this report for further details.

2.4 First meeting of creditors

Section 436E of the Act requires us to conduct a meeting of the creditors of the Company in administration within eight business days of being appointed ("first meeting of creditors").

The first meeting of creditors of the Company was held on Thursday, 24 January 2019.

The purpose of a first meeting is for creditors to vote on whether to appoint a committee of inspection. There were no nominations to join a committee and creditors resolved that no committee be formed. Minutes of the first meeting have been lodged with ASIC.

2.5 Second meeting of creditors

Extension to the convening period

On 1 February 2019, the Supreme Court of Victoria ("the Court") granted Orders extending the convening period of the Company to 20 May 2019. The primary reason for seeking an extension of time was to allow the Administrators to explore the possibility of achieving a sale of the Company's business, to facilitate an extended and orderly inventory realisation program and/or for a Deed of Company Arrangement ("DOCA") to be proposed. Even though a sale of the Company's business did not eventuate and a DOCA was not proposed, the extension of time allowed the Administrators to continue to trade the Company's business in order to realise the stock on hand in an orderly manner, thereby maximising returns from the sale of stock.

In summary the Court ordered that:

- pursuant to section 439A(6) of the Act, the convening period for the second meeting of creditors of the Company be extended to 20 May 2019; and
- the second meeting of creditors may be held at any time during the period up to 20 May 2019 or within five (5) business days thereafter.

Second meeting

The second meeting of creditors will be held **at 12:00pm ACDT (local Adelaide time) on Tuesday, 23 April 2019 at KPMG, Adelaide.**

The purpose of a second meeting is for creditors to vote on one of the following in respect of the Company:

- 1 That the administration end (and therefore control reverts back to the Directors); or
- 2 That the Company execute a Deed of Company Arrangement (where one is proposed); or
- 3 That the Company be wound up (placed into liquidation).

How you vote at the meeting on these three possible options is a commercial decision for you based on your assessment of the Company, the appropriate course of action and your personal circumstances.

Creditors may also resolve to adjourn the second meeting for a period of up to 45 business days.

Further information on the meetings and voting is set out in the enclosed ASIC information sheet No 74, Voluntary administration: A guide for creditors attached.

Notice of meeting

As advised above, the second meeting will be held at **12:00pm ACDT (local Adelaide time) on Tuesday, 23 April 2019 at:**

KPMG Office, Adelaide
151 Pirie Street
Adelaide SA 5000

A copy of the notice of meeting is enclosed.

Electronic facilities will be made available at the meeting by way of telephone conference call. Creditors intending to use these facilities are required to notify us by email at edharry@kpmg.com.au by no later than 18 April 2019. On receipt of this, you will be provided by return email with details and instructions on how to access the electronic facilities for the meeting. Creditors who wish to dial into the meeting will not be able to vote or participate in the meeting unless they attend in person or by proxy. Please refer to the next section of this report for instructions on what you are required to do if you are a creditor of the Company and wish to vote or participate in this meeting.

Submitting your proof of debt and/or proxy form

If you are a creditor of the Company and wish to attend and/or vote at the second meeting, you are required to:

- lodge a formal **proof of debt or claim form** and information to substantiate your claim.
Please note, proof of debt or claim forms lodged for this meeting are for voting purposes only but may be used for voting on resolution proposals without a meeting and distribution purposes, including a subsequent external administration of the Company.

Section 600G of the Act permits electronic notification to creditors of certain notices or documents. If you would like to nominate to receive electronic notification, please complete the relevant section on the proof of debt or claim form.

- lodge a **proxy form** and appoint a person – a “**proxy**” or person authorised under a power of attorney – to vote on your behalf at the meeting.

This is necessary if you are unable to attend the meeting in person or the creditor is a company.

If you are representing a company, please ensure your proxy form is executed pursuant to section 127 of the Act or your representative is appointed pursuant to section 250B of the Act, otherwise you will not be entitled to vote at the meeting.

You can appoint the chairperson of the meeting or another person as your proxy and direct them on how you wish your vote to be cast. If you choose to do this, the elected person, chairperson or otherwise, must cast your vote as directed.

A formal proof of debt or claim form and proxy form are enclosed to this report.

Completed proof of debt or claim forms and, if applicable, proxy forms must be returned to the KPMG Sydney office by post to KPMG, Level 38, Tower Three, 300 Barangaroo Avenue, Sydney NSW 2000, facsimile +61 2 9335 7001 or email by no later than 12.00pm ACDT on 18 April 2019. Failing this, creditors or their proxies may be excluded from voting at the meeting.

Scanned forms can be emailed to edharry@kpmg.com.au, should be in Portable Document Format (**PDF**) and include the following subject-line to the email: *Company name – Proof of debt and/or proxy – [Insert your creditor name]*.

Please contact our office by email at edharry@kpmg.com.au if you have any questions about how to complete these forms.

2.6 Statement of independence

A person appointed as an external administrator of an insolvent company must be a registered liquidator and independent. A voluntary administrator must send to creditors, with the notice of a meeting, a declaration about any relationships they may have, or indemnities they have been given, to allow creditors to consider the voluntary administrator's independence.

Enclosed within our First Report to creditors dated 16 January 2019 was the Administrators' Declaration of Independence, Relevant Relationships and Indemnities ("DIRRI") (pursuant to s436DA of the Act and the ARITA Code of Professional Practice). The DIRRI sets out details of the circumstances leading to our appointment, any relevant relationships and our declaration that we are not aware of any circumstances that would prevent us from taking the appointment as Administrators.

There have been minor changes to the position as stated in our first DIRRI included with the First Report to creditors. In summary the changes relate to the announcement on Thursday, 14 March 2019 that KPMG and Ferrier Hodgson are to merge, with the majority of Ferrier Hodgson's partners and staff to join the combined operation from 1 July 2019. We considered this merger in relation to the Administration of the Company and considered that this did not create a conflict or an appearance of a conflict. The reasons behind this decision are found in the updated DIRRI.

An updated version of the DIRRI dated 5 April 2019 is included within this report at Appendix B.

2.7 Conduct of the Administration

The Company's Directors resolved to place the Company into Voluntary Administration on 15 January 2019 pursuant to Section 436A of the Act. Brendan Richards and Gayle Dickerson were appointed joint and several Voluntary Administrators of the Company.

The conduct of the Administration has centred on the following:

- 2.7.1 Immediate financial review
- 2.7.2 Preserving and securing assets
- 2.7.3 Stock realisation strategy
- 2.7.4 Sale of business and intellectual property
- 2.7.5 Sale of plant and equipment
- 2.7.6 Customer strategy and communications
- 2.7.7 Dealings with landlords
- 2.7.8 Employees
- 2.7.9 Registered securities
- 2.7.10 Insurance

2.7.1 Immediate financial review

Prior to our appointment, the Company's financial position had been deteriorating as a result of challenging retail conditions, such as changing customer preferences and increased competition. The Company's financial position was further impacted by poor sales results during the key Christmas to New Year period which were materially below estimates. The reduction in sales during this period negatively affected the Company's already tight working capital. The Company's high fixed-operational costs (predominantly occupancy and employment costs) also impacted the financial performance, which precipitated the Company being placed into Administration.

On appointment we undertook the following steps to assess the viability of the Company:

- Undertook an urgent review of the Company's financial position, short term cash flow and trading forecasts;
- Liaised with key management personnel and stakeholders to determine the most appropriate steps moving forward;
- Sought submissions from specialist retail inventory clearance advisors to model an inventory realisation strategy to optimise returns; and
- Developed a short term cash flow forecast to understand the funding requirements of continuing to trade.

Following this review we formed the opinion that it would be in the best interests of the Company's creditors to continue to trade on the Company's business in order to maximise the returns from an orderly inventory realisation program, while also facilitating a potential sale of the Company's business as a going concern.

As the Company held a significant value of unencumbered inventory, in conjunction with Hilco it was determined that stock levels of the Company were sufficient to facilitate trade over an extended period without requiring additional purchases of stock. We purchased some minor amounts of Ed Harry

branded stock held by suppliers at a discounted rate during the Administration period. This strategy resulted in the Administrators being able to trade with a cash surplus during the course of the Administration.

The stock realisation program commenced on our appointment included applying discounts and leveraging the publicity and media reports of the Administration in order to procure additional sales.

2.7.2 Preserving and securing assets

Immediately on appointment, we attended the Company's head office located at 125 Port Road, Hindmarsh ("HQ") to take control of the Company's operations and management of assets. We met with all HQ staff and held calls with area managers, where we confirmed our appointment and outlined the Administration process. We introduced management controls which allowed the Administrators to work closely with the Company's employees at both HQ and throughout the store network.

Following our appointment, the KPMG Forensics and IT team accessed the Company's IT infrastructure and secured back-ups and mirrors of the Company's data. The data secured contained:

- Email server;
- Financial data, including accounting, payroll & HR software;
- Stock management system;
- Intellectual property; and
- Other working files.

We negotiated ongoing support from the Company's external IT service provider and essential software providers to secure the ongoing trade of the business during the Administration.

We liaised with the Company's Directors and key management personnel to identify, locate and secure the Company's assets immediately upon our appointment. We subsequently liaised with our insurance broker, Arthur J. Gallagher & Co (Aus) Limited ("AJ Gallagher") who reviewed the Company's existing insurance policies to ascertain their appropriateness for the Administration. AJ Gallagher recommended additional 'top up' policies to be implemented by the Administrators to ensure compliance with their statutory obligations and to secure the value of the Company's assets. All insurance recommendations by AJ Gallagher were implemented by the Administrators.

We wrote to all major banking institutions, requesting all accounts in the Company's name be placed on 'post-credits only' status (allowing deposits but prohibiting withdrawals), with all credit funds to be transferred to the Administration account. Funds totalling \$0.2m were recovered from the Company's bank accounts on our appointment.

2.7.3 Stock realisation strategy

Our initial review of the Company's inventory position identified four distinct categories of stock, as outlined below. A review of each category was undertaken to determine the most commercial realisation strategy.

a) Stock held on appointment

On our appointment, the Company held stock with a book value of c. \$9.7m as per the Company's stock management software. Approximately 90% of this was located across the network of 87 stores, with the balance of stock being in transit or held by 3PL.

Due to operational and technical constraints, the Company had historically operated a 'rolling stocktake' policy across the store network. A number of the stores had not conducted stocktakes for several months. Based on prior stocktakes, and advice from Hilco, a 3% variance was expected in the amount

of stock realised in comparison to the stock on hand at appointment (in accordance with the stock management software). This variance is largely in line with industry averages for stock variances during an Administration process.

b) Stock held by 3PL

Approximately \$0.5m of stock was held by the Company's 3PL, who was located in Melbourne and was also a creditor of the Company. We reached a commercial settlement which allowed for the ongoing supply of stock through the Administration period, and the distribution of two containers of new stock which was delivered shortly after our appointment.

c) Stock in transit

On our appointment, a consignment of stock with a cost price of \$0.4m was in transit from an overseas supplier. We reviewed the agreements with this supplier and identified title of these goods had passed to the Company once placed in transit. Additionally, there were no PPSR registrations on the stock in question. As such we accepted delivery of these containers.

We negotiated a settlement with a logistics provider to have this stock released and delivered to the Company's 3PL, which was then distributed to the Company's stores.

d) Stock held by suppliers

A significant quantity of Ed Harry branded stock was identified as being held at third party suppliers. This was stock which had not been paid for by Ed Harry and for which title had not passed. Given the branding issues associated with these items, and limited ability of suppliers to realise the stock through other channels, we engaged in negotiations to acquire this stock at a discount. Accordingly, a further c. \$500k of discounted stock was able to be acquired.

Stock realisation program

Following discussions with Management, we continued the existing discounting program across the Company's stores in order to realise the Company's stock, generate working capital and take advantage of media publicity regarding the Company being placed into Administration.

We also requested submissions from three independent stock realisation specialists to assist with implementing a stock realisation strategy for the course of the Administration. The Administrators undertook extensive financial modelling in considering the commerciality and benefit to creditors in engaging a stock realisation specialist. This due diligence included the Administrators considering the net result of implementing their own stock realisation program in comparison to the proposals received, taking into account the respective fixed costs, commissions and potential success fees payable and geographically dispersed stores throughout Australia.

After consideration of the respective proposals, the Administrators executed an agreement with Hilco on 24 January 2019 to act as the Administrators' exclusive agent in implementing a stock realisation program. Hilco was successful with their submission as their proposal demonstrated the greatest proposed net return to the Administration.

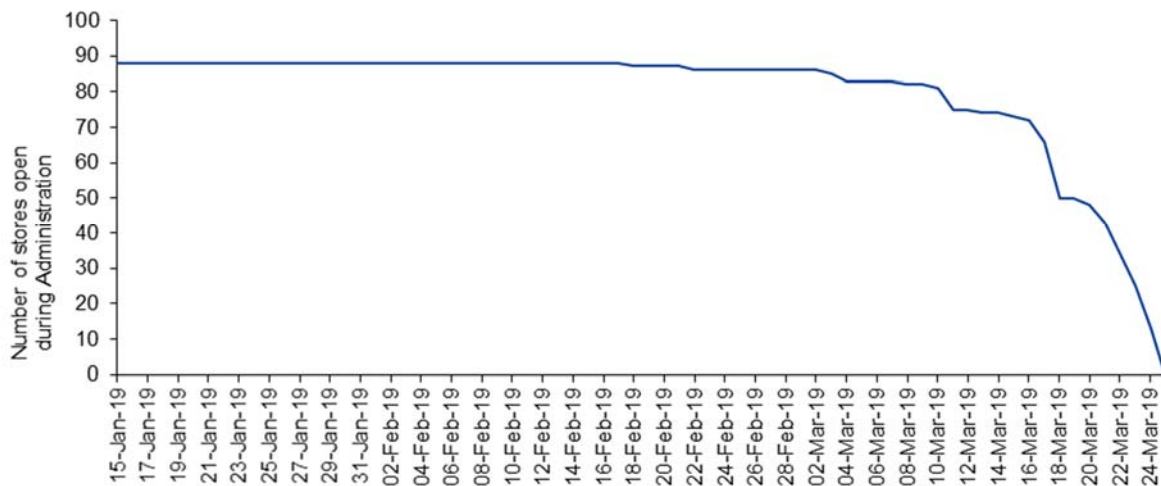
The key elements of the engagement of Hilco focused around:

- Sales forecasting and implementation of the stock realisation program. The stock realisation program applied a staged discounting of stock to ensure consistent sales and profit margins, maintaining of customer footfall and maximising the return to the Administration;
- Implementing a dedicated team on site at stores and head office to assist with the implementation of the stock realisation program and providing 'on site' assistance to the Administration; and

- Preparation and distribution of marketing materials including signage, electronic marketing materials and social media marketing.

Over the course of the stock realisation program, the Administrators, key management personnel of the Company and Hilco representatives monitored the sales results, stock levels and operating costs of each of the Company's stores. As a result of no commercially acceptable offers being received for the Company's business as a going concern (refer Section 2.7.4), the Administrators proceeded to commence an orderly wind down of the Company's operations. This resulted in 38 stores closing in the period between 18 February 2019 and 17 March 2019, with the remaining 49 stores closing during the final week of trade in the week ending 24 March 2019. This is detailed in the graph below:

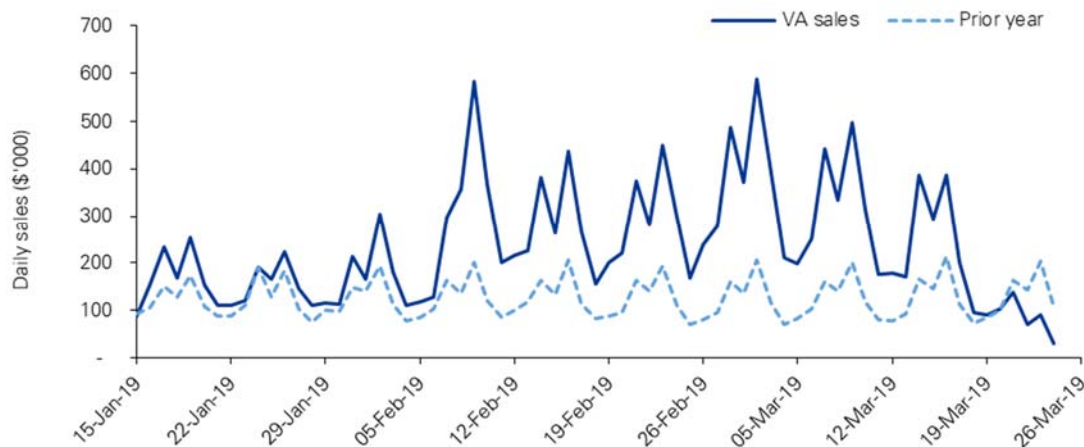
Trading profile of stores during Administration period



The 3PL continued to facilitate the distribution of orders from the Company's online store. Due to the low levels of stock held at the distribution centre and the operating costs involved, the Company's online store was closed on 21 February 2019, with the balance of stock being distributed to stores.

Over the course of the Administration, sales of c. \$16.5m (including GST) were achieved at an uplift of 2.08x in comparison with the same period in the previous year driven by the liquidation of stock, as outlined in the graph below:

Daily sales (VA v PY)



A summary of the sales across the Administration period is outlined in the below table:

Sales Summary		
Description	\$	Multiple
Book value of stock realised	10.2m	0
Directors estimated realisation	13.26m	1.3
Actual Administrators realisation (excl. GST)	15.0m	1.46

The sales results for the Administration exceeded the expected results by both the Administrators and Hilco. Based on prior sales, the Directors and Hilco had initial expectations of achieving a multiple of 1.3x stock cost over the Administration period. An actual rate of 1.46x was achieved during the Administration. The Administrators wish to acknowledge the efforts of the Company's dedicated employees and responses from the loyal customer base in achieving such a positive outcome from the stock realisation program.

2.7.4 Sale of business and intellectual property

Prior to our appointment, the Company engaged Azurium to conduct a comprehensive sale of business and / or capital raising program. No commercial offers were received over the course of the engagement.

Whilst this suggested there may be limited interest, the appointment of an Administrator can generate a renewed interest given the flexibility to structure and price a transaction. The Administrators determined a sale of the Company's business as a going concern would likely facilitate the greatest return to the Company's creditors, while resulting in the ongoing employment of Ed Harry staff. We considered an expedited sale of business campaign to be the most commercial option, which commenced immediately following our appointment. This included development of marketing material (teaser document and data room), liaising with interested parties identified in the pre-appointment sale process, contacting potential interested parties known through the KPMG network and placing advertisements in national newspapers.

A summary of the sale of business process is outlined below:

Sale of Business - Timeline	
Date	Milestone
17 January 2019	Teaser document developed and distribute to Interested parties
18 - 21 January 2019	Advertisements published in the Australian Financial Review Information Memorandum issued (post receipt of confidentiality agreements) and data room opened
1 February 2019	Closure date for submission of non-binding indicative offers

We liaised with 87 interested parties across the sale of business process. Of the parties contacted, seven parties executed confidentiality agreements and accessed the data room set up by the Administrators.

Despite no commercially viable offers being received for the Company's business as a going concern, two non-binding indicative offers were subsequently received for the Company's intellectual property. The Administrators proceeded to accept the highest offer of \$275k for the Company's intellectual property, which included:

- Customer database; and
- Intellectual property including trademarks, business name, website domains and social media accounts.

2.7.5 Sale of plant and equipment

The stock realisation program implemented by the Administrators and Hilco was inclusive of a realisation strategy for the fixtures and fittings located at the Company's store network. The sale of these assets has generated c. \$220k across the store network at an average of \$2.5k per store, significantly above initial expectations.

A formal valuation of the Company's motor vehicles and plant and equipment located at the head office and 3PL was undertaken by Pickles Auctions Pty Ltd ("Pickles"), under instruction from the Administrators. Given the relatively low estimated auction realisable value advised by Pickles (c. \$22k) and costs involved in proceeding with a formal auction process, these assets have been subsequently realised by way of a direct sales campaign. All assets have been realised at an amount greater than auction realisable value, with c. \$35k in sales achieved.

A summary of the realisation of the Company's plant & equipment is as follows:

Plant & Equipment Realisations	
Plant & Equipment	Amount Realised (\$)
Store-based	220,092
Head Office & Other Assets	35,000
Total	255,092

2.7.6 Customer strategy and communications

On our appointment, we issued communications to customers via the Company's and Administrators' websites, in-store FAQs and numerous media releases regarding:

- The Company's stores were to continue trading as per 'business as usual';
- Gift cards were able to be redeemed on a \$1 for \$1 basis for the first month of the Administration, with no further gift cards to be issued;
- Options for dealing with lay-buys, deposits, reserved items and other orders;
- Online orders; and
- Refunds and other disputes.

Continued operational updates were released via the Company's and Administrators' websites, in-store FAQs and media releases over the course of the Administration.

A specific email address monitored by the Administrators office was created to handle all customer enquiries regarding Administration related issues. This email address was distributed on the Company's and Administrators websites, in-store and on media releases. This allowed for a consolidated approach in dealing with the queries of customers and various stakeholders, whilst allowing the Company's staff to carry on their day-to-day duties.

As outlined at section 2.7.3, the Company's stores were closed over a staged process dependent on their profitability, staffing resources and available stock. On the determination to close each store, electronic marketing and media releases were directed to customers and area specific media outlets based in the identified store's location, to generate additional sales in the closure period.

Gift Cards

Unredeemed gift card balances are an unsecured creditor in the Administration. The decision to allow gift cards to be redeemed on a \$1 for \$1 basis for the first month of the Administration was made to incentivise further sales, maintaining customer loyalty and brand goodwill.

As at the date of our appointment, gift cards with available balances totalling \$318,076 were in circulation. Over the course of the first month of the Administration, \$83,370 of gift cards were redeemed. The balance of these gift cards will be able to claim as an unsecured creditor.

2.7.7 Dealings with landlords

We contacted the Company's landlords to advise of our appointment. We subsequently conducted a review and analysis of all lease contracts, sales data, square-metage and other key performance indicators relating to each individual store.

Based on our analysis, we entered into negotiations with landlords to have the terms of the leases varied to incorporate discounts on the rental amounts and the waiving of certain fees and outlays. The majority of landlords were supportive of these requests, resulting in total savings of \$206k during the Administration.

Continued lines of communication were maintained with landlords during the course of the Administration in relation to:

- Updates on the progress of the Administration;
- Maintenance of store signage promoting closing down sales, whilst being in accordance with the lease terms; and
- Winding down of operations and providing formal notices of lease disclaimers.

2.7.8 Employees

On our appointment the Company had 524 employees. A breakdown of employees across the Administration period (inclusive of employees who had provided notice of resignation prior to our appointment, but ceased employment after the appointment of Administrators and new employees engaged post the Administration) are outlined in the following table:

Employee Summary				
State	Casual	Part Time	Full Time	Total
ACT	5	2	0	7
QLD	52	50	24	126
NSW	29	16	13	58
NT	17	8	4	29
SA	42	30	42	114
VIC	47	26	17	90
WA	36	43	21	100
Total	228	175	121	524

We engaged in regular communication with all employees regarding our sales strategy and updates on their employment.

As outlined at section 2.7.4 of this report, no offers were received for the Company's business as a going concern. On 7 February 2019 we communicated this with all staff noting the Administration would subsequently proceed with an orderly wind-down of all stores and operations, including termination of all employees' positions by the end of March 2019.

The Administrators assessed the ongoing resources required to facilitate the orderly wind down of operations, and undertook a phased notice approach to employees at both HQ and across the store network. Employee requirements were continually monitored with all employees receiving notice of the employment being terminated throughout the wind down period. The majority of employees worked through their notice period, if applicable to their individual agreement, enterprise bargaining agreement or award.

The Administrators wish to acknowledge the professionalism and commitment of the employees throughout the Administration period, which was an integral component of the success of the stock realisation process and wind down of operations.

Employee entitlements

The Company operated a fortnightly pay-cycle, which was in its 9th day on our appointment as Administrators. The Administrators remitted the nine days of pre-appointment accrued wages, along with the balance of post appointment wages upon the next payroll cycle, in order to maintain employee morale and ensure the continued operation of the Company's business. The Administrators note unpaid wages hold a statutory priority of payment and in any event, would have been remitted in full upon the Company being subsequently placed into Liquidation.

A summary of entitlements outstanding to employees is as follows:

Employee Entitlements	
Description	Amount Owing (\$)
Wages	-
Pre appointment Superannuation	375,001
Annual Leave	789,569
Long Service Leave	398,477
Payment in Lieu of Notice	75,459
Superannuation on Payment in Lieu of Notice	7,169
Redundancy	1,129,399
Time in Lieu	3,027
Total Entitlements	2,778,102

Employees received a full breakdown of their employee entitlements between 22 March 2019 and 29 March 2019.

The Administrators confirm that sufficient realisations have been made during the Administration period to remit payment of all outstanding employee entitlements in full. Further details of the timing of the payment for employee entitlements is outlined at section 7 of this report.

PAYG summaries for FY19 will be issued to employees prior to 30 June 2019.

2.7.9 Registered securities

A summary of the registration on the Personal Properties Securities Register ("PPSR") against the Company is contained at section 3.5 of this report.

Three parties holding registrations on the PPSR engaged solicitors in order to recover their outstanding amounts as at the date of our appointment. A summary of these secured parties and details of their security and claims are outlined in the following table:

PPSR settlements				
Secured party	Security	Value of assets subject to security	Total claim	Settled amount
Brightview Group Pty Ltd	PMSI	860,098	964,223	Commercial in confidence
Austico Apparel Pty Ltd	PMSI	427,144	283,446	
Tyndall Capital Pty Ltd	All PAAP	225,000	225,000	
		1,512,242	1,472,669	c.\$500,000

The Administrators and their legal representatives conducted an in-depth review of each of the secured parties' claims, including the validity of their security registrations, appropriateness of security documentation and the ability to identify assets subject to the security registrations.

Upon reviewing the above claims and entering into complex and comprehensive negotiations with the PPSR holders and their legal advisors, agreements were executed to settle each of the claims.

The Administrators have determined the settlement amounts to be commercial, considering the validity of each parties' claim, the cost savings by avoiding any unnecessary legal proceedings and allowing for stock subject to securities to be realised inclusive of the stock realisation program (as opposed to being repossessed by the security holders). Given each of these settlements included non-disclosure clauses, we have only provided the quantum of settlement across the three claims.

The Administrators note the Commonwealth Bank of Australia ("CBA") hold a first-ranking General Security Interest over the Company, registered on the PPSR. Further details of the debt owing to the CBA are outlined at section 3.5 of this report.

Additionally, a number of landlords held validly registered securities over the fittings of stores.

2.7.10 Insurance

As outlined above at section 2.7.2, the Administrators engaged AJ Gallagher to conduct an assessment of the Company's insurance policies to ascertain their appropriateness for the Administration. AJ Gallagher recommended a number of additional and 'top up' policies be taken by the Administrators to ensure compliance with their statutory obligations and to secure the value of the Company's assets. All insurance recommendations by AJ Gallagher were implemented by the Administrators.

Additionally, AJ Gallagher was engaged by the Administrators to conduct a Workplace Health & Safety ("WHS") review of the Company's stores and head office. Overall the Company's head office and stores were deemed to be compliant with the WHS inspections, however a number of minor procedures and changes, as recommended by AJ Gallagher, were implemented by the Administrators to ensure WHS compliance was maintained at the highest level.

AJ Gallagher assisted the Administrators with ensuring the relevant WorkCover registrations and policies were maintained in each state of trade.

3. Background

Set out in this section are details of statutory information and the trading history of the Company.

3.1 Company history

Ed Harry is a specialty menswear retailer, offering a range of casual and formal apparel.

The business operated 87 stores across mainland Australia with the first store opening in South Australia in 1993. The Company primarily operated stores from leasehold premises in regional and sub-regional shopping centres and regional cities and towns. Its head office was located in Hindmarsh, Adelaide.

The Directors purchased the Ed Harry brand out of Administration in April 2011, with the Company incorporated in the same year.

Events leading up to Administration

In July 2017 the Company engaged external advisors, Azurium, to facilitate a sale of business campaign on a going concern basis. The initial phase of the engagement included a strategic review of the business including an assessment of the Company's strategy, operations, performance and existing financial model with a view of improving operations and driving profit improvement initiatives.

In October 2017 the Directors also engaged external advisors to conduct an independent review of the Company's leased property portfolio, which included reviewing the impact of management's growth plans to increase store size and add new stores to the Company's current store portfolio. This engagement also included a review of lease negotiations with lessors of the Company.

By mid-2018 the Company made an application to its financier to obtain an increase in funding of \$2m. These negotiations were unsuccessful, with the CBA rejecting the application.

With no formal offers received from the sale of business campaign, the external advisors undertook capital raising initiatives, with investment flyers distributed to interested parties around September 2018 and November 2018. From the documents we have reviewed and enquiries made, the sale process was robust, however did not return a buyer or investor for the Company.

Financing from other sources was also being sought by the Directors, which led to the approval of a \$1m import invoice payment facility with Marketlend in early September 2018.

The Directors were also in negotiations with creditors, including landlords, for extensions and arrangements to payment schedules between July and December 2018.

By the end of 2018 no formal offers had been received following the sale of business and capital raising campaigns. This, coupled with a fully drawn overdraft facility and weaker than expected retail sales during the Christmas trading period in 2018, contributed to the Directors' decision to resolve for the Company to be placed into voluntary administration on 15 January 2019.

3.2 Statutory information

The Incorporation details of the Company are summarised below.

Incorporation details			
Company	ACN	Date of Registration	Registered office / Principal place of business
Specialty Mens Apparel Pty Ltd	149 766 307	09-Mar-11	Level 1, 125 Port Road Hindmarsh SA 5007

Source: ASIC Company search

3.3 Directors

A summary of the current directors of the Company is set out below.

Directors			
Director		Date of Appointment	Cease date
David John Clark		09-Mar-11	n/a
Adrian Lee Crowley		09-Mar-11	n/a
Anthony Shane Hawkins		09-Mar-11	n/a
John Sinclair Read		09-Mar-11	n/a

Source: ASIC Company search

3.4 Shareholders

The shareholders of the Company are set out below.

Shareholders	
Shareholder	%
David John Clark	30
Adrian Lee Crowley	20
John & Patricia Read	30
Hawkins Pty Ltd	20

Source: ASIC Company search

3.5 Secured creditors

Secured parties such as financiers and other lenders can register their security interests on the Personal Property Securities Register ("PPSR") maintained by the Australian Financial Security Authority. The Act and PPSR apply to security over 'personal property' – property that is not land or fixtures to land (i.e. real estate and buildings). Personal property can be owned by a commercial organisation or an individual. A business can use personal property as collateral (as security for a debt owed to sellers or financiers), and this can include goods leased or hired, or received on consignment. In such cases, the seller, owner, lessor, lender, consignor or financier ("the Secured Party" or "Secured Parties") has a security interest in the collateral. A security interest must be registered on the PPSR by the secured party to ensure their interest is secured.

A PPSR search conducted as at the date of the Administrators' appointment disclosed the following security interests registered against the Company:

Schedule of Personal Property Securities Registration charges		
Secured creditor	Collateral class	Number of registrations
Austico Apparel Pty Ltd	Other Goods	2
Brightview Group Pty Ltd	Other Goods	1
C & D Clothing Pty. Ltd	Other Goods	1
Chung's Oriental Trading Pty Ltd	Other Goods	1
Commonwealth Bank of Australia	All PAP	1
Electrical Home-Aids Pty Ltd	Other Goods	1
Expedition Apparel Pty Ltd	Other Goods	1
First Choice Distributors Pty Ltd	Other Goods	1
Goongarline Properties Pty Ltd	All PAP with Exceptions	1
Hangzhou Textiles Pty Ltd	Other Goods	1
Modisto Pty Ltd	Other Goods	1
Network Clothing Company Pty Ltd	Other Goods	1
Print Management Facilities Australia Pty Ltd	Other Goods	1
Sentinel Countrywide Retail Trust	Other Goods	1
SMYJ Pty Ltd	Other Goods	1
Stage II Pty Ltd	Other Goods	1
Stockland Trust Management Limited	Other Goods	8
The trustee for PLC Unit Trust	All PAP	1
Tyndall Capital Pty Ltd	All PAP	1
Tyndall Capital Pty Ltd	Other Goods	1
Tyndall Capital Pty Ltd	Account	1
Total		29

Source: PPSR search conducted on Company name, ABN and ACN

Commentary on our dealings during the Administration with the above secured creditors PPSR registration can be found at sub section 2.7.9 of this report.

3.6 Winding up petitions

We are not aware of any winding up petitions having been made against the Company.

4. Historical financial statements

4.1 Preparation of financial statements

BDO Audit (SA) Pty Ltd were engaged to perform the audit of the Company's special purpose financial statements for the period of our review from FY15 to FY18. We were only able to review management accounts for YTD FY19. The special purpose financial statements included the balance sheet, profit and loss statement and statement of cash flows for each financial year.

Set out below is a summary of the financial information of the Company.

4.2 Balance sheet

Balance Sheet						
\$	Note	FY15	FY16	FY17	FY18	YTD FY19
Current Assets						
Cash and cash equivalents	1	334,869	757,611	115,947	191,118	(353,419)
Trade and other receivables	2	874,787	916,368	350,695	56,558	(528,755)
Inventories	3	5,220,455	7,014,161	9,528,468	10,581,330	9,977,449
Other current assets	4	146,783	127,926	241,996	213,169	291,586
Total Current Assets		6,576,894	8,816,066	10,237,106	11,042,175	9,386,861
Non-Current Assets						
Plant and equipment	5	2,514,893	2,378,878	2,685,899	3,825,036	4,261,940
Deferred tax asset		840,986	929,362	1,091,095	1,492,909	1,091,095
Total Non-Current Assets		3,355,879	3,308,240	3,776,994	5,317,945	5,353,035
Total Assets		9,932,773	12,124,306	14,014,100	16,360,120	14,739,896
Current Liabilities						
Trade and other payables	6	8,490,109	11,050,643	8,233,266	9,711,212	9,185,074
Short-term borrowings	7	1,755,254	1,406,266	2,677,632	2,034,836	645,815
Current tax liabilities	8	-	-	650,118	818,892	454,899
Short-term provisions	9	1,407,478	1,420,038	1,489,938	1,665,133	1,844,024
Total Current Liabilities		11,652,841	13,876,947	13,050,954	14,230,073	12,129,813
Non-Current Liabilities						
Long-term provisions	9	154,650	141,980	103,839	94,635	-
Long-term borrowings	10	-	-	-	-	911,210
Total Non-Current Liabilities		154,650	141,980	103,839	94,635	911,210
Total Liabilities		11,807,491	14,018,927	13,154,793	14,324,708	13,041,022
Net Assets/(Liabilities)		(1,874,718)	(1,894,621)	859,307	2,035,412	1,698,873

Source: Signed annual report FY15 to FY17, unsigned annual report FY18 and FY19 monthly management accounts to 31 December 2018

We comment on each of the categories included in the balance sheet below:

1. **Cash and cash equivalents** includes cash on hand and cash at bank. Prior to our appointment the Company operated nine bank accounts.
2. **Trade and other receivables** primarily comprise security deposits and other receivables.
3. **Inventories** comprise finished goods on hand and in transit that are held for resale.

Inventory increased by c. 11% from \$9.5m in FY17 to \$10.6m in FY18. The increase in inventory was driven by new stock held for resale at the additional retail stores opened by the Company in FY18. The Company increased its store network by 9% from 80 stores in FY17 to 87 in FY18.

4. **Other current assets** comprise of prepaid liabilities made by the Company before the debts became due and payable.

5. **Plant and equipment** relates to the acquisition costs of fixed assets net of depreciation charges.

Fit out costs of the retail stores and the associated rebates and amortisation costs are also included in this category.

Plant and equipment increased by c. 42% from \$2.7m in FY17 to \$3.8m in FY18. This increase was largely driven by the Company's investment in fit outs of new retail stores opened in FY18 and also fixed assets purchased for the new stores.

6. **Trade and other payables** include domestic and overseas trade creditors supplying stock to the Company, accrued expenses and sundry payables including the value of layby deposits and unused gift vouchers.

Payables increased by c. 18% from \$8.2m in FY17 to \$9.7m in FY18. This increase was predominantly driven by the purchase of new stock from suppliers and other operating liabilities incurred in respect of the new retail stores opened by the Company in FY18.

7. **Short-term borrowings** comprise of bank overdraft facilities and insurance premium funding.

Short-term borrowings included a trade finance loan facility with CBA of c. \$635k in YTD FY19.

8. **Current tax liabilities** relate to income tax and goods and services tax payable by the Company.

9. **Short-term provisions** and **long-term provisions** comprise of provisions for employee benefits and leave entitlements.

Short-term provisions increased by c. 12% from \$1.5m in FY17 to \$1.7m in FY18. This increase was also driven by an increase in the number of staff employed to work at the new retail stores opened by the Company in FY18 and the associated increase in employee entitlements.

10. **Long-term borrowings** of \$911k in FY19 comprise of loans from CBA and Marketlend in the sum of c. \$303k and \$608k respectively.

4.3 Income statement

Profit & Loss						
\$	Note	FY15	FY16	FY17	FY18	YTD FY19
Income						
Revenue	1	41,705,002	46,873,067	51,690,835	54,159,533	30,877,616
Other income	2	79,783	160,525	83,316	2,708	(3,848)
Change in inventories	3	591,968	1,793,706	2,337,846	1,145,357	1,585,758
Total Income		42,376,753	48,827,298	54,111,997	55,307,598	32,459,527
Expenses						
Raw materials	4	(17,823,076)	(21,879,100)	(22,883,113)	(22,835,981)	(15,451,469)
Employee benefits expense	5	(13,052,783)	(13,436,273)	(13,897,088)	(15,297,367)	(8,719,063)
Occupancy	6	(8,112,144)	(8,166,496)	(8,225,891)	(9,117,158)	(6,140,504)
Depreciation and amortisation	7	(771,754)	(772,379)	(737,144)	(939,675)	(204,932)
Finance costs	8	(202,192)	(303,756)	(339,110)	(342,926)	(166,148)
Other expenses	9	(4,468,958)	(4,377,573)	(4,787,338)	(5,398,773)	(2,260,639)
Total Expenses		(44,430,907)	(48,935,577)	(50,869,684)	(53,931,880)	(32,942,754)
Profit Before Income Tax		(2,054,154)	(108,279)	3,242,313	1,375,718	(483,228)
Income Tax Benefit/(Expense)		11,993	88,376	(488,385)	(199,613)	-
Profit After Income Tax		(2,042,161)	(19,903)	2,753,928	1,176,105	(483,228)

Source: Signed annual report FY15 to FY17, unsigned annual report FY18 and FY19 monthly management accounts to 31 December 2018

We comment on the categories included in the profit and loss below:

1. **Revenue** comprises income earned by the Company from the sale of stock.

Despite the opening of 7 new retail stores in FY18, revenue only increased by c. 5% from \$51.7m in FY17 to \$54.2m in FY18. This was in contrast to the increase in revenue of 12% in FY16 and 10% in FY17.

2. **Other income** includes interest earned, over and under banking of tills (as described by the Company's financial management accounts) and other sundry income items.

We note that other income is negative in YTD FY19, driven by the under banking of tills (as described by the Company's financial management accounts).

3. **Changes in inventories** includes rebates, discounts received and adjustments on stock.
4. **Raw materials** relate to the total cost attributable to goods sold and includes the cost of stock purchases made during the financial year.
5. **Employee benefits expense** include salaries and wages and other employee-related expenses for Head Office, store and regional employees.

Employee benefits expense increased by c. 10% from \$13.9m in FY17 to \$15.3m in FY18. This increase was largely driven by the increase in the number of staff employed at the new retail stores opened by the Company in FY18.

6. **Occupancy** includes rental expenses and out goings associated with the retail stores and Head Office.

Occupancy expenses increased by c. 11% from \$8.2m in FY17 to \$9.1m in FY18. This increase was driven by additional rent expenses incurred from the operating leases of new retail stores opened in FY18.

7. **Depreciation and amortisation** relates to depreciation charged on fixed assets held and amortisation charged on fit outs in the retail stores and at Head Office.

8. **Finance costs** comprises of interest paid to third parties and shareholders.

9. **Other expenses** predominantly comprises of operating expenses relating to the retail stores and Head Office.

4.4 Statement of cash flows

Statement of Cash Flow						
\$	Note	FY15	FY16	FY17	FY18	YTD FY19
Cash Flows From Operating Activities						
Receipts from customers	1	45,796,931	51,672,088	57,442,187	59,871,183	33,835,543
Payments to suppliers and employees		(44,534,458)	(51,421,813)	(57,927,439)	(56,953,208)	(31,972,056)
Interest received		17,423	21,166	18,037	1,290	-
Finance costs paid		(121,778)	(229,146)	(264,500)	(275,426)	(220,635)
Income tax received		-	-	-	-	-
Income tax/GST paid		-	-	-	(432,653)	(761,473)
Net cash flow from operating activities		1,158,118	42,295	(731,715)	2,211,186	881,379
Cash Flows From Investing Activities						
Proceeds from sale of plant and equipment	2	-	-	9,374	45,905	-
Payment for plant and equipment		(674,894)	(356,266)	(887,945)	(1,539,124)	(587,511)
Net cash flow from investing activities		(674,894)	(356,266)	(878,571)	(1,493,219)	(587,511)
Cash Flows From Financing Activities						
Proceeds from borrowings	3	55,658	62,284	85,483	90,228	-
Proceeds from/(repayments) for director loans		-	302,745	(302,745)	-	-
Repayment of borrowings		(81,105)	(57,582)	(78,182)	(78,040)	(178,902)
Net cash flow from financing activities		(25,447)	307,447	(295,444)	12,188	(178,902)
Net increase/(decrease) in cash held		457,777	(6,524)	(1,905,730)	730,155	114,966
Cash at beginning of year		(1,055,711)	(597,934)	(604,458)	(2,510,187)	(781,856)
Cash at end of year	4	(597,934)	(604,458)	(2,510,188)	(1,780,032)	(666,889)

Source: Signed annual report FY15 to FY17, unsigned annual report FY18 and FY19 monthly management accounts to 31 December 2018

We note that YTD FY19 includes incomplete and unaudited management account figures up to and including December 2018 and as such the data included in the statement of cash flow is unreconciled for this financial year.

We comment on each of the categories of the statement of cash flows below:

1. **Cash flows from operating activities** primarily comprises of:

- sales receipts from customers;
- payments to domestic and overseas suppliers for stock purchases;
- payments to employees in respect of entitlements including salaries, wages and superannuation; and
- payments to landlords and service providers for rent, outgoing and utilities.

In February 2018, the Company entered into a payment arrangement plan with the ATO in respect of unpaid income tax for the 2017 financial year and c. \$432k of this income tax was paid in FY18.

In YTD FY19, c. \$543k in GST payments and c. \$219k in income tax payments were made by the Company.

We note that net cash flows from operating activities were positive in all financial years with the exception of FY17.

2. **Cash flows from investing activities** predominantly relate to the purchase of fixed assets and the fit out of the retail store network.

In August 2017 an additional term loan of \$500k was provided by the CBA to assist with the funding of new retail stores for FY18.

3. **Cash flows from financing activities** relates to borrowings with related parties and third parties.

In FY16 JSSC Read Superannuation (related party) entered into a Shareholder Loan Agreement with the Company, agreeing to provide finance of c. \$300k. The loaned sum plus interest was repaid by the Company in FY17 in line with the terms of the agreement.

In March 2017 the Company re-negotiated a new facility with CBA with an increased limit of \$3m (previously \$1.5m with Bendigo Bank).

4. **Cash at end of year** includes cash at bank and the drawn balance of the Company's bank overdraft at year end. The negative cash balance at the end of the financial years is largely driven by the drawn balance of the Company's bank overdraft facility.

We note that the Company's overdraft facility limit was \$1.5m in FY15 and FY16, \$3.0m in FY17 and \$3.5m from FY18 onwards.

5. Statement by directors

5.1 Report on Company Activities and Property

In accordance with the Act, directors are required to submit a Report on Company Activities and Property ("ROCAP") in relation to the Company, providing details of the business, property, affairs and financial circumstances.

The ROCAP presents a snapshot of the asset and liability position of the Company on a going concern and forced asset realisation basis, as prepared by the directors.

The ROCAPs for the Company are summarised below:

Directors ROCAP		All Directors	
Description	Notes	Book value \$'000	ERV \$'000
Assets			
Cash	1	134	134
Inventory	2	9,794	12,732
Other Assets - AQR warehouse	3	103	41
Company website		Unknown	50
Other Assets - prepayments	3	78	Unknown
Plant and Equipment	4	6,745	100
Total Assets		16,854	13,057
Liabilities			
Employee entitlements	5	(2,134)	Unknown
Trade creditors - Domestic	6	(1,521)	Unknown
Trade creditors - FOB suppliers	7	(3,794)	Unknown
Secured creditors	8	(2,315)	Unknown
Other creditors	9	(2,351)	Unknown
Sundry creditors	10	(3,835)	Unknown
Total Liabilities		(15,950)	Unknown
Estimated surplus / (deficiency)		904	Unknown

Source: ROCAPs submitted by the Directors

We make the following observations on the major items in these reports:

1. Cash includes cash at bank of \$105k in 9 pre appointment bank accounts, merchant services and store cash floats of \$29k. The Administrators note there was c. \$185k cash on appointment.
2. The value of inventory at cost is recorded at c. \$9.8m in the ROCAP at the date of appointment with the Directors applying a 30% mark up on cost for the total realisable value giving a value of \$12.7m. The Administrators ran a number of clearance sales and were able to achieve total sales of c. \$16.5m (including GST) during the trade on period, which was higher than the ERV disclosed by the Directors. The Administrators purchased a quantity of stock at a discount during the period of their appointment. Please refer to subsection 2.7.3 of this report for further details.
3. 'Other assets' comprise fixtures and fittings in the main distribution warehouse, prepayments and rental refunds. Plant and equipment including fixtures and fittings were realised by way of a direct sales campaign at an amount greater than the auction realisable value provided by an independent third party valuer engaged by the Administrators. Refer to subsection 2.7.5 of this report for further details.

Given the potential value of creditor claims including landlords against the Company, we anticipate recoverability of prepayments and rental refunds to be unlikely at this stage.

4. Plant and equipment comprises of fixed assets held at Head Office in Adelaide and each of the 87 retail stores. These items including fixture and fittings have been realised for c. \$250k.
5. Employee entitlements in the ROCAP include approximately \$0.2m in pre-appointment wages which was paid by the Administrators in the ordinary course of business and does not include an estimate for redundancy or PILN. Our revised estimate for employee entitlements is c. \$2.7m which incorporates a value for December quarter superannuation, annual leave, long service leave, PILN, superannuation on PILN, redundancy and time in lieu. This is outlined further in subsection 2.7.8 of the report.
6. Trade creditors - Domestic comprises of wholesalers owed \$1.5m at the date of appointment, net of rebates of \$0.1m.
7. Trade creditors - FOB suppliers comprises of overseas creditors in China who were supplying stock to the business. The amount of \$3.8m included stock on water of c. \$0.4m. The Administrators accepted this stock during the trade on period.
8. Secured creditors relate to All PAAP registrations by CBA and Marketlend. The Administrators have confirmed the validity of CBA's registration on the PPSR. Refer to subsection 2.7.9 of this report for further details on the settlement outcome achieved by the Administrators in respect of Marketlend's registrations.
9. Other creditors include amounts owed to the ATO of \$1.4m for GST, PAYG and income tax, director related loans of \$0.6m and gift cards and laybys of \$0.4m.
10. Sundry creditors predominantly consist of monies owed to landlords at the date of appointment.

5.2 Reasons for financial difficulties

Directors explanation

The Directors provided reasons for the financial difficulties of the Company in the ROCAP. The main reasons for failure provided were:

- Undercapitalisation;
- Fierce competition in the retail sector;
- Difficult market conditions around discretionary household spend; and
- Actual sales being lower than forecast.

Administrators opinion

We concur that the explanation from the Directors appears to have contributed to the failure of the Company. However it appears there were other contributory factors including:

- A weaker than expected sales period in the second half of calendar year 2018;
- Strong competition both in local bricks and mortar and online shopping;
- Rising fixed costs;
- Margin pressures in the form of higher cost of goods sold;
- Lack of investment in e-commerce offering;
- Sustained discounting across the specialty menswear category; and
- Failure to raise capital and sell the business over the course of 2018.

6. Statutory investigations

6.1 Scope

The Administrators are required, pursuant to section 438A of the Act, to conduct investigations into the Company's business, property, affairs and financial circumstances. The Administrators are required to form an opinion about whether it would be in the best interests of the creditors for the administration to end, for the Company to execute a DOCA or for the Company to be wound up.

In considering any proposal for a DOCA in the event one is received, it is necessary to also consider the possible returns if the Company was wound up. Given the comparison required with a winding up the Administrators investigations include the consideration of whether there are any potential actions available to a liquidator in the event that creditors resolve to place the Company into liquidation.

A liquidator has various statutory rights to seek to set aside or void, for the benefit of creditors, certain types of transactions including unfair preferences, uncommercial and unfair loans, unreasonable director related transactions and other transactions for the purpose of interfering with the rights of creditors. The time period involved can be from within 6 months up to 4 years and in some cases beyond this, from when the company was placed into administration or liquidation. With some exceptions these recovery rights only arise if the company was insolvent at the relevant time and there are some limited available statutory defences.

There are also statutory provisions that apply to company directors that give rise to civil and criminal offences for breaches of the Act and a basis for claims against them. There are circumstances where directors can be held personally liable for losses incurred as a consequence for continuing to trade and incur debt at a time when a company was or was likely to become insolvent. There are, again, some limited available statutory defences.

In considering the merits of proceeding with any recovery action, a liquidator must have regard to the relative costs and benefits together with the prospects of success and the financial ability of defendants to meet claims. Recovery actions are usually expensive and involve lengthy delays if court proceedings are required, therefore any action needs to be considered in a commercial manner.

We are also required to report to ASIC if we consider that past or present officers or shareholders of the may have committed an offence under the Act. Reports to ASIC are confidential and we are unable to disclose details to creditors.

6.2 Overview of Administrators' investigations

Our investigations to date have primarily focused on the following:

- Potential actions available to a liquidator (if appointed); and
- Breaches of duty and other offences under the Act by the Directors of the Company.

6.3 Information reviewed

The information reviewed by the Administrators in conducting the preliminary investigations has included:

- ROCAPs submitted and representations made by the Directors;
- Discussions held with the Directors, management, key employees and other external parties;
- Key financial information of the Company including but not limited to audited annual reports and monthly financial management accounts;
- Company books and records, including emails, electronic records and hard copy records;
- Forensic images of computer servers and laptops;
- Board minutes; and
- Various searches undertaken from publically available databases, including but not limited to ASIC.

6.4 Limitations

The short time frame associated with the administration process limits the extent of investigations that that can be performed prior to the second meeting. While a detailed review has been undertaken during the Administration period, we have not completed a full investigation of the kind that we would perform should the Company be placed into liquidation.

The investigations performed to date are based on the information sources outlined in section 6.3 of this report and are only indicative of the actions that may be possible in the event of liquidation.

Should creditors consider they have further information that may be useful in our inquiries, please do not hesitate to contact this office.

6.5 Books and records

Pursuant to section 286 of the Act, a company is required to keep written financial records for a period of 7 years that correctly record and explain its transactions, financial position and performance and would enable true and fair financial statements to be prepared and audited. Section 1305 of the Act states that a book kept by a company is prima facie evidence of any matter recorded unless the contrary is proved.

In some circumstances, the failure to maintain adequate books and records in accordance with the Act may be relied upon by a liquidator in an application for compensation for insolvent trading and other actions for recoveries.

We note that due to time constraints we have not reviewed the Company's books and records in detail.

We have however observed the following:

- The Company engaged external auditor BDO Audit (SA) Pty Ltd to conduct a yearly audit on the Company's special purpose financial statements from FY15 to FY18.
- The books and records reviewed by the Administrators included signed audited annual reports for the financial years ended 30 June 2015, 2016 and 2017.
- The Auditors provided an unmodified audit opinion on these annual reports expressing that the financial statements were, in all material aspects, prepared using accepted Australian Accounting Standards and principles, in accordance with the Act.

- An unsigned annual report for the year ended 30 June 2018 and monthly management accounts for the 2019 financial year including financial data up to and including the month of December 2018 were also sighted.
- A search of ASIC's data base confirmed the Company lodged financial reports for the years ended 2012, 2013 and 2014.

On this basis, our preliminary view is that it appears the Company has met its obligations under the Act with respect to books and records and has therefore complied with the requirements of section 286(1) and (2) of the Act.

6.6 Offences and director duties

Section 438D of the Act requires an administrator to report to ASIC if it appears that:

- A past or present officer, or member, of the company may have been guilty of an offence in relation to the company; or
- A person who has taken part in the formation, promotion, administration, management or winding up of the company may have misapplied money or property of the company or may have been guilty of negligence, default, breach of duty or trust in relation to the company.

Our investigations to date have not revealed any potential breaches by the Directors' of their fiduciary duties under the Act. We are not aware of any management or persons of the Company, misappropriating money or property of the Company. We are not aware of any persons who have been guilty of negligence, breach of duty or trust of the Company. Accordingly, we have not reported to ASIC under section 438D of the Act.

Pursuant to sections 180 to 184 of the Act, the Directors have a duty to act with care and diligence, in good faith and in the best interests of the Company. From our investigations to date, we have not found evidence that suggests the Directors have breached their duty in this regard.

6.7 Related party transactions

We have reviewed related party transactions as part of our investigation into possible offences and possible avenues for asset recovery or claims in the event of a winding up.

Related party transactions can be voidable if they are 'insolvent transactions' entered into, or an act was done for the purpose of giving effect to it, during the 4 years ending on the day of the administration. If transactions during the previous 4 years were with directors and considered to be 'unreasonable director related transactions' (to a director or close associate) then they could be voidable regardless of whether the company was insolvent at the time or became insolvent as a result of the transaction.

The following list of companies are related entities of the Directors of the Company.

Ed Harry - related entities		
Company	ACN	Status
Allens Stores Pty Limited	100 437 992	Registered
AS & HM Hawkins Pty Ltd	150 396 679	Registered
Bronsonbay Proprietary Limited	106 780 465	Registered
Christer Investments Pty Ltd	007 764 687	Deregistered
EEC Commercial Energy Pty Ltd	600 300 909	Registered
EEC Pty Ltd	166 719 491	Registered
Harris Scarfe Insurance Pty Ltd	003 511 171	Registered
Integrated Procurement Pty Ltd	091 588 966	Deregistered
PSEA Dept.Stores Pty Ltd	095 018 803	Registered
Read Business Analysts Pty Ltd	095 550 593	Registered

Our review of the books and records did not identify any director related payments made by the Company. Further investigations will be undertaken if the Company is wound up.

6.8 Voidable transactions

As noted earlier, a liquidator has the ability to apply to the Court for an order to void certain transactions should they be detrimental to the company and/or its creditors under the provisions of the Act.

We set out below, based on our initial review of the Company's books and records, our preliminary views as to whether there are any transactions that may be considered voidable, subject to the further review of a liquidator, if appointed.

Ed Harry – voidable transaction review		
Review area	Evidence found?	Potential claims (\$)
1. Unfair preferences	Y	\$2.2m
2. Uncommercial transactions	N	-
3. Unfair loans to a company	N	-
4. Unreasonable director-related transactions	Y	Nil
5. Transactions to defeat creditors	N	-
6. Voidable transactions	N	-

These transactions are discussed in more detail below.

Unfair preferences

If the Company is placed into liquidation, various provisions of the Act enable the liquidator to recover certain payments that were made by the Company to a creditor prior to the Company being placed into Administration, referred to as unfair preferences. An unfair preference payment is a transaction between a Company and a creditor, generally occurring in the six months prior to the relation back day, resulting in the creditor receiving from the company, in relation to an unsecured debt owed to the creditor, a greater amount than it would have received in relation to the debt in a winding up of the company. A liquidator would therefore be able to review transactions between 15 July 2018 and 15 January 2019.

In order to prove a creditor received an unfair preference payment, the liquidator must first demonstrate the Company was insolvent at the time the payment was made.

The creditor has a defence to an unfair preference claim by a liquidator if it proves that it entered into the transaction in good faith and, at the time the payment was received, the creditor had no reasonable grounds for suspecting that the Company was insolvent or would become insolvent through entering into the transaction and valuable consideration was given, nor would a reasonable person in the creditors position have suspected that the Company was insolvent or would become insolvent.

A preliminary review of the Company's records indicates that there are potential preference payments made to creditors under provisions of Section 588FA of the Act.

Our preliminary investigations have identified payments totalling \$2.2m, which include trade creditors who received a net benefit during the relation back date period, and a number of payment arrangements between the Company and its creditors. This total is split out as follows:

Ed Harry – unfair preference breakdown	
Creditor category	Amount
International suppliers	\$1.98m
Local creditors	\$98k
Statutory – ATO	\$110k

The ability of a liquidator to recover these unfair preferences would be dependent on proving those who received preferential payments had known or had reason to suspect the Company was insolvent, as well as successful recovery action in overseas jurisdictions such as China, which would likely involve significant legal costs.

Uncommercial transactions

A transaction of a company is an uncommercial transaction if the following elements are established by a Liquidator:

- The transaction was entered into or given effect to within two (2) years of the date of appointment of the Administrator, and
- At the time the transaction was entered into, or when given effect to, the company was insolvent or became insolvent as a result of the transaction, and
- A reasonable person in the company's circumstances would not have entered into the transaction having regard to the benefits and detriments to the company in entering into the transaction and the respective benefits to other parties.

The defences available to a party involved in an uncommercial transaction claim are, in effect, the same as those for an unfair preference.

Based on our investigations to date, we are not aware of any uncommercial transactions entered into by the Company.

Unfair loans to a company

An unfair loan is a loan made by a creditor to the company where, upon analysis, the interest or charges with respect to the loan are extortionate. Unfair loans made to the company any time prior to the appointment of the Administrators may potentially be overturned by a subsequently appointed Liquidator, whether or not the company was insolvent at any time after the loan was entered into.

Based on the books and records in our possession we have not identified any transactions which would constitute unfair loans entered into by the Company prior to our appointment.

Unreasonable director-related transactions

Pursuant to Section 588FDA of the Act, a transaction is an unreasonable director-related transaction if there is a payment by the Company to a director or close associate of the director, where a reasonable person in the company's circumstances would not make the payment.

The transaction must have been unreasonable, and entered into during the four years prior to the relation back day, regardless of the solvency at the time the transaction occurred. These can include remuneration, bonuses, loans, loan forgiveness and asset transfers to company officers within the four-year period ending on the relation-back date.

In our preliminary review of the books and records, we identified one director-related transaction which warranted additional scrutiny. To assist liquidity constraints, the JSSC Read Superannuation Fund, an entity related to one of the Directors, John Read, lent \$300k to the Company in April 2016. This loan was repaid in full by May 2017 at an annual interest rate of 7.5%. Given the commercial rate applied, this transaction is not deemed to be unreasonable.

Transactions to defeat creditors

Section 588FE of the Act provides that a transaction will be voidable if the transaction was designed to defeat, delay or interfere with the rights of creditors. Our investigations have not uncovered any such transactions.

Voidable charges

Section 588FJ of the Act provides the circumstances whereby some securities granted by a company might be void as against a liquidator. We have not identified any potentially voidable charges.

6.9 Insolvent trading

A company is considered to be insolvent if it is unable to pay all of its debts as and when they become due and payable. Case law suggests that, in certain circumstances, directors, when discharging their duties to a company, must take into account the interests of creditors, such as when a company is potentially about to become insolvent. Directors who allow a company to continue trading when there are reasonable grounds for suspecting that the company is or may become insolvent, may be held personally liable for debts incurred.

It is necessary to establish insolvency in order for a liquidator to be able to set aside a transaction or obtain compensation from a director for insolvent trading (with the exception of unfair loans and unreasonable director related transactions).

Determining the solvency of a company is a complex matter, which is assessed as a matter of commercial reality in light of all relevant facts. Short term periods of illiquidity are to be distinguished from an endemic shortage of working capital. Where a company is experiencing the latter, it is regarded as insolvent under section 95A of the Act. Accordingly the test for insolvency is not a balance sheet test but rather a cash flow test.

It should be noted by creditors that a successful claim for insolvent trading often requires extensive analysis and generally requires legal action, with such legal proceedings being lengthy and involving significant cost. Any successful claim may also be set off by the Directors against amounts due to that individual by way of unsecured advances or loan amounts.

Preliminary assessment

Although there is no single test that provides an authoritative answer on whether or not a company was insolvent, there are a number of tests that have been established by the courts as indicators of insolvency. These insolvency indicators are recognised in the case of *ASIC v Plymin* (2003) 46 ACSR 126.

The case contains a list of 14 common indicators of insolvency, which have been adopted when considering the solvency of a company. An insolvent company may illustrate one or more of these indicators at any one time. It is important to note they are mere indicators of insolvency and do not operate as a list that must be established in order to prove insolvency.

Based on our preliminary investigations, we set out a table below illustrating a summary of our findings in relation to the insolvency indicators reviewed:

Indicators of Insolvency					
Indicator	FY15	FY16	FY17	FY18	YTD FY19
Continuing losses	✓	✓	✗	✗	✓
Current ratio below 1	✓	✓	✓	✓	✓
<i>Adjusted Current Ratio</i>	?	?	?	✗	✗
Overdue taxes	?	✓	✗	✗	✓
Inability to borrow	✗	✗	✗	✗	✓
No alternative finance	✗	✗	✗	✗	✗
Inability to raise capital	✗	✗	✗	✗	✓
Suppliers placed on COD	✗	✗	✗	✗	✗
Creditors outside terms	?	?	?	✓	?
Issuing post-dated cheques	?	?	✗	✗	✗
Dishonoured cheques	?	?	✗	✗	✗
Special creditor arrangements	✗	✓	✗	✓	✓
Demands, writs, judgements	✗	✗	✗	✗	✗
Round-sum payments	?	?	✓	✓	?
Inability to produce information	✗	✗	✗	✗	✗
Legend:	Preliminary assessment of insolvent period				
Indicator	✓				
Requires further investigation	?				
Not an indicator	✗				

We comment on the table above as follows.

Continuing losses

The table below sets out the yearly profit or loss of the Company from FY15 to YTD FY19. Despite the Company incurring losses in FY15, FY16 and YTD FY19, the Company recorded a profit after tax in FY17 and FY18. The overall net profit during the period of review was \$1,384,741.

Assessment of continuing losses						
\$	FY15	FY16	FY17	FY18	YTD FY19	Total
Profit after tax	(2,042,161)	(19,903)	2,753,928	1,176,105	(483,228)	1,384,741

Source: Signed annual report FY15 to FY17, unsigned annual report FY18 and FY19 monthly management accounts to 31 December 2018

Auditors opinion

The independent auditors report for FY15 (signed on 6 September 2016), FY16 (signed on 25 January 2017) and FY17 (signed on 22 December 2017) provided an unmodified audit opinion, expressing that the Company's financial statements provided a true and fair view of the Company's financial position and performance, and also complied with Australian Accounting Standards.

Notwithstanding this, an Emphasis of Matter section was highlighted in the Auditor's Report for FY15 and FY16 indicating the existence of a material uncertainty that may cast significant doubt on the Company's ability to continue as a going concern. The Auditor attributed this uncertainty to losses incurred by the Company and current liabilities exceeding current assets. We note the profitability improvement made by the Company, from the loss incurred of c. \$20k in FY16 to the significant profit of \$2.7m in FY17 and \$1.2m in FY18.

Liquidity

Current ratio

The current ratio compares the Company's current assets to its current liabilities and is designed to examine a company's ability to access funds in the immediate to short term from "liquid" assets to pay liabilities that are due and payable. A ratio less than 1.0 indicates a company is unable to fund short term debts from current assets.

The table below sets out the yearly current ratio of the Company from FY15 to YTD FY19:

Liquidity position					
\$'000	FY15	FY16	FY17	FY18	YTD FY19
Current assets	6,577	8,816	10,237	11,042	9,387
Current liabilities	11,653	13,877	13,051	14,230	12,130
Current ratio	0.56	0.64	0.78	0.78	0.77

Source: Signed annual report FY15 to FY17, unsigned annual report FY18 and FY19 monthly management accounts to 31 December 2018

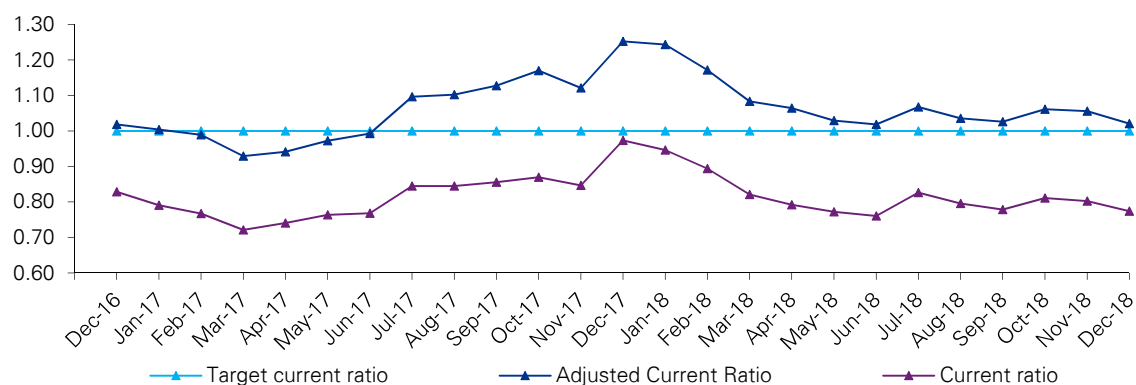
The Company did not maintain a current ratio above 1.0 during FY15 to YTD FY19. This was emphasised by BDO in their Auditor's report for the FY15 to FY17 financial statements.

Adjusted Current Ratio

The Adjusted Current Ratio includes an adjustment to current assets by "marking up" inventory by 30% to its book value. This approach was used based on the mark up on prior sales communicated to us by the Directors.

Set out in the graph below is the monthly current ratio and Adjusted Current Ratio from December 2016 to December 2018:

Current ratio & Adjusted Current Ratio



Source: Monthly management accounts from December 2016 to December 2018

The Adjusted Current Ratio was above 1.0 from July 2017 to December 2018 suggesting that the Company had sufficient realisable assets to pay its debts as and when they fell due.

Cash flow considerations

A review of the cash flow statement identified positive net cash flows from operating activities during FY15 to YTD FY19, with the only exception being FY17. This supports our preliminary findings from the Adjusted Current Ratio analysis, indicating the Company had sufficient realisable assets in FY18 and YTD FY19 to pay its debts as and when they fell due. The statement of cash flows was discussed in section 4.4 of this report.

Overdue taxes

Non-payment of statutory taxes is an indicator of financial distress.

Our preliminary findings suggest that the Company had overdue PAYG and GST debts totalling the sum of c. \$783k in FY16 and overdue income tax in the sum of c. \$825k in YTD FY19.

The Company had entered into a payment arrangement plan with the ATO in FY16 and FY18 and the statutory debts relating to both of these payment plans were paid in full and in line with the payment plan.

Inability to borrow

A poor relationship with a financier may lead to the inability to renew, extend, increase or restructure a company's financing facilities.

The Company previously held facilities with Bendigo Bank and refinanced its facilities with CBA around March 2017.

In FY18, CBA increased the Company's total facility limit by \$500k from \$3.0m to \$3.5m.

Our preliminary findings indicate the Company's relationship with CBA deteriorated in FY19 when it was advised of a breach of a financial ratio pursuant to the terms and conditions of its' banking facilities, notwithstanding that CBA did not exercise its rights in relation to this breach.

The Company was also advised by CBA in July 2018 that its application for extra short term funding to December 2018 of \$2.0m had been rejected.

No alternative finance

In FY16, a related party provided short term funding of c. \$300k to the Company. This was repaid in full by May 2017.

Marketlend (registered secured creditor) approved a \$1.0m import invoice payment facility on 3 September 2018 in exchange for security over certain assets of the Company. Our preliminary findings indicate no alternative financing was obtained by the Company after September 2018, with all potential funding sources exhausted by around December 2018.

Inability to raise capital

The Directors engaged external advisors in July 2017 to facilitate a sale of business campaign on a going concern basis. The initial phase of this engagement included a strategic review of the business including an assessment of the Company's' strategy, operations, performance and existing financial model with a view of improving operations and driving profit improvement initiatives.

With no formal offers received from the sale of business campaign, the external advisors undertook capital raising initiatives, with investment flyers distributed to interest parties around September 2018 and November 2018.

The pre-appointment advisors and Directors appear to have engaged with a broad range of interested parties including but not limited to retail companies, individual parties, capital brokers and private equity advisors in an attempt to successfully effect a sale of the business / capital raising.

No formal offers were received following the sale of business and capital raising campaigns.

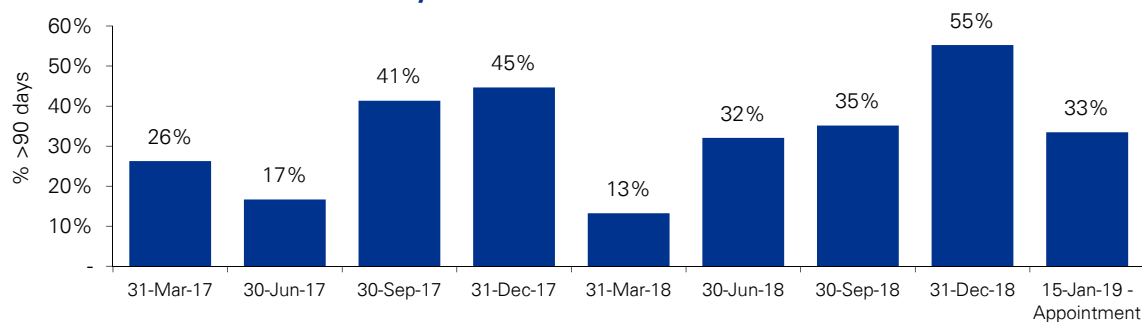
Creditors outside terms

An indicator of cash flow stress is creditors increasingly being paid late, invoices not paid within trading terms, or invoices not being paid at all.

Analysis was conducted for the aged creditors profile for the Company's domestic, international and sundry creditors for the quarter period ended 31 March 2017 to the date of appointment.

The analysis shows unpaid invoices > 90 days in FY17, FY18 and YTD FY19, which is likely to be outside creditor trading terms.

Trade creditors ageing analysis Domestic & International 90+ days



Further investigation is required given that inconsistencies were found between ageing reports and general ledger balances and we have also not reviewed trade terms between the Company and its suppliers as part of our investigations.

Special creditor arrangements

A preliminary review of the Company's email correspondence indicates the Company engaged in negotiations for extensions to trading terms and payment deadlines with suppliers in 2018.

The Company also entered into negotiations with landlords in FY19 between July and December 2018 for extensions and arrangements to lease payment schedules. We did not identify any suppliers or landlords who did not agree to an extension being granted to the Company.

Defences

Directors have a number of defences available to them in relation to an insolvent trading claim. In summary, if a director can establish any of the following defences, they will not incur civil liability under section 588G (these do not apply to the criminal offence provision in section 588G(3) of the Act):

- At the time the debt was incurred the director had reasonable grounds to expect, and did expect, that the company was solvent and would remain solvent if it incurred that debt, and any other debts, that it had incurred at that time;

- At the time the debt was incurred the director had reasonable grounds to believe, and did believe, that a competent and reliable person was responsible for providing information about the company's solvency, and that person was fulfilling that responsibility;
- The director through illness, or some other good reason, was not taking part in the management of the company at the time the debt was incurred; and
- The director took all reasonable steps to avoid the company from incurring the debt.

Our preliminary investigations identified a number of operational and restructuring initiatives that appear to have been undertaken by management. These include (but are not limited to) the following:

- Negotiations with suppliers and landlords to defer payments prior to due dates.
- Engagement of external advisors prior to our appointment to facilitate sale of business and equity raising campaigns.
- Pursuit of business improvement strategies and initiatives to generate additional sales and reduce product costs.
- Regularly monitoring the Company's cash flow position by maintaining and updating daily cash flow forecasts, circulated on a weekly basis to Directors and regularly discussed at monthly board meetings.

All of these factors are relevant to the questions of the solvency position of the Company prior to our appointment. They will require further consideration if creditors resolve to place the Company into liquidation.

Conclusion

From information reviewed, it is the Administrators' preliminary view that the Company was likely not insolvent until December 2018 given all potential funding sources had been exhausted by this date, with little to no prospects of success. This view also considered the Company's ability to obtain support from its key suppliers and landlords in extending payment terms throughout the course of 2018. Further investigation would be required to confirm this position if the Company was placed into liquidation, including the quantum of any insolvent trading claim if one is found to exist.

6.10 Other investigations

Directors' personal financial position

In certain circumstances, directors may become personally liable for losses incurred by creditors and where related party transactions are overturned. Should recovery actions be contemplated against any of the Directors, it would be necessary to consider their insurance cover as well as their personal financial positions and ability to meet any claim.

We understand one of the Directors may have joint ownership in property located in Australia, however our findings relating to the property ownership position of each of the Directors are not conclusive and we have not fully assessed the financial ability of individual directors to meet any potential claims.

If the Company is placed into liquidation and we identify that there may be director liabilities we would seek to determine the financial positions of the Directors as part of any consideration of recovery actions.

7. Estimated returns from Liquidation

The purpose of a liquidation of an insolvent company is to have a Liquidator take control of the company so that its affairs can be wound up in an orderly and fair way for the benefit of all creditors.

Set out in Appendix C is an analysis of estimated returns to creditors in the event of liquidation of the Company.

Given the complex nature of insolvency law and the potential defences available to directors and other parties, liquidator's actions are often costly and potentially long dated entailing a high degree of risk and uncertainty with no guarantees of success. Recovery of any judgement debt may involve enforcement in a foreign judgement, which could prove difficult and costly.

Should creditors choose to place the Company into Liquidation a more substantive investigation will be conducted to consider the merits of proceeding with any recovery action having regard to the relative costs and benefits together with the prospects of success and the financial ability of defendants to meet claims.

Estimated returns from winding up

Set out below is a summary of the possible returns to creditors in the event of liquidation, setting out a low and high scenario in respect of the Company.

Estimated Outcome Statement - Liquidation	
Creditor class	Estimated cents in the \$ distribution
Priority creditors	100c
Secured creditors	100c
Unsecured creditors	12c

Basis for estimation and underlying assumptions

Full details of the attached calculation are provided in Appendix C along with supporting assumptions around:

- possible recoveries;
- associated costs; and
- the level of creditor claims that are admitted to participate in any distribution.

There will usually be differences between estimated outcomes and actual results, because events and circumstances frequently do not occur as expected or predicted, and those differences may be material. Given the large value of landlord claims submitted at the date of this report (and the inclusion of lost future rental income in these claims) the final return to unsecured creditors will be materially dependent on the extent to which these claims are admitted in a distribution.

These scenarios are illustrative only and we recommend creditors review the assumptions in the appendix to assist in forming your own view on possible returns.

Estimated timing of returns

Priority creditors and secured creditors are expected to be paid out in full by May 2019 and unsecured creditors are expected to receive a dividend of c. 12 c/\$ in a liquidation during the second half of 2019. This time frame could be delayed if there is any litigation in respect of the adjudication of proofs of debt.

8. Deed of Company Arrangement

A deed of company arrangement (DOCA) is a binding arrangement between a company and its creditors governing how the company's affairs will be dealt with, which may be agreed to as a result of the company entering voluntary administration. It aims to maximise the chances of the company, or as much as possible of its business, continuing, or to provide a better return for creditors than an immediate winding up of the company, or both.

A DOCA binds all unsecured creditors, even if they voted against the proposal. It also binds owners of property, those who lease property to the company and secured creditors, if they voted in favour of the deed. The DOCA does not prevent a creditor who holds a personal guarantee from the company's directors or another person taking action under the personal guarantee to be repaid their debt.

If creditors resolve to accept a proposed DOCA, it will commence when both the company and the administrators have executed the Deed. If a DOCA has been executed the company continues its legal existence. The Company is described as being "Subject to Deed of Company Arrangement".

The Administrators did not receive a DOCA proposal during the period of Voluntary Administration of the Company.

9. Options available to creditors

Pursuant to rule 75-225(3)(b) of the IPR, we provide creditors with a statement setting out our opinion for the Company as to whether or not it is in creditors' interests for:

- The Administration to end;
- The company to execute a Deed of Company Arrangement (we note that a DOCA proposal was not received as at the date of this report); or
- The company to be placed into Liquidation.

10. Administrators' opinion

Our statement setting out our opinion for the Company is set out below.

In our opinion, it would be in the interests of creditors that the Company be placed into Liquidation.

This opinion is based on our preliminary conclusion that the Company is insolvent and that no DOCA proposal has been submitted during the administration. This opinion has also been considered in light of the Company ceasing to trade from 24 March 2019 following the completion of a stock realisation program and sale of business campaign which ultimately proved unsuccessful.

Please refer to our earlier summary of estimated returns from winding up detailed in section 7 of this report.

11. Remuneration

This section of our report summarises key aspects of the Administrators' claim for remuneration as well as expected prospective remuneration of a Liquidator, if appointed.

Creditors may approve fees of an Administrator by passing a resolution at a creditors' meeting and we seek various resolutions in approval of remuneration at the second meeting.

Further details of remuneration together with the resolutions are set out in the Administrators' Remuneration Approval Report attached as Appendix D.

11.1 KPMG Restructuring Services guide to hourly rates

In our circular to creditors dated 16 January 2019, we provided creditors with a Remuneration Advice that noted that we proposed to charge fees on time based / hourly rates basis.

We attached a guide to hourly rates which included the following based on our costs of running an insolvency business, including KPMG's professional staff and other overheads. These hourly rates are generally similar to other insolvency professionals:

Title	Hourly Rate (excl GST)
Partner/ Appointee	\$720
Director	\$615
Associate Director	\$540
Manager	\$490
Executive	\$360
Analyst	\$285
Personal Assistant/ Other	\$150

11.2 Administrators' remuneration

The attached remuneration report sets out detail of the Administrators' remuneration claim.

The work undertaken by Administrators depends on the type of Administration concerned and the issues that need to be resolved. Some issues are straightforward, while others are more complex. However, what is common amongst all administration types is that an Administrator is, by law, required to undertake a number of tasks which may not directly benefit creditors (for example, the preparation of reports to ASIC or the preparation and lodgement of accounts of receipts and payments). An Administrator is entitled to reasonable remuneration for work performed including statutory tasks. Creditors have an interest in the level of fees and costs, as the Administrator will, generally, be paid from the Company's available assets before any payments to creditors are made.

The total remuneration for the administration is estimated to be \$1,463,638 excluding GST and disbursements. This has increased compared to our previous estimate of \$600,000 excluding GST and disbursements because of the following reasons:

- Extension of the trading period to 10 weeks as required to adequately realise stock and action the orderly wind down of the company. The initial estimate was based on a four week trading period at

a rate of \$150,000 per week. The actual weekly rate of \$131,000 included a considerable amount of work relating to non-trading activities (ie employee entitlements). This has resulted in a materially improved outcome for creditors had the trading period been limited to a four week period as previously outlined;

- Completion of investigations during the voluntary administration period which were budgeted to be completed during the liquidation;
- Calculating employee entitlements and communicating to all employee their specific entitlements due to payment in a liquidation;
- Larger than anticipated volume of queries through the functional mailbox;
- Landlord negotiations which resulted in a saving across the Administration period of c.\$0.2m; and
- Extensive negotiations with suppliers of stock to release additional stock to be sold during the Administration period.

The Administrators have not received any remuneration to date for work performed in the Administration.

Retrospective remuneration from 15 January to 31 March 2019

We will seek approval of the following retrospective (actual) remuneration by creditors at the second meeting, via formal resolution, as set out in the attached Agenda of the meeting. Based on the hourly rates set out above, total proposed remuneration of the Administrators for the period from 15 January 2019 to 31 March 2019 is \$1,313,638 (excluding GST).

Prospective remuneration from 1 April 2019 to the date of the second meeting of creditors

We estimate that further costs from 1 April 2019 to the date of the second meeting on 23 April 2019 will be up to a limit of \$150,000 (excluding GST).

11.3 Deed Administrators' remuneration

Given there was no DOCA proposal received, this is not applicable.

11.4 Liquidators' remuneration

If creditors resolve that the Company be placed into Liquidation and the Administrators be appointed as Liquidators, then we propose that the Liquidators' remuneration be calculated on the basis of time spent by us, and our staff, based upon the KPMG Restructuring Services guide to hourly rates (the same basis as the Administrators' remuneration).

We propose that the Liquidators' future fees for the Liquidation initially be approved in advance up to an amount of \$150,000 plus GST and disbursements, based on the estimated time to spent by the Liquidators and their staff in respect of the Liquidation based upon the KPMG Restructuring Services guide to hourly rates. Prospective remuneration approval will be sought from creditors at the second meeting. Further particulars are set out in the Administrators' remuneration Report attached as Appendix D.

No provision has been made for possible additional remuneration costs associated with unforeseen circumstances such as disputes, legal challenges or proceedings. Should additional work be necessary beyond what is contemplated, further approval may be sought from creditors.

12. Closing

The Administrators will advise creditors in writing, if applicable and practical, of any additional matters that come to hand after the dispatch of this report that, in our view, is material to creditors' deliberations.

Should you have any queries with respect to this report or the second meeting of creditors convened for 23 April 2019, please do not hesitate our office via email at edharry@kpmg.com.au.

13. Appendices

Appendix A - Notice of Meeting

NOTICE OF SECOND MEETING OF CREDITORS OF COMPANY

Specialty Mens Apparel Pty Ltd (Administrators Appointed)

ACN 149 766 307 (“the Company”)

Notice is given that a meeting of the creditors of the Company will be held as follows:

Date: Tuesday, 23 April 2019
Time: 12:00pm ACDT (local Adelaide time)
Address: KPMG Office, Adelaide, 151 Pirie Street, Adelaide SA 5000

Agenda

The purpose of this meeting is to:

- 1 Consider the Voluntary Administrators’ report pursuant to rule 75-225(3) of the Insolvency Practice Rules (Corporations) 2016 in relation to the Company’s business, property, affairs and financial circumstances including the Administrators’ statement of opinion relating to the future of the Company and the options available to creditors to resolve either that:
 - a. the Company execute a Deed of Company Arrangement (if one is proposed); or
 - b. the administration should end; or
 - c. the Company be wound up; or
 - d. the meeting be adjourned.
- 2 Consider and if thought fit determine the remuneration of the Administrators’.
- 3 If the Company executes a deed of company arrangement (subject to one being proposed):
 - a. to determine the remuneration and internal disbursements of the Deed Administrators’; and
 - b. to consider the appointment of a Committee of Inspection.
- 4 If the Company is wound up:
 - a. to determine the remuneration of the Liquidators’;
 - b. to consider the appointment of a Committee of Inspection; and
 - c. to consider authorising the Liquidators’ to dispose of the books and records of the company after finalisation, subject to obtaining ASIC approval in accordance with IPS 70-35; and
 - d. to consider authorising the Liquidators’, in so far as is necessary for the beneficial winding up of the Company, to compromise any debts to the Company greater than the prescribed amount pursuant to s477(2A) of the Corporations Act 2001 (*Cth*); and
 - e. to consider authorising the Liquidators’, in so far as is necessary for the beneficial winding up of the Company, to enter into any agreement on the Company’s behalf involving a term or obligations extending for more than three months pursuant to s477(2B) of the Act
- 5 To discuss any other relevant business which may arise.

Attending and voting at the second meeting of creditors

Creditors are invited to attend the meeting but are not entitled to participate and vote at the meeting unless:

- **Proof of debt:** They have lodged with the Voluntary Administrators' particulars of their debt or claim and this has been admitted for voting purposes, wholly or in part, by the Voluntary Administrators'. If you have previously lodged a proof of debt form in the Voluntary Administration, you do not need to do so again. Refer to Note 1 for further guidance on entitlement to vote at meeting of creditors.
- **Attendance or proxies:** They are either present in person or validly represented by proxy, attorney or an authorised person under s250D of the Act. If the creditor is a corporate creditor or is being represented, a proxy form, power of attorney or evidence of appointment of a company representative pursuant to Section 250D of the Act must be validly completed and provided to the Voluntary Administrators' by no later than 12.00pm ACDT on 18 April 2019.

A proxy form is only valid for a particular meeting and will need to be resubmitted for this meeting even if previously provided for the first meeting of creditors of the Company.

To enable sufficient time to review, proofs of debt and proxy forms should be received by the Administrators' by no later than 12.00pm ACDT on 18 April 2019 and can be submitted by email to edharry@kpmg.com.au, fax +61 2 9335 7001 or by post to KPMG Sydney, Level 38, Tower Three, 300 Barangaroo Avenue, Sydney NSW 2000. Please allow sufficient time for the documents to be received prior to the due date.

Electronic facilities

Electronic facilities will be made available at the second meeting of creditors by telephone conference call for creditors who are unable to attend in person. To access those facilities, creditors are required to notify a representative of the Voluntary Administrators' by email at edharry@kpmg.com.au, by no later than 12.00pm ACDT on 18 April 2019. Upon receipt of this correspondence, creditors will be provided with details and instructions on how to access the electronic facilities for the meeting by return email.

Creditors who wish to attend and vote at the second meeting of creditors by electronic facilities must lodge a formal proof of debt form and appointment of proxy form. Failing this, creditors or their proxies will be excluded from voting at the second meeting of creditors.

Any queries should be directed to by email to edharry@kpmg.com.au.

Dated: 5 April 2019

Brendan Richards

.....
Brendan Richards
Joint and Several Voluntary Administrator

KPMG
Tower Two, Collins Square
727 Collins Street
Melbourne VIC 3008

Note 1: Entitlement to vote and completing proofs

IPR (Corp) 75 85 Entitlement to vote at meetings of creditors

- (1) A person other than a creditor (or the creditor's proxy or attorney) is not entitled to vote at a meeting of creditors.
- (2) Subject to subsections (3), (4) and (5), each creditor is entitled to vote and has one vote.
- (3) A person is not entitled to vote as a creditor at a meeting of creditors unless:
 - (a) his or her debt or claim has been admitted wholly or in part by the external administrator; or
 - (b) he or she has lodged, with the person presiding at the meeting, or with the person named in the notice convening the meeting as the person who may receive particulars of the debt or claim:
 - (i) those particulars; or
 - (ii) if required—a formal proof of the debt or claim.
- (4) A creditor must not vote in respect of:
 - (a) an unliquidated debt; or
 - (b) a contingent debt; or
 - (c) an unliquidated or a contingent claim; or
 - (d) a debt the value of which is not established; unless a just estimate of its value has been made.
- (5) A creditor must not vote in respect of a debt or a claim on or secured by a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor unless he or she is willing to do the following:
 - (a) treat the liability to him or her on the instrument or security of a person covered by subsection (6) as a security in his or her hands;
 - (b) estimate its value;
 - (c) for the purposes of voting (but not for the purposes of dividend), to deduct it from his or her debt or claim.
- (6) A person is covered by this subsection if:
 - (a) the person's liability is a debt or a claim on, or secured by, a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor; and
 - (b) the person is either liable to the company directly, or may be liable to the company on the default of another person with respect to the liability; and
 - (c) the person is not an insolvent under administration or a person against whom a winding up order is in force.

Appendix B - Declaration of Independence, Relevant Relationships and Indemnities

Corporations Act 2001 (Cth) (Act)

Replacement Declaration of Independence, Relevant Relationships and Indemnities “DIRRI”

Specialty Mens Apparel Pty Ltd (Administrators Appointed)
Trading as Ed Harry
ACN 149 766 307 (the Company)

We have previously provided creditors with a DIRRI in relation to our appointment. Pursuant to section 436DA(5) of the Act, we have updated our DIRRI to reflect a change in circumstances.

This declaration requires us as the Practitioners appointed to the Company to make declarations as to:

- A. our independence generally;
- B. relationships, including:
 - i the circumstances of the appointment;
 - ii any relationships with the Company and others within the previous 24 months;
 - iii any prior professional services for the Company within the previous 24 months;
 - iv. that there are no other relationships to declare; and
- C. any indemnities given, or up-front payments made, to us as the Practitioner.

This declaration is made in respect of us, Brendan Richards and Gayle Dickerson, our partners, KPMG Australia partnership and related parties covered by the extended definition of firm.

On Thursday, 14 March 2019 it was announced that, in Australia, KPMG Ferrier Hodgson are to merge (**Merger**) by way of an acquisition of assets, with the majority of Ferrier Hodgson’s partners and staff to join the combined operation from 1 July 2019.

We consider that this does not create a conflict (or an appearance of a conflict) because:

- we completed our investigations, and the majority of tasks required to be undertaken in order finalise the voluntary administration of the Company and its subsequent winding-up should we be appointed liquidators, prior to the parties agreeing to enter into the Merger;
- relevantly, these investigations included a review of the Company’s affairs including its prior engagement of Azurium Advisory (**Engagement**), including whether the Engagement, or the payments made to Azurium Advisory in respect of it, could be set aside as voidable transactions in the event the Company is wound up;
- as set out in our accompanying section 439A report, we came to the firm conclusion that no voidable transaction or other claims could be brought by the Company or its subsequently-appointed liquidators arising out of the Engagement; and



- further, as the entity which carries on the Ferrier Hodgson business will continue to exist following the Merger, any voidable transaction or other claim which might have been identified, could still be brought against that entity.

There have not been any other changes that would have affected our independence, relevant relationships or indemnities requiring notification to creditors since our initial appointment as Administrators on 15 January 2019 and as outlined in our initial Declaration of Independence, Relevant Relationships and Indemnities dated 16 January 2019.

A. Independence

We, Brendan Richards of the KPMG Australia partnership (“KPMG Australia”), Tower Two, Collins Square, 727 Collins Street Melbourne VIC 3008 and Gayle Dickerson, of KPMG Australia, Level 38, Tower 3, 300 Barangaroo Avenue, Sydney NSW 2000, have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Voluntary Administrators of the Company in accordance with the law and applicable professional standards. We declare that this assessment identified no real or potential risks to our independence.

It remains the case, following the announcement of the Merger, that we are not aware of any reasons that would prevent us from accepting this appointment or subsequently continuing our appointment as Administrators or Liquidators should the Company be wound up at the second meeting of creditors.

In the event that any real or perceived conflict arises, we will:

- seek independent legal advice or court directions if appropriate;
- update this DIRRI if necessary, in which case we will issue a written notice to all known creditors and lodge the updated DIRRI with ASIC; and
- set up information barriers within KPMG and/or seek or support the appointment of a special purpose liquidator as appropriate.

B. Declaration of Relationships

i) Circumstances of appointment

Brendan Richards, a Partner in the KPMG Restructuring Services team, received a phone call from the Managing Director of the Company, David Clark, on 8 January 2019 to discuss some challenges the Company was experiencing following a weaker than expected sales period in the second half of 2018. Brendan Richards had been referred to David Clark by Azurium Advisory, who were acting on behalf of the Company to raise capital and / or strategic partners for the business (**Main Engagement**). Azurium Advisory is a consulting firm established by Ferrier Hodgson, a firm at which Brendan Richards was a partner until November 2017.

Our previous DIRRI noted that Azurium Advisory did not advise the Company until after Brendan Richards had left Ferrier Hodgson. We have subsequently been advised by the Company that Azurium Advisory was initially engaged to undertake a strategic business



review for the Company in July 2017 (**Initial Review**), ie prior to Brendan Richards departing in November 2017.

In addition to our points raised in our previous DIRRI, in our opinion, the above change in circumstances does not affect our independence for the following reasons:

- Brendan Richards did not undertake any work on either the Initial Review or the Main Engagement while at Azurium Advisory.
- Referrals from accountants, lawyers, business advisors and government agencies are commonplace and do not impact on our independence in carrying out our duties as voluntary administrator.
- We have not identified any issue in relation to this relationship that would give rise to a conflict in undertaking the administration of the Company. This relationship has not impeded our independence.

We had 1 meeting with the Company and its Directors on Wednesday, 9th January 2019 prior to our appointment for the purposes of:

- Discussing the recent trading performance of the Company.
- Clarifying and explaining to the Company and its directors the various options available to the Company and the nature and consequences of an insolvency appointment.

A summary of the meeting is provided below.

Date	KPMG Attendees	External Attendees	Agenda
9 January 2019	Brendan Richards (Partner), David Hardy (Director)	David Clark, John Read, Anthony Hawkins, Adrian Crowley	Discussion on challenges in the retail sector Discussion on general background and current trading performance of the Company Discussion on implications of formal insolvency

We did not receive any remuneration in relation to this advice.

Post this meeting, there were a series phone calls and emails with David Clark and John Read in the period from 9 January to 14 January 2019. These communications were focused on information provided by the Company, general advice, provision of Consents to Act and undertaking preliminary planning for a Voluntary Administration.



In our opinion, the meeting held and subsequent phone calls do not affect our independence for the following reasons:

- The discussions were at all times factual in nature, focused on the historical and financial position of the Company, the consequences of insolvency and the possible voluntary administration. Neither we nor KPMG provided advice to the Company. Discussions were restricted to the Company situation and no advice was provided to the directors personally. We understand the directors have sought their own advice.
- No fees or charges were rendered in respect to time incurred by us and our staff in attending the above meetings or reviewing information.
- The discussions were restricted in accordance with the limitations imposed by Principle 2 of the ARITA Code of Professional Practice in relation to independence and pre-appointment communications and meetings.
- As the discussions were of a factual nature, they are unlikely to be subject to review by an Administrator or Liquidator and would not impact on compliance with our statutory and fiduciary duties.

ii) Relevant Relationships

We, or a member of our Firm, have, or have had within the preceding 24 months, a relationship with the following parties:

Name	Nature of relationship	Reasons
Commonwealth Bank of Australia ("CBA") provides financial services to the Company. We have made no determination at this time whether the secured creditor has a charge on the whole of or substantially the whole of the Company.	KPMG has had relationships with CBA due to the nature of KPMG's business. This includes business advisory, consulting services and the appointment of KPMG's registered liquidators to companies as a formal insolvency appointment (in some cases by the secured creditor), where the secured creditor has provided banking facilities, loan facilities and/ or leasing facilities to insolvent companies.	In our opinion, this relationship does not result in a conflict of interest or duty as KPMG has never undertaken any work for CBA in respect of the Company.
Australian Taxation Office ("ATO")	KPMG undertakes work from time to time on behalf of the ATO. This includes business advisory, consulting services and the appointment of KPMG's registered liquidators to companies as a formal insolvency appointment where the ATO has asked us to consent to act as liquidators.	In our opinion, this relationship does not result in a conflict of interest or duty as KPMG have not identified any issue in relation to this relationship that would give rise to a conflict in undertaking the administration of the Company. This relationship has not impeded our independence.

iii) Prior professional services to the Company

Our previous DIRRI noted that neither we, nor our firm, have provided any professional services to the Company in the previous 24 months prior to the acceptance of this appointment.

Professional services provided to the Company by Azurium Advisory under the Engagement have no bearing on our independence for the reasons identified on pages 1 and 2 above. Accordingly, we believe there is no impediment to us continuing our appointment as Administrators or subsequently being appointed as liquidators.

Notwithstanding the above, should a conflict arise out of the Engagement following the Merger on some unforeseen basis, we will:

- seek independent legal advice or court directions if appropriate;
- update this DIRRI if necessary, in which case we will issue a written notice to all known creditors and lodge the updated DIRRI with ASIC; and
- set up information barriers within KPMG and/or seek or support the appointment of a special purpose liquidator as appropriate.

Brendan Richards was a partner at Ferrier Hodgson between 2009 and 2017. In 2011, Ferrier Hodgson were appointed voluntary administrators and subsequently liquidators to the company that traded the Ed Harry business, EDH Pty Ltd (Deregistered), which was later acquired by the Company.

We believe that this relationship does not result in a conflict of interest or duty because:

- Brendan Richards was not personally involved in the voluntary administration of EDH Pty Ltd (Deregistered);
- the Company and EDH Pty Ltd (Deregistered) are unrelated; and
- the voluntary administration and liquidation of EDH Pty Ltd (Deregistered) occurred almost 8 years ago such that there would not be any transactions that would or could be subject to review during the conduct of the external administration.

Should a conflict arise, we will keep creditors informed and take appropriate action to resolve the conflict.

iv) Other relevant relationships

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with the Company, an associate of the Company, a former insolvency practitioner appointed to the Company or any person or



entity that has security over the whole or substantially whole of the Company's property that should be disclosed.

C. Indemnities and up-front payments

We not been indemnified in relation to this voluntary administration, other than any indemnities that we may be entitled to under statute.

We have not been provided with any upfront payments in respect of my remuneration or disbursements.

Dated: 5 April 2019

Brendan Richards

**Brendan Richards
Administrator**

Gayle Dickerson

**Gayle Dickerson
Administrator**

Note:

1. If circumstances change, or new information is identified, we are required under the Corporations Act 2001 and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication as well as table a copy of any replacement at the next meeting of the insolvent's creditors.
2. Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.

Appendix C - Estimated Outcome Statement

Specialty Mens Apparel Pty Ltd (Administrators Appointed)		
Estimated return to creditors		
Item	Ref	Liquidation ERV \$
Assets		
Cash at bank	1	257,819
Gross sales	2	16,454,967
Realisation costs	3	(926,341)
Net realisations		15,528,626
Other assets	4	220,159
Intellectual property	5	305,250
Total assets		16,311,854
Less: Operating liabilities		
Payroll costs	6	(3,402,640)
Inventory purchases		(918,981)
Rent and outgoings		(1,745,675)
Finance costs		(59,629)
Freight		(197,999)
Miscellaneous expenses	7	(156,771)
GST refund / (payment)		(1,008,147)
Total operating liabilities		(7,489,842)
Professional costs		
Insurance		(43,837)
Legal fees	8	(139,477)
Administrators' fees and disbursements	9	(1,670,695)
Liquidators' fees and disbursements	9	(178,442)
Other		(54,564)
Total Professional costs		(2,087,014)
Funds available to meet priority claims		6,734,998
Less: Priority claims		
Employee entitlements	10	(2,778,102)
Total priority creditor claims		(2,778,102)
Funds available to meet secured creditor claims		3,956,896
Less: Secured creditor claims		
Commonwealth Bank	11	(2,349,139)
Total secured creditor claims		(2,349,139)
Funds available to meet unsecured creditor claims		1,607,757
Less: Unsecured creditor claims		
Trade and other creditors	12	12,746,707
Related party claims	13	582,442
Total owing to unsecured creditors		13,329,149
Estimated return to unsecured creditors (cents / \$)		12.1

Notes

1. Cash at bank and not tendered as at 15 January 2019 realised by the Administrators
2. Actual sales for the period 15 January 2019 to 24 March 2019 (final store closure date)
3. Professional fees for stock realisation for the period from 24 January 2019 to 24 March 2019 and marketing fees for undertaking sale campaign
4. Relates to the sale of property, plant and equipment and IT equipment. For more information refer to Section 2.7.5 of this report
5. A contract for the sale of the Company's intellectual property has been executed with settlement to occur in April 2019
6. Payroll costs incurred during the Administration include wages, superannuation, PAYG, payroll tax and WorkCover
7. The Administrators have incurred trading costs relating to cleaning, storage, IT, telecommunications, marketing, security and other costs
8. Estimate for legal costs
9. Actual or expected remuneration and disbursements of the Administrators and Liquidators. For more information refer to Appendix D of this report
10. Outstanding employee entitlements. For more information refer to Section 2.7.8 of this report
11. Commonwealth Bank of Australia advised on 18 January 2019 that their claim totals \$2,349,139. This claim is secured pursuant to the term loan, overdraft and finance facilities provided to the Company
12. Trade and other creditors are estimated based on information available to the Administrators and does not represent an adjudication or admission of claims. This estimate also includes 3 months rent in relation to the unexpired portion of landlord leases
13. Related party loans being director loans

Appendix D – Remuneration Approval Report



Remuneration Approval Report

Specialty Mens Apparel Pty Ltd (Administrators
Appointed)



Contents

This remuneration approval report provides you with the information you need to be able to make an informed decision regarding the approval of our remuneration for undertaking the Voluntary Administration of Specialty Mens Apparel Pty Ltd (Administrators Appointed) trading as Ed Harry Menswear ("Ed Harry" or "the Company").

This report has the following information included:

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What do you need to do next?

You should read this report and the other documentation that we have sent you and then attend the meeting of creditors in order to voice your opinion by casting your vote on the resolutions put to the meeting. The meeting will also give you an opportunity to ask any questions that you may have.

Alternatively, you are also able to appoint a representative to attend on your behalf by lodging a proxy form. Please note that all company's and trusts who are creditors of the Company will need to appoint a proxy to attend. Lodging a specific proxy form allows you to specify how your proxy must vote. Lodging a general proxy form allows your representative to choose how your vote is exercised.

Information about the meeting of creditors is provided at part 8 of this report.

Please advise this office via email at edharry@kpmg.com.au if you will be attending the meeting of creditors and to request the conference password if required. If you have any questions or need any assistance, please contact edharry@kpmg.com.au.



1 Declaration

We, Brendan Richards and Gayle Dickerson of KPMG Australia have undertaken a proper assessment of this remuneration claim for our appointment as Administrators of Specialty Mens Apparel Pty Ltd (Administrators Appointed) in accordance with the law and applicable professional standards.

We are satisfied that the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of the Administration.

2 Executive Summary

The total remuneration for the administration is estimated to be \$1,463,638 *excluding GST and disbursements*. This has increased compared to our previous estimate of \$600,000 *excluding GST and disbursements* because of the following reasons:

- Extension of the trading period to 10 weeks as required to adequately realise stock and action the orderly wind down of the company. The initial estimate was based on a four week trading period at a rate of \$150,000 per week. The actual weekly rate of \$131,000 included a considerable amount of work relating to non-trading activities (ie employee entitlements). This has resulted in a materially improved outcome for creditors had the trading period been limited to a four week period as previously outlined;
- Completion of investigations during the voluntary administration period which were budgeted to be completed during the liquidation;
- Calculating employee entitlements and communicating to all employee their specific entitlements due to payment in a liquidation;
- Larger than anticipated volume of queries through the functional mailbox;
- Landlord negotiations which resulted in a saving across the Administration period of c.\$0.2m; and
- Extensive negotiations with suppliers of stock to release additional stock to be sold during the Administration period.

Remuneration	Report Reference	Amount \$ (GST Ex)
Current remuneration approval sought:		
Voluntary Administration Period		
Resolution 1: Retrospective Voluntary Administrators' remuneration for the period 15 January 2019 to 31 March 2019.	3.2.1	1,313,638
Resolution 2: Prospective Voluntary Administrators' remuneration for the period 1 April 2019 to 23 April 2019.	3.2.2	150,000
Total Remuneration for the Voluntary Administration		1,463,638
Liquidation Period		
Resolution 3: If resolved that the Company be wound up, prospective Liquidators' remuneration for the period 23 April 2019 to completion of the liquidation.	3.2.3	150,000
Resolution 4: Prospective KPMG Tax Advisory remuneration for the period 23 April 2019 to completion of the liquidation.	3.2.4	10,000
Total - Remuneration claimed		160,000
<i>Approval for the future remuneration sought is based on an estimate of the work necessary to the completion of the administration. Should additional work be necessary beyond what is contemplated, further approval may be sought from creditors.</i>		



Internal disbursements requiring creditor approval are summarised below:

Internal disbursements	Report Reference	Amount \$ (GST Ex)
Current internal disbursements claim:		
Voluntary Administration Period		
Resolution 5: Retrospective Voluntary Administrators' internal disbursements for the period 15 January 2019 to 31 March 2019.	4	3,329
Resolution 6: Prospective Voluntary Administrators' internal disbursements for the period 1 April 2019 to 23 April 2019.	4	1,021
Total internal disbursements for the Voluntary Administration		4,350
Liquidation Period		
Resolution 7: If resolved that the Company be wound up, prospective Liquidators' internal disbursements for the period 23 April 2019 to completion of the liquidation.	4	7,220
Total – Internal disbursements claimed		11,570
<i>Approval for the future internal disbursements sought is based on an estimate of the internal disbursements necessary to the completion of the administration. Should additional disbursements be necessary beyond what is contemplated, further approval may be sought from creditors.</i>		

Please refer to report section references detailed in the above tables for full details of the calculation and composition of the remuneration and internal disbursement approval sought.

3 Remuneration

3.1 Remuneration claim resolutions

We will be seeking approval of the following resolutions to approve our remuneration. Details to support these resolutions are included in section 3.2 and in the attached Schedules.

Resolution 1 (retrospective fees): 15 January 2019 to 31 March 2019

Resolution 1			
Company	Specialty Mens Apparel Pty Ltd (Administrators Appointed)	Period:	15 January 2019 to 31 March 2019
Practitioners	Brendan Richards Gayle Dickerson	Firm:	KPMG
Administration type:	Voluntary Administration		
Proposed resolution:	"That the remuneration of the Voluntary Administrators for the period 15 January 2019 to 31 March 2019, calculated at hourly rates as detailed in the report to creditors of 5 April 2019, is approved for payment in the sum of \$1,445,001.80, which includes GST of \$131,363.80, and that the Voluntary Administrators can draw the remuneration immediately or as required."		



Resolution 2 (prospective fees): 1 April 2019 to 23 April 2019

Resolution 2			
Company	Specialty Mens Apparel Pty Ltd (Administrators Appointed)	Period:	1 April 2019 to 23 April 2019
Practitioners	Brendan Richards Gayle Dickerson	Firm:	KPMG
Administration type:	Voluntary Administration		
Proposed resolution:	"That the future remuneration of the Voluntary Administrators from 1 April 2019 to 23 April 2019 is determined at a sum equal to the cost of time spent by the Voluntary Administrators and their partners and staff, calculated at the hourly rates as detailed in the report to creditors of 5 April 2019, up to a capped amount of \$150,000.00, exclusive of GST, and that the Voluntary Administrators can draw the remuneration on a monthly basis or as required."		

Resolution 3 (prospective Liquidators' fees): 23 April 2019 to finalisation

Resolution 3			
Company	Specialty Mens Apparel Pty Ltd (Administrators Appointed)	Period:	23 April 2019 to finalisation
Practitioners	Brendan Richards Gayle Dickerson	Firm:	KPMG
Administration type:	Liquidation		
Proposed resolution:	"That the future remuneration of the Liquidators from 23 April 2019 to finalisation of the liquidation is determined at a sum equal to the cost of time spent by the Liquidators and their partners and staff, calculated at the hourly rates as detailed in the report to creditors of 5 April 2019, up to a capped amount of \$150,000, exclusive of GST, and that the Liquidators can draw the remuneration on a monthly basis or as required."		

Resolution 4 (prospective Liquidators' fees): 23 April 2019 to finalisation

Resolution 4			
Company	Specialty Mens Apparel Pty Ltd (Administrators Appointed)	Period:	23 April 2019 to finalisation
Practitioners	Brendan Richards Gayle Dickerson	Firm:	KPMG
Administration type:	Liquidation		
Proposed resolution:	"That the KPMG Tax Advisory Services' remuneration in respect of Specialty Mens Apparel Pty Ltd (Administrators Appointed), their partners and staff, for the period from 23 April 2019 to finalisation be approved in the amount of \$10,000 exclusive of GST, and that the Liquidators can draw the remuneration on a monthly basis or as required."		

3.2 Details of remuneration

The basis of calculating the remuneration claims are summarised below and the details of the major tasks performed and the costs associated with each of those major tasks are contained in Schedules 1 to 3.



3.2.1 Resolution 1 (retrospective fees): 15 January 2019 to 31 March 2019

The below table sets out time charged to each major task area by staff members working on the Voluntary Administration for the period 15 January 2019 to 31 March 2019 which is the basis of the Resolution 1 claim. More detailed descriptions of the tasks performed within each task area, matching the amounts below, are contained in Schedule 1.

Employee	Position	Rate (ex GST)	Total hours	Total (\$)	Assets		Creditors		Employees		Trade On		Investigations		Administration	
					Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Richards Brendan	Appointee	720	132.10	95,112.00	14.50	10,440.00	5.00	3,600.00	-	-	97.80	70,416.00	-	-	14.80	10,656.00
Dickerson Gayle	Appointee	720	4.50	3,240.00	1.50	1,080.00	1.00	720.00	-	-	1.00	720.00	-	-	1.00	720.00
Hardy David	Director	615	123.50	75,952.50	16.40	10,086.00	-	-	-	-	100.40	61,746.00	-	-	6.70	4,120.50
Richards Carly	Director	615	19.00	11,685.00	4.00	2,460.00	-	-	-	-	15.00	9,225.00	-	-	-	-
Bongers Michael	Associate Director	540	43.70	23,598.00	-	-	-	-	-	-	-	-	3.90	2,106.00	39.80	21,492.00
Hatsatouris Michael	Associate Director	540	116.70	63,018.00	-	-	42.20	22,788.00	1.50	810.00	2.30	1,242.00	30.20	16,308.00	40.50	21,870.00
Clark Edwin	Associate Director	540	323.50	174,690.00	5.00	2,700.00	9.00	4,860.00	5.00	2,700.00	302.50	163,350.00	-	-	2.00	1,080.00
Henderson Duncan	Associate Director	540	14.50	7,830.00	-	-	-	-	-	-	-	-	14.50	7,830.00	-	-
Naran Darsun	Associate Director	540	1.50	810.00	-	-	-	-	-	-	1.50	810.00	-	-	-	-
Gowling Henry	Manager	490	95.40	46,746.00	-	-	-	-	-	-	78.90	38,661.00	-	-	16.50	8,085.00
Pitt Greg	Manager	490	262.70	128,723.00	11.70	5,733.00	46.40	22,736.00	17.40	8,526.00	171.20	83,888.00	1.90	931.00	14.10	6,909.00
Sarpa Christopher	Manager	490	34.20	16,758.00	30.70	15,043.00	-	-	-	-	-	-	-	-	3.50	1,715.00
Boxsell Lauren	Manager	490	156.00	76,440.00	1.00	490.00	146.00	71,540.00	-	-	9.00	4,410.00	-	-	-	-
Mahoney Shane	Manager	490	0.50	245.00	-	-	-	-	-	-	-	-	0.50	245.00	-	-
Ekladious Niany	Executive	360	385.00	138,600.00	1.70	612.00	201.00	72,360.00	34.50	12,420.00	48.10	17,316.00	76.80	27,648.00	22.90	8,244.00
George Will	Executive	360	26.80	9,648.00	-	-	0.30	108.00	-	-	-	-	26.50	9,540.00	-	-
Master Dylan	Executive	360	308.20	110,952.00	2.30	828.00	9.10	3,276.00	120.10	43,236.00	151.70	54,612.00	0.80	288.00	24.20	8,712.00
Sayer Nicholas	Executive	360	108.70	39,132.00	29.30	10,548.00	1.80	648.00	7.60	2,736.00	68.20	24,552.00	-	-	1.80	648.00
Del Borrello Veronica	Analyst	285	182.20	51,927.00	4.90	1,396.50	71.90	20,491.50	69.00	19,665.00	-	-	1.10	313.50	35.30	10,060.50
Foo Adrian	Analyst	285	21.00	5,985.00	-	-	21.00	5,985.00	-	-	-	-	-	-	-	-
Hutchison Kate	Analyst	285	15.30	4,360.50	-	-	1.30	370.50	-	-	14.00	3,990.00	-	-	-	-
Gelb Nathan	Analyst	285	28.00	7,980.00	-	-	-	-	28.00	7,980.00	-	-	-	-	-	-
Immanuel Rica	Analyst	285	60.80	17,328.00	57.20	16,302.00	3.60	1,026.00	-	-	-	-	-	-	-	-
Simpson Ashleigh	Analyst	285	170.10	48,478.50	-	-	77.90	22,201.50	-	-	-	-	48.20	13,737.00	44.00	12,540.00
Vogel Gillian	Analyst	285	382.00	108,870.00	-	-	12.90	3,676.50	40.40	11,514.00	304.80	86,868.00	6.20	1,767.00	17.70	5,044.50
Pham Michael	Analyst	285	110.70	31,549.50	-	-	82.80	23,598.00	13.60	3,876.00	-	-	-	-	14.30	4,075.50
Burns Andrew	Team Administrator	150	51.70	7,755.00	-	-	-	-	-	-	-	-	12.20	1,830.00	39.50	5,925.00
Dong Si Wai	Team Administrator	150	21.50	3,225.00	-	-	21.50	3,225.00	-	-	-	-	-	-	-	-
Vitas Katarina	Team Administrator	150	1.50	225.00	1.50	225.00	-	-	-	-	-	-	-	-	-	-
Webb Georga	Team Administrator	150	16.50	2,475.00	-	-	12.70	1,905.00	-	-	-	-	-	-	3.80	570.00
Pham Henry	Team Administrator	150	2.00	300.00	-	-	2.00	300.00	-	-	-	-	-	-	-	-
Total			3,219.80	1,313,638.00	181.70	77,943.50	769.40	285,415.00	337.10	113,463.00	1,366.40	621,806.00	222.80	82,543.50	342.40	132,467.00
GST				131,363.80		7,794.35		28,541.50		11,346.30		62,180.60		8,254.35		13,246.70
Total (incl. GST)				1,445,001.80		85,737.85		313,956.50		124,809.30		683,986.60		90,797.85		145,713.70
Average hourly rate				448.79		471.86		408.05		370.24		500.58		407.53		425.57

3.2.2 Resolution 2 (prospective fees): 1 April 2019 to 23 April 2019

The below table sets out the expected costs for the major tasks likely to be performed by the Voluntary Administrators and their staff for the period 1 April 2019 to 23 April 2019 which is the basis of the Resolution 2 claim. More detailed descriptions of the tasks likely to be performed within each task area, matching the amounts below, are contained in Schedule 2.

Task	Hours	Amount \$ (GST Ex)
Assets	60.8	15,000.0
Creditors	243.1	60,000.0
Employees	121.5	30,000.0
Trade On	121.5	30,000.0
Investigations	30.4	7,500.0
Administration	30.4	7,500.0
Total	607.6	150,000.0

3.2.3 Resolution 3 (prospective Liquidators' fees) 23 April 2019 to finalisation

The below table sets out the expected costs for the major tasks likely to be performed by the Liquidators and their staff for the period 23 April 2019 to finalisation of the liquidation which is the basis of the Resolution 3 claim. More detailed descriptions of the tasks likely to be performed within each task area, matching the amounts below, are contained in Schedule 3.

Task	Hours	Amount \$ (GST Ex)
Assets	20.2	7,500.0
Creditors	121.2	45,000.0
Employees	40.4	15,000.0
Trade On	20.2	7,500.0
Dividend	101.0	37,500.0
Investigations	60.6	22,500.0
Administration	40.4	15,000.0
Total	404.0	150,000.0

3.2.4 Resolution 4 (prospective Liquidators' fees): KPMG Tax Advisory Services 23 April 2019 to finalisation

The Administrators are planning to engage KPMG Tax Advisory Services during the period 23 April 2019 to prepare, finalise and submit the company's tax return and other taxation lodgements for the 2019 financial year. These lodgements are necessary to obtain the relevant clearances from the ATO in accordance with section 260-45 of the *Taxation Administration Act 1953*.

Fees incurred in the preparation, finalisation submission of the Company's taxation lodgements are to be capped at \$10,000 exclusive of GST.

3.3 Total remuneration reconciliation

At this point in time we estimate that the total remuneration for the Voluntary Administration will be \$1,463,638.00 excluding GST. This includes the current approval amount being sought of \$1,313,638.00 excluding GST.

Approval for future remuneration is based on our best estimate of the work required to be completed during the relevant prospective periods (ie Resolution 2, Resolution 3 and Resolution 4). We do not anticipate that we will have to seek approval for any further remuneration for these periods, however should additional work be necessary beyond what is contemplated, approval will be sought from creditors accordingly. Should this occur a further remuneration report will be provided outlining the additional work undertaken and approvals sought. Issues which may give rise to an increase in remuneration sought may include the following:

- Material delays in responses from employees signing off their entitlements;
- Delays in adjudicating unsecured creditor claims; and
- Any unexpected litigation.

This estimate differs to the estimate of costs provided in the Initial Remuneration Notice dated 16 January 2019, which estimated a cost of the administration of \$600,000 (excluding GST and disbursements), for the following reasons:

- The initial remuneration notice was provided on the basis of four weeks of trade to realise stock in a business as usual manner. The Voluntary Administrators traded the business for a period of 10 weeks to maximise stock realisations and facilitate the orderly wind-down of the Company. Despite a long trading period, the actual weekly rate has been lower than forecast reflecting a more efficient process. We believe these activities were in the best interests of the Creditors as the value of stock realisations achieved exceeded expectations.
- The Administrators undertook a significant proportion of Investigations during the administration period. These investigations are usually conducted through the Liquidation period, and as such were not accounted for in the initial fee estimate.
- Employee entitlement calculations required higher than anticipated time commitment due to complications regarding the ability of the payroll software HR3 to output data necessary for Administrators. This resulted in an extended manual effort to calculating employee entitlements which was not accounted for during the initial fee estimate.
- Larger than anticipated volume of queries through the functional mailbox.

We have provided 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 2 of the report.

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

3.4 Likely impact on dividends

The Corporations Act sets the order for payment of claims against the Company and it provides for remuneration of the Administrators to be paid in priority to other claims. This ensures that when there are sufficient funds, the appointees receive 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 assets 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.

Based on:

- realisations to date,
- estimated future realisations,
- our estimated remuneration to complete the Voluntary Administration and Liquidation, and
- the estimated total of creditor claims based on the company's records and claims lodged now,

We estimate that a dividend of 100 cents in the dollar will be paid to priority and secured creditors, and a dividend of c. 12 cents in the dollar will be paid to unsecured creditors.

However, this is subject to a range of variables, particularly landlord creditor claims.

4 Disbursements

Disbursements are divided into three types:

- **Externally provided professional services** - these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- **Externally provided non-professional costs** - these are recovered at cost. Examples of externally provided non-professional costs are travel, accommodation and search fees.
- **Internal disbursements** such as photocopying, printing and postage. These disbursements, if charged to the administration, would generally be charged at cost. 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. Whilst KPMG does not charge these costs on an itemised basis, it charges a flat 3.5% technology and administration charge on remuneration paid to recover costs of this nature. However, as outlined at section 4.2 of this remuneration report, no internal disbursements have been claimed in the Administration.

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

We will be seeking creditor approval to pay our internal disbursements from creditors.

4.1 External disbursement claim

Externally provided, non-professional disbursements incurred for the period 15 January 2019 to 31 March 2019 which have not yet been paid, but do not require creditor approval, include:

Externally provided non-professional disbursements	Amount \$ (GST ex)
Advertising	709
Couriers	47
Information technology & stationery	4,364
Postage	3,051
Travel, meals & accommodation	40,655
Total	48,826

The Administrators anticipate a further \$2,000 in appointee disbursements for the period 1 April 2019 to the end of Administration and a further \$5,000 for the Liquidation period.

4.2 Internal disbursement claim

The following internal disbursements have been claimed by the Administrators. Approval of these disbursements from creditors in the amount of \$11,570 (GST Ex) is being sought at the meeting of creditors.

Internal Disbursements Claimed	Basis	Total (Ex GST)
Period 15 January 2019 to 31 March 2019		
Electronic File Storage		
User access	\$150 per month	370
Active storage (60 gigabyte)	\$20 per gigabyte, per month	2,959
Total		3,329
Period 1 April 2019 to 23 April 2019		
Electronic File Storage		
User access	\$150 per month	113
Active storage (60 gigabyte)	\$20 per gigabyte, per month	907
Total		1,021
Period 23 April 2019 to finalisation of Liquidation		
Electronic File Storage		
User access	\$150 per month	907
Active storage (60 gigabytes)	\$20 per gigabyte, per month	2,683
Inactive storage (60 gigabytes)	\$10 per gigabyte, per month	3,630
Total		7,220

Resolution 5 (retrospective internal disbursements): 15 January 2019 to 31 March 2019

Resolution 5			
Company	Specialty Mens Apparel Pty Ltd (Administrators Appointed)	Period:	15 January 2019 to 31 March 2019
Practitioners	Brendan Richards Gayle Dickerson	Firm:	KPMG
Administration type:	Voluntary Administration		
Proposed resolution:	"That the internal disbursements claimed by the Voluntary Administrators for the period 15 January 2019 to 31 March 2019, calculated at the rates as detailed in the Remuneration Report included in the report to creditors dated 5 April 2019 are approved for payment in the amount of \$3,329 exclusive of GST, to be drawn from available funds immediately or as funds become available."		

Resolution 6 (prospective internal disbursements): 1 April 2019 to 23 April 2019

Resolution 6			
Company	Specialty Mens Apparel Pty Ltd (Administrators Appointed)	Period:	1 April 2019 to 23 April 2019
Practitioners	Brendan Richards Gayle Dickerson	Firm:	KPMG
Administration type:	Voluntary Administration		
Proposed resolution:	"That the future internal disbursements of the Voluntary Administrators for the period 1 April 2019 to 23 April 2019, calculated at the rates as detailed in the Remuneration Report included in the report to creditors dated 5 April 2019, up to a capped amount of \$1,021 exclusive of GST and that the Voluntary Administrators can draw the disbursements from available funds on a monthly basis or as required."		

Resolution 7 (prospective internal disbursements): 23 April 2019 to finalisation

Resolution 7			
Company	Specialty Mens Apparel Pty Ltd (Administrators Appointed)	Period:	23 April 2019 to finalisation
Practitioners	Brendan Richards Gayle Dickerson	Firm:	KPMG
Administration type:	Liquidation		
Proposed resolution:	"That the future internal disbursements of the Liquidators for the period 23 April 2019 to finalisation of the Liquidation, calculated at the rates as detailed in the Remuneration Report included in the report to creditors dated 5 April 2019, up to a capped amount of \$7,220 exclusive of GST and that the Liquidators can draw the disbursements from available funds on a monthly basis or as required."		

5 Report on progress of the Administration

Please refer to the Report to Creditors dated 5 April 2019 for a comprehensive report on the status of the administration.

6 Summary of Receipts and Payments

A summary of the receipts and payments for the Voluntary Administration as at 31 March 2019 is at Schedule 4 to this report.

7 Queries

If you have any queries in relation to the information in this report, please contact our staff on edharry@kpmg.com.au.

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

- ARITA at www.arita.com.au/creditors
- ASIC at www.asic.gov.au (search for "insolvency information sheets").

8 Approval of remuneration and internal disbursements

Creditor approval of the remuneration resolutions contained in this report will be sought at the meeting of Creditors scheduled for 23 April 2019. Details and notice of the meeting are contained in the Report to Creditors dated 5 April 2019, of which this remuneration report forms a part of.

Schedule 1 – Resolution 1

The below table provides a description of the work undertaken in each major task area for the period 15 January 2019 to 31 March 2019.

Table: Resolution 1 | Description of work undertaken:

Task Area	General Description	Including, but not limited to:
Assets 181.7 hours \$77,943.50 (exc GST)	Sale of Business	Establishment of and management of data room
		Planning for sale of business strategy
		Preparation of information memorandum
		Management of EOI schedule and IP data requests
		Liaising with interested parties, lawyers, purchasers and other stakeholders
		Collating relevant sale of IP information as required
		Assessment of offers
	Stock	Review of stock take procedure
		Appointment and assessments of stock realisation experts
		Review of stock holdings by location and arrange movement as required
		Monitoring of daily sales and associated reporting
	Sale of Intellectual Property	Review of intangible assets
		Negotiation with purchasers
		Assessment of offers
		Liaising with solicitors
		Preparation and review of Asset Sale Deed
	Retention of Title Assets	Review of retention of title and PPSR claims
		Analyse stock positions for negotiations with PPSR holders
		Obtain legal advice and liaise with solicitors regarding validity of PPSR claims.
		Extensive communication with PPSR holders regarding claims
		Negotiation with retention of title suppliers
	Plant and Equipment	Liaising with valuers and auctioneers
		Develop and implement specific sale strategies for plant and equipment tranches
		Identification of assets and appropriate sale strategy
	Cash on Hand	Freezing of bank accounts and redirection of funds
		Cancellation of company credit cards
		Arrange for regular bank account sweeps
		Correspondence with Paypal, Afterpay and Zippay and arrange redirection of funds

Task Area	General Description	Including, but not limited to:
	Leased Assets	Merchant facility management
		Liaising with Lessors
		Review of leasing documents
		Negotiations with lessees
		Disclaim of leases
Creditors 769.4 Hours \$285,415.00 (exc GST)	Creditor enquiries	Respond to general creditor queries via telephone and email
		Arrange for set up and regular review of creditor functional mailbox
		Respond to creditor requests
		Maintaining and managing functional mailbox for creditor enquiries
		Review and prepare correspondence to creditors and their representatives via facsimile, email and post
		Notifying PPSR registered creditors of appointment
	Secured creditors	Correspondence and liaising with secured creditor
		Preparation of reports and updates to secured creditor
		Discussion regarding attendance at second meeting of creditors
	Reports to Creditors	Preparation and finalisation of the Voluntary Administrators' report to creditors
		Mailing reports and circulars to creditors
		Preparing the Voluntary Administrators Reports to Creditors
	Processing proofs of debt	Preparation of correspondence to potential creditors inviting lodgement of Proof of Debt ("POD")
		Receipt of PODs
		Maintenance of POD register
		Adjudicating POD for voting purposes only
		Recording creditor claim amounts and adjudicated amount for voting purposes
		Requests to creditors for further information regarding their proofs of debt, where required
	Meeting of creditors	Prepare agenda for second meeting of creditors
		Prepare for and hold first meeting of creditors
		Prepare and issue minutes of first meeting of creditors
		Preparation of documents for second meeting of creditors including notices, proxies and advertisements
		Prepare and finalise remuneration report for second meeting of creditors
		Issue notice of second meeting to creditors
		Review and collate creditor proxies for meeting
		Liaise with creditors regarding meeting attendance
		Convene second meeting of creditors

Task Area	General Description	Including, but not limited to:
		Attend to actions resulting from the second meeting of creditors
		Preparation of meeting minutes from the second meeting of creditors and lodge with ASIC
Employees (Priority creditors) 337.1 Hours \$113,463.00 (exc GST)	Employees enquiries	Convene employee meetings to address broader enquiries regarding ongoing trading and employment
		Maintain ongoing employee correspondence
		Maintaining and managing functional mailbox for employee enquiries
		Receive and prepare correspondence in response to employees' objections to entitlements
		Entering employee information into the Voluntary Administrators' accounting system
		Adjudication of employees' proofs of debt for voting purposes at the first creditors meeting
		Dealings with employees in relation to proofs of debt
	Employee entitlements	Calculation of employee entitlements
		Review employee records, awards, contracts and other specific arrangements
		Obtain legal advice in relation to calculating certain entitlements
		Correspondence with employees regarding entitlements and responding to related queries
	Fair entitlement guarantee	Correspondence and updates to FEG
	Workers compensation	Review insurance policies
		Preparation of wages declarations for actual and estimated wages
		Processing workers compensation claims
	Other employee issues	Correspondence with Centrelink, Child Support, etc.
		Correspondence with ATO and state revenue offices
Issue notice of redundancy and separation certificates		
General employee meetings		
Trade-on 1,366.4 Hours \$621,806.00 (exc GST)	Trade on management	Correspondence and liaison in relation to the suppliers, management and employees
		Attendance on site
		Implementation of purchase order system and authorisation of purchase orders
		Maintenance of purchase order register
		Processing supplier and landlord payments
		Processing fortnightly payroll
		Liaising with ATO, state revenue offices, insurance brokers etc.
		Reviewing and assisting with store closures
		Daily sales and stock reviews
		Head office closure planning
		Organising storage of books and records
		Liaison with suppliers in relation to obtaining final invoices

Task Area	General Description	Including, but not limited to:
		Management of third party stock realisation consultant 'Hilco'
		Match invoices received to purchase orders and prepare payment of invoices
	Budgeting and financial reporting	Development of a trading period cashflow forecast
		Updates to the estimated statement of position for recoveries and creditor claims
		Monitoring of cash flow forecasts
		Planning and review of trade on strategy
		Preparation of budgets
		Preparation of regular financial reports and updates
		Meetings to discuss trading position
		Consideration of PPSR claims on estimated statement of position
	Landlord	Correspondence with landlords advising of appointment
		Development of landlord negotiations strategy
		Liaise with landlord and representatives regarding reduced rent
		Review of monthly landlord position and payments
	Media	Development of media strategy to support trading
		Issue media releases nationally and locally to help drive sales
	Customer	Responding to customer queries via phone and email
		Consideration of gift card policy and communication of same
		Consideration of refund and returns policy and communication of sale
		Dealing with customer order concerns and queries
Investigation 222.8 Hours \$82,543.50 (exc GST)	Conducting investigation	Secure company books and records
		Undertake forensic image of computer servers and computers of key management personnel.
		Correspondence with the Company with regards to obtaining financial statements
		Preliminary review of company's books and records
		Conducting and summarising statutory searches
		Preparation of initial investigation file
		Reviewing management information supplied
		Review board packs
		Undertake statutory investigations
		Review Directors' ROCAP
		Obtain legal advice on investigations
Document maintenance/file review/checklist	Filing of documents	
	File reviews	

Task Area	General Description	Including, but not limited to:
Administration 342.4 Hours \$132,467.00 (exc GST)		Weekly administration reviews
		Updating administration checklists
		Identification of potential issues requiring attention of insurance specialists
	Insurance	Correspondence with insurer regarding initial and ongoing insurance requirements
		Reviewing insurance policies
		Correspondence with previous brokers
		Preparing correspondence opening and closing bank accounts
	Bank account administration	Correspondence with banks regarding specific transfers
		Bank account reconciliation
		Preparing and lodging ASIC forms
	ASIC Form 505 and other forms	Notification of appointment
	General administration	Risk assessment
		Set up client in system
		Set up website and functional email address
	Legal	Correspondence with solicitors regarding appointment and issues identified
		Provision of information required as part of PPSR negotiations
		General discussion with ongoing PPSR and sale issues identified
	Media	Preparation of initial and ongoing media releases
		Responding to media queries and requests
		Attending to media interviews
	ATO and other statutory reporting	Liaising with the ATO regarding outstanding debt
Liaising with the ATO regarding the initial meeting of creditors, and information requests relevant to statutory investigations		

Schedule 2 – Resolution 2

The below table sets out the estimated cost for each major task area for the Voluntary Administration for the period 1 April 2019 to finalisation of the Voluntary Administration. The table below also includes detailed descriptions of the tasks anticipated to be performed within each task area.

Table: Resolution 2 | Description of work to be undertaken

Task Area	General Description	Including, but not limited to:
Assets 60.8 hours \$15,000.00 (exc GST)	Sale of intellectual property	Finalisation of Asset Sale Deed
	Retention of title assets	Correspondence with secured parties to finalise adjudication of PPSR registrations.
		Negotiation with retention of title suppliers
	Plant and equipment	Finalising sale of remaining plant and equipment and fixtures
	Leased assets	Liaising with Lessors regarding collection of assets
Liaising with landlords regarding final accounts and reconcile amounts payable		
Creditors 243.1 Hours \$60,000.00 (exc GST)	Creditor enquiries	Respond to general creditor queries via telephone and email
		Consider reasonableness of creditor requests
		Maintain and manage functional mailbox for creditor enquiries
		Review and prepare correspondence to creditors and their representatives via facsimile, email and post
	Secured creditors	Correspondence and liaising with secured creditor
		Preparation of reports and updates to secured creditor
	Processing proofs of debt	Receipt of PODs
		Adjudication of PODs for voting purposes only
		Request further information from claimants regarding POD, where required
		Maintenance of POD register
	Meeting of creditors	Preparation of meeting notices, proxies and advertisements
		Forward notice of meeting to all known creditors
		Preparation of meeting file, including agenda, presentation, statement of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting, voting slips, resolution voting workbook
		Attendance at second meeting of creditors.
		Responding to stakeholder queries regarding the second meeting of creditors.
Employees 121.5 Hours \$30,000.00 (exc GST)	Employees enquiries	Ongoing employee correspondence
	Employee entitlements	Finalisation of employee entitlements
		Review employee records, awards and arrangements
		Obtain legal advice in relation to calculating certain entitlements.
		Correspondence with employees regarding entitlements and responding to related queries
Dividend	Collation of employee acknowledgements regarding entitlements	

Task Area	General Description	Including, but not limited to:	
	Workers compensation	Identifications of issues requiring insurer's attention	
		Preparation of wages declarations for actual and estimated wages	
		Correspondence with insurers regarding ongoing workers compensation requirements	
	Other employee issues	Correspondence with Centrelink, Child Support, etc.	
		Correspondence with ATO and state revenue offices	
Trade-on 121.5 Hours \$30,000.00 (exc GST)	Trade on management	Correspondence and liaising with suppliers, management and employees	
		Processing supplier and landlord payments	
		Attendance at Head Office	
		Liaising with ATO, state revenue offices, insurance brokers etc.	
		Organising Head Office Closure	
		Liaison with suppliers in relation to obtaining final invoices	
		Match invoices received to purchase orders and prepare payment of invoices	
	Budgeting and financial reporting	Updates to the estimated statement of position for recoveries and creditor claims	
		Monitoring of cash flow forecasts	
		Preparation of regular financial reports and updates	
		Ongoing meetings to discuss trading position and wind-down of operations	
	Investigations 30.4 Hours \$7,500.00 (exc GST)	Conducting Investigations	Finalisation of statutory investigations
			Obtain legal advice on investigations
Review of books and records			
Update report to creditors with details of investigations			
Administration 30.4 Hours \$7,500.00 (exc GST)	Correspondence	Attend to general correspondence	
	Document maintenance / file review / checklist	File reviews	
		Updating and reviewing Administration checklists	
		Filing of documents	
	Insurance	Correspondence with insurer regarding ongoing insurance requirements	
	Bank account administration	Bank account reconciliations	
		Correspondence with bank account provider	
	ASIC	Preparing and lodging ASIC forms	
		Notification to ASIC of second meeting	
		Correspondence with ASIC	
	ATO	Correspondence with ATO	
		Completion of BAS returns	
	Finalisation	Finalisation of Administration tasks	

Schedule 3 – Resolution 3

The below table sets out the estimated cost for each major task area for the Liquidation for the period 23 April 2019 to finalisation of the Liquidation, which is the basis of the Resolution 3 claim. The table below also includes detailed descriptions of the tasks anticipated to be performed within each task area.

Table: Resolution 3 | Description of work to be undertaken

Task Area	General Description	Including, but not limited to:
Assets 20.2 hours \$7,500.00 (exc GST)	Intangible assets	Post sale issues
	Leased assets	Disclaim remaining leases
Creditors 121.2 Hours \$45,000.00 (exc GST)	General creditors	Prepare and issue circular to creditors on liquidation
		Review and respond to creditor queries regarding process
		Prepare and update estimated outcome statement for classes of creditors
		Issue report to creditors
		Consider holding meeting of creditors if necessary
	Secured creditors	Correspondence and liaison with secured creditor
		Prepare and update estimated distribution based on asset realisations and financier claims
		Consider PPSR implications
	Proof of Debts	Receipt and adjudication of proof of debt forms
		Maintenance of proof of debt register
		Requests for further substantiation
		Correspondence regarding outcome of adjudication
	Employees 40.4 Hours \$15,000.00 (exc GST)	Employee entitlements
Review and prepare correspondence to creditors and their representatives via facsimile, email and post		
Review and consider supporting documents for employee claims		
Priority Dividend		Confirm funds available to distribute to priority creditors
		Review and confirm priority claims
		Issue correspondence to creditors regarding distribution
		Prepare and finalise distribution
Other employee issues		Finalisation of Workers Compensation insurance
		Correspondence with superannuation funds, ATO and state revenue offices
		Completion of PAYG Summaries
Trade-on 20.2 Hours \$7,500.00 (exc GST)	Trade on management	Finalisation of trade on period liabilities
		Maintenance of cash flow

Task Area	General Description	Including, but not limited to:
Dividend 101.0 Hours \$37,500.00 (exc GST)	Dividend distribution	Correspondence regarding intention to declare dividend
		Obtain required clearances for distribution
		Preparation of dividend including calculation and payment
Administration 60.6 Hours \$22,500.00 (exc GST)	Finalisation	Finalisation of investigations
Administration 40.4 Hours \$15,000.00 (exc GST)	General administration	Attend to general correspondence
		Liaise with statutory bodies regarding appointment
		Attend to statutory receipts and payments lodgements
		Updating and reviewing Administration and Liquidation checklists
		Uploading reference information to the KPMG website
		Filing of documents
	Insurance	Correspondence with insurer regarding ongoing insurance requirements
	Bank account administration	Bank account reconciliations
		Correspondence with bank account provider
	ASIC Forms	Preparing and lodging ASIC forms
	ATO and other statutory reporting	Liaising with the ATO regarding statutory lodgements
Finalisation	Finalisation of Liquidation tasks	

Schedule 4 – Summary of Receipts and Payment

Receipt and payments (15 January 2019 to 31 March 2019)	
Receipts	\$
Cash held at appointment	257,819
Trading revenue	15,867,154
P&E Sales	220,092
Total receipts	16,345,065
Payments	
Advertising	3,930
Bank charges	59,007
Consultant fees	629,293
IT trading costs	68,470
Insurance	46,672
Inventory purchases	115,711
Legal fees	109,477
Meeting room hire	600
Payroll expenses	2,556,479
Printing & postage	3,625
Property Expenses	1,140,834
ROT / PPSR settlements	360,318
Sundry trading expenses	2,315
Transport & distribution costs	443,214
Utilities (trading)	9,576
Valuation fees	1,045
Total payments	5,550,565
Closing cash at bank at 31 March 2019	10,794,500

Appendix E – Appointment of Proxy Form

APPOINTMENT OF PROXY

**Specialty Mens Apparel Pty Ltd (Administrators Appointed)
ACN 149 766 307 (“the Company”)**

*I/*We _____(name of signatory) of _____(creditor name)

a creditor of **Specialty Mens Apparel Pty Ltd (Administrators Appointed)** appoint ____
_____(name of proxy)

of _____(address of proxy)

or in his or her absence _____(details of alternate proxy)

as *my/*our *general/*special proxy to vote at the meeting of creditors to be held on **Tuesday, 23 April 2019 at 12:00pm ACDT (local Adelaide time)**, or at any adjournment of that meeting.

If a special proxy, specify how you wish your proxy to vote for each of the resolutions.

Resolutions

	For	Against	Abstain
<p>Voluntary administration outcomes</p> <p><i>Only mark your vote for one of the following three options for the resolution below on voluntary administration outcomes.</i></p>			
<p>Resolution: Voluntary administration outcomes</p> <p><i>Note: option a) of this resolution is <u>not</u> applicable unless a Deed of Company Arrangement proposal is received prior to or on the day of the second meeting of creditors.</i></p> <p>a) “That the Company execute the proposed Deed of Company Arrangement and Brendan Richards and Gayle Dickerson to be appointed as Joint and Several Deed Administrators’.”</p>			
<p>b) “That the Company be wound up and that Brendan Richards and Gayle Dickerson be appointed as Joint and Several Liquidators’.”</p> <p>(Administrators’ recommendation)</p>			
<p>c) “That the Administration should end.”</p>			

Fee resolutions

Resolution 1: Voluntary Administration (retrospective fees)

“That the remuneration of the Voluntary Administrators for the period 15 January 2019 to 31 March 2019, calculated at hourly rates as detailed in the report to creditors of 5 April 2019, is approved for payment in the sum of \$1,445,001.80, which includes GST of \$131,363.80, and that the Voluntary Administrators can draw the remuneration immediately or as required.”

Resolution 2: Voluntary Administration (prospective fees)

“That the future remuneration of the Voluntary Administrators from 1 April 2019 to 23 April 2019 is determined at a sum equal to the cost of time spent by the Voluntary Administrators and their partners and staff, calculated at the hourly rates as detailed in the report to creditors of 5 April 2019, up to a capped amount of \$150,000.00, exclusive of GST, and that the Voluntary Administrators can draw the remuneration on a monthly basis or as required.”

Resolution 3: Liquidation (prospective fees)

“That the future remuneration of the Liquidators from 23 April 2019 to finalisation of the liquidation is determined at a sum equal to the cost of time spent by the Liquidators and their partners and staff, calculated at the hourly rates as detailed in the report to creditors of 5 April 2019, up to a capped amount of \$150,000, exclusive of GST, and that the Liquidators can draw the remuneration on a monthly basis or as required.”

Resolution 4: Liquidation (prospective fees)

“That the KPMG Tax Advisory Services’ remuneration in respect of Specialty Mens Apparel Pty Ltd (Administrators Appointed), their partners and staff, for the period from 23 April 2019 to finalisation be approved in the amount of \$10,000 exclusive of GST, and that the Liquidators can draw the remuneration on a monthly basis or as required.”

Internal disbursements resolutions

Resolution 5: Voluntary Administration (retrospective disbursements)

“That the internal disbursements claimed by the Voluntary Administrators for the period 15 January 2019 to 31 March 2019, calculated at the rates as detailed in the Remuneration Report included in the report to creditors dated 5 April 2019 are approved for payment in the amount of \$3,329 exclusive of GST, to be drawn from available funds immediately or as funds become available.”

Resolution 6: Voluntary Administration (prospective disbursements)

“That the future internal disbursements of the Voluntary Administrators for the period 1 April 2019 to 23 April 2019, calculated at the rates as detailed in the Remuneration Report included in the report to creditors dated 5 April 2019, up to a capped amount of \$1,021 exclusive of GST and that the Voluntary Administrators can draw the disbursements from available funds on a monthly basis or as required.”

Resolution 7: Liquidation (prospective disbursements)

“That the future internal disbursements of the Liquidators for the period 23 April 2019 to finalisation of the Liquidation, calculated at the rates as detailed in the Remuneration Report included in the report to creditors dated 5 April 2019, up to a capped amount of \$7,220 exclusive of GST and that the Liquidators can draw the disbursements from available funds on a monthly basis or as required.”

Additional resolutions if the Company is wound up

Resolution: Destruction of books and records

“That the Liquidators’ may apply to ASIC when appropriate or upon finalisation of the Liquidation for consent to destroy books within the retention period in accordance with IPS 70-35.”

Resolution: Compromise of debts

“That so far as is necessary for the beneficial winding up of the Company the Liquidators’ are authorised to compromise any debts to the Company greater than the prescribed amount pursuant to s477(2A) of the Corporations Act 2001 (*Cth*)”

Resolution: Entering agreements > 3 months			
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“That so far as is necessary for the beneficial winding up of the Company the Liquidators’ are authorised to enter into any agreement on the Company’s behalf involving a term or obligations extending for more than three months pursuant to s477(2B) of the Corporations Act 2001 (Cth)”

*I/*We authorise *my/*our proxy to vote as a general proxy on resolutions other than those specified above (*delete if not required*)

Signature: _____

Dated: _____

*Omit if inapplicable

Appendix F – Formal Proof of Debt or Claim Form

FORMAL PROOF OF DEBT OR CLAIM

To the Administrators of:

Specialty Mens Apparel Pty Ltd (Administrators Appointed)

ACN 149 766 307 (the "Company")

1. This is to state that the Company was on 15 January 2019, and still is, justly and truly indebted to: _____

(full name, ABN 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) for _____ dollars and _____ cents

Particulars of the debt are:

Date	Consideration <i>(state how the debt arose)</i>	Amount	Remarks <i>(include details of voucher substantiating payment)</i>
------	--	--------	---

\$

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: _____

(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. Signed by (select option):

- I am the creditor personally.
- I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.
- I am the creditor's agent authorised in writing to make this statement in writing. I know the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Signature: _____ Dated: _____

Name: _____ Occupation: _____

Address: _____

RECEIVE REPORTS BY EMAIL

Yes No

Do you wish to receive all future reports and correspondence from our office via email?

Email:.....

If being used for the purpose of voting at a meeting:

- a) Is the debt you are claiming assigned to you? No Yes
- b) If yes, attach written evidence of the debt, the assignment and consideration given. Attached
- c) If yes, what value of consideration did you give for the assignment (eg, what amount did you pay for the debt?) \$ _____
- d) If yes, are you a related party creditor of the Company? No Yes
(f you are unsure contact the Administrators at edharry@kpmg.com.au)

Appendix G – Information sheet: Approving Remuneration of an External Administrator

Information sheet: Approving remuneration of an external administrator

If you are a creditor in a liquidation, voluntary administration or deed of company arrangement you may be asked to approve the external administrator's remuneration. An external administrator can be a liquidator, voluntary administrator or deed administrator. The process for approving the remuneration for each of these is the same.

This information sheet gives general information to help you understand the process of approving an external administrator's remuneration and your rights in this process. The following topics are covered in this information sheet:

- About external administrations
- External administrator's remuneration and costs
- Calculating remuneration
- Information you will receive
- Approving remuneration
- Who may approve remuneration
- Deciding if remuneration is reasonable
- What can you do if you decide the remuneration is unreasonable?
- Reimbursement of out of pocket costs
- Queries and complaints
- More information.

About external administrations

If a company goes into liquidation, voluntary administration or enters into a deed of company arrangement, an independent person is appointed to oversee the administration. They are called an external administrator and include a liquidator, voluntary administrator and deed administrator, depending on the type of administration involved. In this information sheet they are simply referred to as an external administrator.

The duties of an external administrator are specified in legislation and they must adhere to certain standards while conducting the administration.

All external administrators are required by law to undertake certain tasks which may not benefit creditors directly (e.g. investigating whether any offences have been committed and reporting to the Australian Securities and Investments Commission (ASIC)).

External administrator's remuneration and costs

External administrators are entitled to be paid for the necessary work they properly perform in the administration.

An external administrator is entitled:

- to be paid reasonable remuneration, for the work they perform, once this remuneration has been approved,
- to be paid for internal disbursements they incur in performing their role (these costs do need approval), and
- to be reimbursed for out-of-pocket costs incurred in performing their role (these costs do not need approval).

Common internal disbursements are stationery, photocopying and telephone costs.

Commonly reimbursed out-of-pocket costs include:

- legal fees
- a valuer's, real administration agent's and auctioneer's fees
- postage costs
- retrieval costs for recovering the company's computer records, and
- storage costs for the company's books and records.

Creditors have a direct interest in the amount of an external administrator's remuneration and costs, as these will generally be paid from the administration before any payments are made to creditors.

Remuneration and internal disbursements must be approved in accordance with the Corporations Act and Insolvency Practice Rules (Corporations) before it can be paid.

If there is a shortfall between the external administrator's remuneration and the assets available from the administration, in certain circumstances the external administrator may arrange for a third party to pay the shortfall. As a creditor, you will be provided details of any such arrangement.

If there are not enough assets to pay the external administrator's remuneration and costs, and there is no third party payment arrangement, the external administrator remains unpaid.

Calculating remuneration

An external administrator may calculate their remuneration using one (or a combination) of a number of methods, such as:

- on the basis of time spent working on the administration, according to hourly rates
- a quoted fixed fee, based on an estimate of the costs
- a percentage (usually of asset realisations), or
- a contingent basis on a particular outcome being achieved.

Charging on the basis of time spent is the most common method used. External administrators have a set of hourly rates that they will seek to charge. These rates are set to reflect the seniority, skills and experience of staff and, where applicable, the complexity and risks of the bankruptcy. They cover staff costs and overheads.

If remuneration is being charged on a time basis, the external administrator must keep time sheets noting the number of hours spent on the tasks performed.

Creditors have a right to question the external administrator about the remuneration and the rates to be charged. They also have a right to question the external administrator about the fee calculation method used and how the calculation was made. The external administrator must justify why the chosen fee calculation method is appropriate for the administration.

Information you will receive

There are different types of remuneration reports that you may receive during the course of an external administration. The following table details the reports and when you might receive them.

Document	Information it contains	When you will receive it
Initial Remuneration Notice (IRN)	<ul style="list-style-type: none"> • A brief explanation of the types of methods that may be used to calculate fees. • The external administrator's chosen fee calculation method(s) and why it is appropriate. • Details of the external administrator's rates, including hourly rates if time spent basis is used. • An estimate of the external administrator's remuneration. • The method that will be used to calculate disbursements. 	<p>Voluntary Administration – with the notice of first meeting.</p> <p>Creditors' voluntary liquidation – within 10 business days of appointment.</p> <p>Court liquidation – within 20 business days of appointment.</p>
Remuneration Approval Report (RAR)	<ul style="list-style-type: none"> • A summary description of the major tasks performed, or likely to be performed. • The costs associated with each of those major tasks and the method of calculation. • The periods at which the external administrator proposes to withdraw funds from the administration for remuneration. • An estimated total amount, or range of total amounts, of the external administrator's remuneration. • An explanation of the likely impact of that remuneration on the dividends (if any) to creditors. • Where internal disbursements are being claimed, the external administrator will report to creditors on the amount and method of calculation of these disbursements. 	<p>Sent at the same time as:</p> <ul style="list-style-type: none"> • the notice to creditors of the meeting at which approval of remuneration will be sought; or • the notice to creditors of the proposal without a meeting by which approval of remuneration will be sought <p>If approval of remuneration is not being sought, a RAR will not be provided.</p>

Approving remuneration

The meeting of creditors (or committee of inspection) gives a chance for those participating to ask questions about the external administrator's remuneration. Fees are then approved by a vote of the creditors. Alternatively, the external administrator may seek approval of remuneration via a proposal without a meeting. Whichever method is used, the external administrator must provide the same report to creditors about their remuneration (Remuneration Approval Report).

Creditors may be asked to approve remuneration for work already performed and/or remuneration estimate for work not yet carried out. If the work is yet to be carried out, the external administrator must set a maximum limit (cap) on the future remuneration approval. For example, 'future remuneration is approved, calculated on hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X'.

If the remuneration for work done then exceeds this figure, the external administrator will have to ask the creditors to approve a further amount of remuneration, after accounting for the amount already incurred.

If an external administrator can't get the creditors' approval, an application can be made to the Court to determine their remuneration.

When there are limited funds available in the administration, or the external administrator's remuneration is below a statutory threshold, an external administrator is entitled to draw a one-off amount of up to that threshold plus GST, without creditor approval. This amount is currently \$5,000 (indexed).

Who may approve remuneration?

Committee of inspection approval

A committee of inspection will generally only be established where there are a large number of creditors and/or complex matters which make having a committee desirable. Committee members are chosen by a vote of all creditors and work with the external administrator to represent the creditors' interests.

If there is a committee, the external administrator will ask it to approve the remuneration. A committee makes its decision by a majority in number of its members present in person at a meeting, but it can only vote if a majority of its members attend.

In approving the remuneration, it is important that committee members understand that they represent all the creditors, not just their own individual interests.

Creditors' approval

Creditors approve remuneration by passing a resolution at a creditors' meeting. Creditors may vote according to their individual interests.

To approve an external administrator's remuneration, a resolution is put to the meeting to be decided on the voices or by a 'poll' (if requested by the external administrator or a person participating and entitled to vote at the meeting). A poll requires a count of each vote and its value to be taken and recorded for each creditor present and voting.

A proxy is a document whereby a creditor appoints someone else to represent them at a creditors' meeting and to vote on their behalf. A proxy can be either a general proxy or a special proxy. A general proxy allows the person holding the proxy to vote how they want on a resolution, while a special proxy directs the proxy holder to vote in a particular way.

A creditor will sometimes appoint the external administrator as a proxy to vote on the creditor's behalf. An external administrator is only able to vote on remuneration if they hold a special proxy.

There are provisions for a resolution to be passed by creditors without a meeting. This still requires a majority in value and number of creditors voting to vote in favour of the resolution. Creditors representing at least 25% in value of those responding to the external administrator's proposal can object to the proposal being resolved without a meeting of creditors.

Deciding if remuneration is reasonable

If you are asked to approve an external administrator's remuneration, your task is to decide if the amount of remuneration is reasonable, given the work carried out in the administration and the results of that work.

You may find the following information from the external administrator useful in deciding if the remuneration claimed is reasonable:

- the method used to calculate remuneration
- the major tasks that have been performed, or are likely to be performed, for the remuneration
- the remuneration/estimated remuneration (as applicable) for each of the major tasks
- the size and complexity (or otherwise) of the administration
- the amount of remuneration (if any) that has previously been approved
- if the remuneration is calculated, in whole or in part, on a time basis:
 - the period over which the work was, or is likely to be performed
 - if the remuneration is for work that has already been carried out, the time spent by each level of staff on each of the major tasks
 - if the remuneration is for work that is yet to be carried out, whether the remuneration is capped.

ARITA's Code of Professional Practice ('the Code') outlines the steps external administrators should take to make sure they fulfil their responsibilities to creditors when asking creditors to approve remuneration, including when those creditors are acting in their capacity as committee members. The Code is available on the ARITA website at www.arita.com.au.

If you need more information about remuneration than is provided in the external administrator's report, you should let them know before the meeting at which remuneration will be voted on.

What can you do if you think the remuneration is unreasonable?

If you think the remuneration being claimed is unreasonable, you should raise your concerns with the external administrator. It is your decision whether to vote in favour of, or against, a resolution to approve remuneration. You may also choose to not vote on the resolution (abstain).

You also have the power to put a resolution to the meeting. For example, you could put forward a resolution to change the way the external administrator charges for remuneration, or the periods at which the external administrator may withdraw funds. Any amending resolution must occur before the vote being taken on the resolution to approve remuneration. If the amended proposal is passed, the resolution is binding on the external administrator. However, such an amendment may result in the external administrator seeking to be replaced by another external administrator.

If the external administrator is seeking approval of remuneration via a resolution without a meeting and more than 25% in value of the creditors responding object using the form provided by the external administrator, the proposal will not pass. If the external administrator wants the proposal passed, a meeting will need to be convened and any creditor entitled to participate in the meeting has the right, before the vote is taken, to put a resolution to the meeting as mentioned above.

A creditor may apply to Court for a review of an external administrator's remuneration. Creditors also have the power to appoint, by resolution, a reviewing liquidator to review any remuneration approved within the six months and any disbursements incurred in the 12 months before the reviewing liquidator's appointment. The cost of a reviewing liquidator is paid from the assets of the external administration. An individual creditor may also appoint a reviewing liquidator with the external administrator's consent. An individual creditor seeking the appointment of a reviewing liquidator must pay the cost of the reviewing liquidator.

Reimbursement of out-of-pocket costs

An external administrator should be very careful incurring costs that must be paid from the administration; as careful as if they were incurring the expenses on their own behalf. Their report on remuneration sent to creditors must also include information on the out-of-pocket costs of the administration (disbursements).

Where these out-of-pocket costs are internal disbursements paid to the external administrator's firm (for example photocopying and phone calls) the external administrator must request creditor approval of these amounts. The external administrator may also ask for approval of internal disbursements in advance. If they do so, they will set the rates for those disbursements and a cap on the maximum amount that can be drawn.

If you have questions about any of these costs, you should ask the external administrator and, if necessary, bring it up at a creditors' or committee meeting. If you are still concerned, you have the right to seek the appointment of a reviewing liquidator (refer above).

Queries and complaints

You should first raise any queries or complaints with the external administrator or their firm.

If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ARITA at www.arita.com.au or with ASIC at www.asic.gov.au. ARITA is only able to deal with complaints in respect of their members.

More information

The [ARITA website](http://www.arita.com.au) contains the ARITA Code of Professional Practice which is applicable to all its members. ARITA also provides general information to assist creditors at www.arita.com.au/creditors.

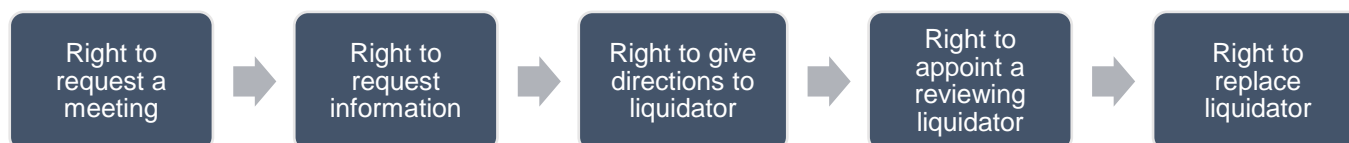
ASIC includes information on its website which may assist creditors. Go to www.asic.gov.au and search for 'insolvency information sheets'.

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.

Appendix H – Information sheet: Creditor Rights in Liquidations

Creditor Rights in Liquidations

As a creditor, you have rights to request meetings and information or take certain actions:



Right to request a meeting

In liquidations, no meetings of creditors are held automatically. However, creditors with claims of a certain value can request in writing that the liquidator hold a meeting of creditors.

A meeting may be requested in the first 20 business days in a creditors' voluntary liquidation by $\geq 5\%$ of the value of the debts held by known creditors who are not a related entity of the company.

Otherwise, meetings can be requested at any other time or in a court liquidation by:

- $> 10\%$ but $< 25\%$ of the known value of creditors on the condition that those creditors provide security for the cost of holding the meeting
- $\geq 25\%$ of the known value of creditors
- creditors by resolution, or
- a Committee of Inspection (this is a smaller group of creditors elected by, and to represent, all the creditors).

If a request complies with these requirements and is 'reasonable', the liquidator must hold a meeting of creditors as soon as reasonably practicable.

Right to request information

Liquidators will communicate important information with creditors as required in a liquidation. In addition to the initial notice, you should receive, at a minimum, a report within the first three months on the likelihood of a dividend being paid.

Additionally, creditors have the right to request information at any time. A liquidator must provide a creditor with the requested information if their request is 'reasonable', the information is relevant to the liquidation, and the provision of the information would not cause the liquidator to breach their duties.

A liquidator must provide this information to a creditor within 5 business days of receiving the request, unless a longer period is agreed. If, due to the nature of the information requested, the liquidator requires more time to comply with the request, they can extend the period by notifying the creditor in writing.

Requests must be reasonable.

They are not reasonable if:

Both meetings and information:

- (a) complying with the request would prejudice the interests of one or more creditors or a third party
- (b) there is not sufficient available property to comply with the request
- (c) the request is vexatious

Meeting requests only:

- (d) a meeting of creditors dealing with the same matters has been held, or will be held within 15 business days

Information requests only:

- (e) the information requested would be privileged from production in legal proceedings
- (f) disclosure would found an action for breach of confidence
- (g) the information has already been provided
- (h) the information is required to be provided under law within 20 business days of the request

If a request is not reasonable due to (b), (d), (g) or (h) above, the liquidator must comply with the request if the creditor meets the cost of complying with the request.

Otherwise, a liquidator must inform a creditor if their meeting or information request is not reasonable and the reason why.

Specific queries about the liquidation should be directed to the liquidator's office.

Right to give directions to liquidator

Creditors, by resolution, may give a liquidator directions in relation to a liquidation. A liquidator must have regard to these directions, but is not required to comply with the directions.

If a liquidator chooses not to comply with a direction given by a resolution of the creditors, they must document their reasons.

An individual creditor cannot provide a direction to a liquidator.

Right to appoint a reviewing liquidator

Creditors, by resolution, may appoint a reviewing liquidator to review a liquidator’s remuneration or a cost or expense incurred in a liquidation. The review is limited to:

- remuneration approved within the six months prior to the appointment of the reviewing liquidator, and
- expenses incurred in the 12 months prior to the appointment of the reviewing liquidator.

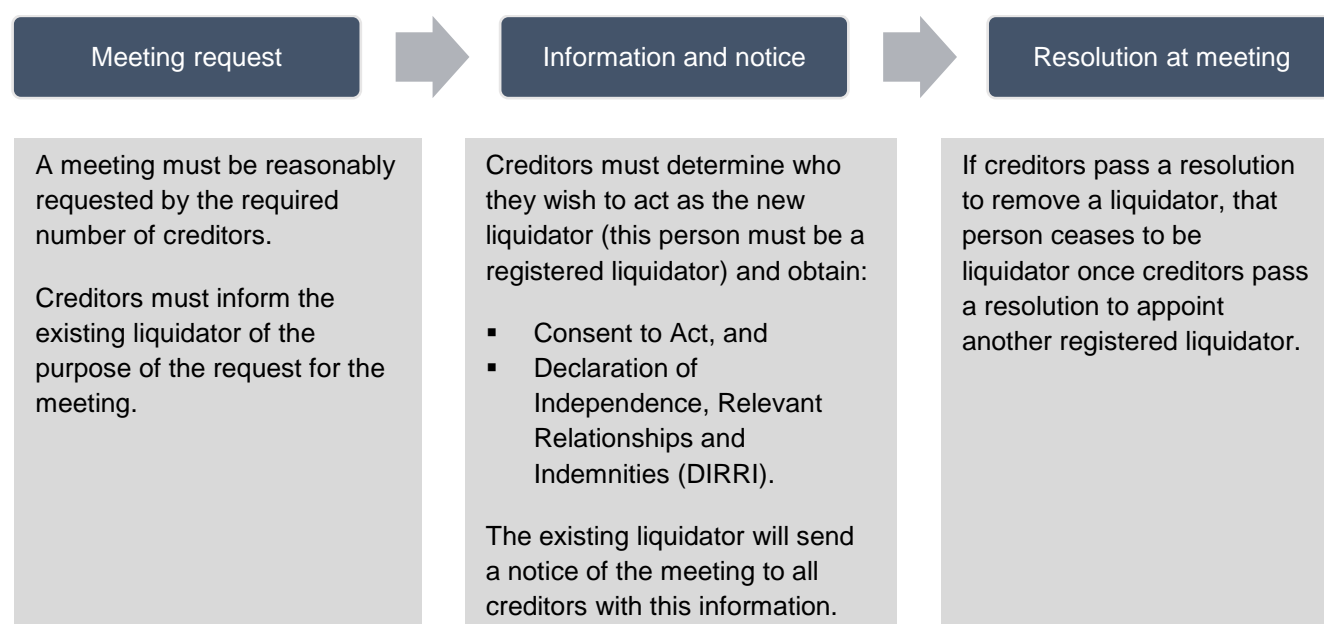
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

An individual creditor can appoint a reviewing liquidator with the liquidator’s consent, however the cost of this reviewing liquidator must be met personally by the creditor making the appointment.

Right to replace liquidator

Creditors, by resolution, have the right to remove a liquidator and appoint another registered liquidator.

For this to happen, there are certain requirements that must be complied with:



**For more information, go to www.arita.com.au/creditors.
Specific queries about the liquidation should be directed to the liquidator’s office.**

Appendix I – Information sheet: Offences, Recoverable Transactions and Insolvent Trading

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.

Appendix J – Information sheet No 74, Voluntary Administration: A guide for creditors



ASIC

Australian Securities & Investments Commission

Voluntary administration: A guide for creditors

If a company is in financial difficulty, it can be put into voluntary administration.

This information sheet (INFO 74) provides general information for unsecured creditors of companies in voluntary administration. It covers:

- [who is a creditor](#)
- [the purpose of voluntary administration](#)
- [the voluntary administrator's role](#)
- [effect of appointment](#)
- [voluntary administrator's liability](#)
- [creditors' meetings](#)
- [voting at a creditors' meeting](#)
- [company returned to directors](#)
- [liquidation](#)
- [deed of company arrangement](#)
- [approval of administrator's fees](#)
- [proposals to creditors without a meeting](#)
- [committee of inspection](#)
- [directors and voluntary administration](#)
- [other creditor rights](#)
- [queries and complaints](#)

Who is a creditor?

You are a creditor of a company if the company owes you money. Usually, a creditor is owed money because they have provided goods or services, or made loans to the company.

A retail customer of a company in voluntary administration may also be a creditor if they have partly or fully paid for goods or services that they have not received.

An employee owed money for unpaid wages and other entitlements is a creditor.

A person who may be owed money by the company if a certain event occurs (e.g. if they succeed in a legal claim against the company) is also a creditor, and is sometimes referred to as a 'contingent' creditor.

There are generally two categories of creditor - secured and unsecured:

- A secured creditor is someone who holds a security interest, such as a mortgage, in some or all of the company's assets, to secure a debt owed by the company. Lenders usually require a security interest in company assets when they provide a loan. Security interests over personal property other than land are registered on the Personal Property Securities Register (PPSR) if the creditor wants to ensure their security interest is enforceable and accorded priority in an insolvency. You can search the PPSR to find out if anyone holds a security interest (other than a mortgage over land) in the company's assets.

- An unsecured creditor is a creditor who does not hold a security interest in the company's assets.

Employees are a special class of unsecured creditors. Their outstanding entitlements are usually paid in priority to the claims of other unsecured creditors. If you are an employee, see [Information Sheet 75 Voluntary administration: A guide for employees](#) (INFO 75).

All references in this information sheet to 'creditors' relate to unsecured creditors unless otherwise stated.

The purpose of voluntary administration

Voluntary administration is designed to resolve a company's future direction quickly (the below table summarises the process). An independent and suitably qualified person (the voluntary administrator) takes full control of the company to try to work out a way to save either the company or its business.

If it isn't possible to save the company or its business, the aim is to administer the affairs of the company in a way that results in a better return to creditors than they would have received if the company had instead been placed straight into liquidation. A mechanism for achieving these aims is a deed of company arrangement.

A voluntary administrator is usually appointed by a company's directors, after they decide that the company is insolvent or likely to become insolvent. Less commonly, a voluntary administrator may be appointed by a liquidator, provisional liquidator, or a secured creditor.

The voluntary administration process

Step	What happens
Appointment of voluntary administrator	<p>A decision to appoint a voluntary administrator for a company can be made by:</p> <ul style="list-style-type: none"> • the directors (by resolution of the board and in writing) • a secured creditor (with a security interest in all or substantially all of the company's property), or • a liquidator (or provisional liquidator). <p>Voluntary administration begins on the appointment of the voluntary administrator.</p>
First meeting of creditors	<p>The voluntary administrator must hold the first meeting of creditors within eight business days of being appointed, unless the court allows an extension of time.</p> <p>At least five business days notice of the meeting must be given to creditors.</p> <p>Creditors can vote at this meeting to:</p> <ul style="list-style-type: none"> • replace the administrator, and/or • create a committee of inspection.
Voluntary administrator's investigation and report	<p>The voluntary administrator must investigate the company's affairs and report to creditors on alternatives.</p>

Step	What happens
Second meeting of creditors – meeting to decide company's future	<p>The voluntary administrator must hold the meeting to decide the company's future within 25 business days of being appointed (or 30 business days if the appointment is around Christmas or Easter), unless the court allows an extension of time.</p> <p>At least five business days notice of the meeting must be given to creditors.</p> <p>Creditors can decide at this meeting to:</p> <ul style="list-style-type: none"> • return the company to the control of the directors • accept a deed of company arrangement (the deed must be signed by the company within 15 business days following the meeting, unless the court allows an extension of time), or • put the company into liquidation (this happens immediately, and the administrator becomes the liquidator).

A company in voluntary administration may also be in receivership: see [Information Sheet 54 Receivership: A guide for creditors](#) (INFO 54).

The voluntary administrator's role

After taking control of the company, the voluntary administrator investigates and reports to creditors on the company's business, property, affairs and financial circumstances, and on the three options available to creditors. These are:

- end the voluntary administration and return the company to the directors' control
- approve a deed of company arrangement through which the company will pay all or part of its debts and then be free of those debts
- wind up the company and appoint a liquidator.

The voluntary administrator must give an opinion on each option and recommend which option is in the best interests of creditors.

In doing so, the voluntary administrator tries to work out the best solution to the company's problems, assesses any proposals put forward by others for the company's future, and compares the possible outcomes of the proposals with the likely outcome in a liquidation.

A creditors' meeting is usually held about five weeks after the company goes into voluntary administration to decide on the best option for the company's future. In complex administrations, this meeting may be held later if the court consents.

The voluntary administrator has all the powers of the company and its directors. This includes the power to sell or close down the company's business or sell individual assets in the lead up to the creditors' decision on the company's future.

Another responsibility of the voluntary administrator is to report to ASIC on possible offences by people involved with the company.

At the end of their administration, the voluntary administrator must lodge a detailed account of receipts and payments (known as the 'end of administration return'). A copy of this account of receipts and payments may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

Although the voluntary administrator may be appointed by the directors, they must act fairly and impartially.

Effect of appointment

The effect of the appointment of a voluntary administrator is to provide the company with breathing space while the company's future is resolved. While the company is in voluntary administration:

- unsecured creditors can't begin, continue or enforce their claims against the company without the administrator's consent or the court's permission
- owners of property (other than perishable property) used or occupied by the company, or people who lease such property to the company, can't recover their property
- except in limited circumstances, secured creditors can't enforce their security interest in the company's assets
- a court application to put the company in liquidation can't be commenced
- a creditor holding a personal guarantee from the company's director or other person can't act under the personal guarantee without the court's consent.

Voluntary administrator's liability

Any debts that arise from the voluntary administrator purchasing goods or services, or hiring, leasing, using or occupying property, are paid from the available assets of the company as costs of the voluntary administration. If there are insufficient funds available from asset sales to pay these costs, the voluntary administrator is personally liable for the shortfall. To have the benefit of this debt protection as a provider of goods or services to a company in voluntary administration, you should ensure you receive a purchase order authorised in the manner advised by the voluntary administrator.

The voluntary administrator must also decide whether to continue to use or occupy property owned by another party that is held or occupied by the company at the time of their appointment.

Within five business days after their appointment, the voluntary administrator must notify the owner of property whether they intend to continue to occupy or use the property and, if they do not intend to continue to occupy or use the property, the location of that property (if known). If the voluntary administrator decides to continue to occupy or use the property, they will be personally liable for any rent or amounts payable arising after the end of the five business days.

Creditors' meetings

Two meetings of creditors must be held during the voluntary administration.

First creditors' meeting

The voluntary administrator must hold the first creditors' meeting within eight business days after the voluntary administration begins.

At least five business days before the meeting, the voluntary administrator must notify as many creditors as practical in writing and advertise the meeting. The advertisement must appear on [ASIC's published notices website](#).

The voluntary administrator must send to creditors, with the notice of meeting, declarations about any relationships they may have, or indemnities they have been given, to allow creditors to consider the voluntary administrator's independence and make an informed decision about whether to replace them with another voluntary administrator of the creditors' choice.

The purpose of the first meeting is for creditors to decide two questions:

- whether they want to form a committee of inspection, and, if so, who will be on the committee
- whether they want the existing voluntary administrator to be removed and replaced by a voluntary administrator of their choice.

A committee of inspection may be formed to assist and advise the voluntary administrator. The committee of inspection also monitors the conduct of the voluntary administration, may approve certain steps in the administration and may give directions to the voluntary administrator. The voluntary administrator must have regard to, but is not always required to comply with, such directions.

A creditor who wishes to nominate an alternative voluntary administrator at the first meeting must approach a registered liquidator before the meeting and get a written consent from that person that they would be prepared to act as voluntary administrator. The proposed alternative administrator should give to the meeting declarations about any relationships

they may have or indemnities they have been given. The voluntary administrator will only be replaced if the resolution to replace them is passed by the creditors at the meeting.

To be eligible to vote at this meeting, you must lodge details of your debt or claim with the voluntary administrator (discussed further below).

This meeting can be chaired by either the voluntary administrator or one of their senior staff.

Second creditors' meeting (to decide the company's future)

After investigating the affairs of the company and forming an opinion on each of the three options available to creditors (outlined above), including an opinion as to which option is in the best interests of creditors, the administrator must call a second creditors' meeting. At this meeting, creditors are given the opportunity to decide the company's future.

This meeting is usually held about five weeks after the company goes into voluntary administration (six weeks if the appointment is around Christmas or Easter).

However, in complex voluntary administrations, often more time is needed for the voluntary administrator to be in a position to report to creditors. In these circumstances, the court can approve an extension of time to hold the meeting.

The voluntary administrator must chair this meeting.

In preparation for the second meeting, the voluntary administrator must send creditors the following documents at least five business days before the meeting:

- a notice of meeting
- the voluntary administrator's report
- the voluntary administrator's statement.

These will be accompanied by:

- a claim form (usually a 'proof of debt' form)
- a proxy voting form.

The meeting must also be advertised on [ASIC's published notices website](#).

Either or both the first and second creditors' meeting may be held using telephone or videoconferencing facilities.

Voluntary administrator's report

You should read the voluntary administrator's report before you attend the second meeting or decide whether you want to appoint someone else to vote on your behalf at that meeting. This report must give sufficient information to explain the company's business, property, affairs and financial circumstances, to enable you to make an informed decision about the company's future.

The report should also provide an analysis of any proposals for the future of the company, including the possible outcomes, as well as a comparable estimate of what would be available for creditors in a liquidation.

Voluntary administrator's statement

The voluntary administrator's statement must include the voluntary administrator's opinion, with reasons, on each of the options available to creditors, as well as an opinion on which option the voluntary administrator believes is in the best interests of creditors. As noted above, the options are:

- end the voluntary administration and return the company to the directors' control
- approve a deed of company arrangement (if one is proposed)
- wind up the company and appoint a liquidator.

The voluntary administrator's statement must also include such other information known to the voluntary administrator that will allow you to make an informed decision about each of the options above.

The statement must also advise whether there are any voidable transactions (such as unfair preferences, unfair loans, insolvent trading, etc.) where money or property may be recoverable by a liquidator, if one were appointed.

If there are proposals for a deed of company arrangement, the voluntary administrator must provide creditors with a statement giving enough details of each proposal to enable creditors to make an informed decision. The types of proposals allowed in a deed of company arrangement are very flexible.

Typically, a proposal will provide for the company to pay all or part of its debts, possibly over time, and then be free of those debts. It will often provide for the company to continue trading. How these things will happen varies from case to case, as the terms allowed in a deed of company arrangement are also very flexible. The contents of a deed of company arrangement are discussed below.

You should insist on being provided with as much information about the terms of the proposed deed as possible before the creditors' meeting. The minimum contents of a deed of company arrangement, discussed below, provide a guide on the information you might request if it hasn't already been provided.

You should also contact the voluntary administrator before the meeting if you believe the voluntary administrator's report or statement do not contain sufficient information to enable you to make a decision about the company's future.

Voting at a creditors' meeting

To vote at any creditors' meeting you must lodge details of your debt or claim with the voluntary administrator. Usually, the voluntary administrator will provide you with a form called a 'proof of debt' to be completed and returned before the meeting.

The chairperson of the meeting decides whether or not to accept the debt or claim for voting purposes. The chairperson may decide that a creditor does not have a valid claim. In this case, they may not allow the creditor to vote at all. If the chairperson is in doubt whether to accept the debt or claim, they must mark the vote as objected to and allow the creditor to vote subject to the vote being declared invalid if the objection is sustained. This decision is only for voting purposes. It is not relevant to whether a creditor will receive a dividend.

An appeal against a decision by the chairperson to accept or reject a proof of debt or claim for voting purposes may be made to the court within 10 business days after the decision.

A secured creditor is entitled to vote for the full amount of their debt without having to deduct the value of their security interest.

Voting by proxy

You may appoint an individual as proxy to attend and vote at a meeting on your behalf. Creditors who are companies will have to nominate a person as proxy so that they can participate in the meeting. This is done using a form sent out with the notice of meeting. The completed proxy form must be provided to the voluntary administrator before the meeting.

An electronic form of proxy may be used if the liquidator allows electronic lodgement, provided there is a way to authenticate the appointment of the proxy (e.g. by scanning and emailing a signature or using a digital signature).

You can specify on the proxy form how the proxy is to vote on a particular resolution and the proxy must vote in accordance with that instruction. This is called a 'special proxy'. Alternatively, you can leave it to the proxy to decide how to vote on each of the resolutions put before the meeting. This is called a 'general proxy'.

You can appoint the chairperson to represent you either through a special or general proxy. The voluntary administrator or one of their partners or employees must not use a general proxy to vote in favour of a resolution approving payment of the voluntary administrator's fees.

Manner of voting

A vote on any resolution put to a creditors' meeting may be taken by creditors stating aloud their agreement or disagreement, or by a more formal voting procedure called a 'poll'.

If voting is by verbally signalling agreement, the resolution is passed if a majority of those present indicate agreement. It is up to the chairperson to decide if this majority has been reached.

After the vote, the chairperson must tell those present whether the resolution has been passed or lost. If the chairperson is unable to determine the outcome of a resolution on verbal agreement, they may decide to conduct a poll.

Alternatively, a poll can be demanded by the person presiding at the meeting or by a person participating and entitled to vote at the meeting. If a poll is demanded, it must be taken immediately.

The chairperson will determine how this poll is taken.

If you intend to demand that a poll be taken, you must do so before, or as soon as, the chairperson has declared the result of a vote taken by voices.

When a poll is conducted, a resolution is passed if both:

- more than half the number of creditors who are voting (in person or by proxy) vote in favour of the resolution
- those creditors who are owed more than half of the total debt owed to creditors at the meeting vote in favour of the resolution.

This is referred to as a 'majority in number and value'. If a majority in both number and value is not reached under a poll (often referred to as a deadlock), the chairperson has a casting vote.

Chairperson's casting vote

When a poll is taken and there is a deadlock, the chairperson may use their casting vote (except for resolutions to approve their remuneration) either in favour of or against the resolution. Where the resolution relates to their removal as voluntary administrator, the chairperson may only exercise the casting vote in favour of their removal. The chairperson may also decide not to use their casting vote, in which case the deadlocked resolution is not passed.

The chairperson must inform the meeting, and include in the written minutes of meeting that are lodged with ASIC, of the reasons why they exercised their casting vote in a particular way or why they chose not to use their casting vote.

If you are dissatisfied with how the chairperson exercised their casting vote or failed to use their casting vote, you may, in specified circumstances, apply to the court for a review of the chairperson's decision. The court may vary or set aside the resolution or order that the resolution is taken to have been passed.

Votes of related creditors

If directors and shareholders, their spouses and relatives and other entities controlled by them are creditors of the company, they are entitled to attend and vote at creditors' meetings, including the meeting to decide the company's future.

If a resolution is passed or defeated based on the votes of these related creditors and you are dissatisfied with the outcome, you may, in specified circumstances, apply to the court for the resolution to be set aside and/or for a fresh resolution to be voted on without related creditors being entitled to vote. Certain criteria must be met before the court will make such an order (e.g. the original result of the vote being against the interests of all or a class of creditors).

Deciding how to vote at the second meeting

How you vote at the meeting on the three possible options, including any competing proposals for a deed of company arrangement, is a commercial decision based on your assessment of the company and its future prospects, and your personal circumstances. The information provided by the voluntary administrator, including opinions expressed, will assist you. However, you are not obliged to accept the administrator's recommendation.

If you do not consider that you have been given enough information to decide how to vote, and particularly whether to vote for any deed proposal, you can ask for a resolution to be put to creditors that the meeting be adjourned (up to a maximum of 45 business days in total) and for the administrator to provide more information. You must make this request before a vote on the company's future. This resolution must be passed for the adjournment to take place.

Creditors also have the right, when a deed of company arrangement is proposed and considered at the meeting, to negotiate specific requirements into the terms of the deed – including, for example, how the deed administrator is to report to them on the progress of the deed.

Any request to vary the deed proposal to include such requirements should be made before the deed proposal is voted on.

Minutes of meeting

The chairperson must prepare minutes of each meeting and a record of those who were present at each meeting.

The minutes must be lodged with ASIC within 10 business days of the meeting. A copy of the minutes of meeting may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

Company returned to directors

If the company is returned to the directors, they will be responsible for ensuring that the company pays its outstanding debts as they fall due. It is only in very rare circumstances that creditors will resolve to return the company to the control of its directors.

Liquidation

If creditors resolve that the company go into liquidation, the voluntary administrator becomes the liquidator unless creditors vote at the second meeting to appoint a different liquidator of their choice. The liquidation proceeds as a creditors' voluntary liquidation with any payments of dividends to creditors made in the order set out in the *Corporations Act 2001* (Corporations Act). To find out more, see [Information Sheet 45 Liquidation: A guide for creditors](#) (INFO 45).

Deed of company arrangement

If creditors vote for a proposal that the company enter a deed of company arrangement, the company must sign the deed within 15 business days of the creditors' meeting, unless the court allows a longer time. If this doesn't happen, the company will automatically go into liquidation, with the voluntary administrator becoming the liquidator.

The deed of company arrangement binds all unsecured creditors, even if they voted against the proposal. It also binds owners of property, those who lease property to the company and secured creditors, if they voted in favour of the deed. In certain circumstances, the court can also order that these people are bound by the deed even if they didn't vote for it. The deed of company arrangement does not prevent a creditor who holds a personal guarantee from the company's director or another person taking action under the personal guarantee to be repaid their debt.

Contents of the deed

Whatever the nature of the deed of company arrangement, it must contain certain information, including:

- the name of the deed administrator
- the property that will be used to pay creditors
- the debts covered by the deed and the extent to which those debts are released
- the order in which the available funds will be paid to creditors (the deed of company arrangement must ensure that employees have a priority in payment of outstanding employee entitlements unless the eligible employees agree by a majority in both number and value to vary this priority)
- the nature and duration of any suspension of rights against the company
- the conditions (if any) for the deed to come into operation
- the conditions (if any) for the deed to continue in operation
- the circumstances in which the deed terminates.

There are also certain terms that will be automatically included in the deed, unless the deed says they will not apply. These are called the 'prescribed provisions'. They include such matters as the powers of the deed administrator, termination of the deed and the appointment of a committee of creditors (called a 'committee of inspection').

The voluntary administrator's report should tell you which prescribed provisions are proposed to be excluded or varied, and, if varied, how.

Monitoring the deed

It is the role of the deed administrator to ensure the company (or others who have made commitments under the deed) carries through these commitments. The extent of the deed administrator's ongoing role will be set out in the deed.

Creditors can also play a role in monitoring the deed. If you are concerned that the obligations of the company (or others) under the deed are not being met, you should take this up promptly with the deed administrator. Matters that may give rise for concern include deadlines for payments or other actions promised under the deed being missed.

Creditors also have the right when a deed of company arrangement is proposed and considered at the second meeting to negotiate consequences of failure to meet such deadlines into the terms of the deed. Any request to vary the deed proposal to include such consequences should be made before the deed proposal is voted on.

A director must notify the deed administrator if they become aware that there has been, or is likely to be, a material contravention of the deed. In addition, the deed administrator must give notice to creditors as soon as practicable after becoming aware of the material contravention or if there is likely to be a material contravention of the deed.

A deed administrator must lodge with ASIC a detailed list of their receipts and payments (known as the annual administration return) annually on the anniversary of their appointment and at the end of their administration. A copy of the receipts and payments may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

Note: If the deed of company arrangement commenced prior to 1 September 2017, the deed administrator will continue to lodge the six-monthly [Form 524 Presentation of accounts and statement](#) until the six-month period ending on the first anniversary of their appointment date. Thereafter, they will lodge the annual administration return.

Varying the deed

The deed administrator can call a creditors' meeting at any time to consider a proposed variation to the deed. The proposed resolutions must be set out in the notice of meeting sent to creditors.

The deed administrator must also call a meeting to consider a resolution to vary the deed if:

- the committee of inspection directs it (where there is a committee of inspection)
- creditors pass a resolution requiring the deed administrator call a meeting
- at least 25% in value of creditors direct the deed administrator to do so in writing
- less than 25% but more than 10% in value of creditors direct the deed administrator to do so in writing and they provide security for the cost of holding the meeting.

The deed administrator is not required to comply with a direction by the committee of inspection or creditors to call a meeting if that direction is not reasonable.

If the deed administrator considers the direction is not reasonable, they must notify the person or body that gave the direction and set out the reasons why it is not reasonable. In this circumstance, the deed administrator may still convene a meeting to consider varying the deed if the person or body who gave the direction agree to pay the costs of calling and holding the meeting.

Payment of dividends under a deed

The order in which creditor claims are paid depends on the terms of the deed. Sometimes the deed proposal is for creditor claims to be paid in the same priority as in a liquidation. Other times, a different priority is proposed.

The deed must ensure employee entitlements are paid in priority to other unsecured creditors unless eligible employees have agreed to vary their priority.

Before you decide how to vote at the creditors' meeting, make sure you understand how the deed will affect the priority of payment of your debt or claim.

You may wish to seek independent legal advice if the deed proposes a different priority to that in a liquidation, or if creditors approve such a deed.

Establishing your claim under a deed

How debts or claims are dealt with under a deed of company arrangement depends on the deed's terms. Sometimes the deed incorporates the Corporations Act provisions for dealing with debts or claims in a liquidation.

Before any dividend is paid to you for your debt or claim, you will need to give the deed administrator sufficient information to prove your debt. You may be required to complete a claim form (this is called a 'proof of debt' in a liquidation). You should attach copies of any relevant invoices or other supporting documents to the claim form, as your debt or claim may be rejected if there is insufficient evidence to support it.

If a creditor is a company, the claim form should be signed by a person authorised by the company to do so.

When submitting a claim, you may ask the deed administrator to acknowledge receipt of your claim and advise if any further information is needed.

If the deed administrator rejects your claim after you have taken the above steps, first contact the deed administrator. You may also wish to seek your own legal advice. This should be done promptly. Depending on the terms of the deed, you may have a limited time in which to take legal action to challenge the decision.

If you have a query about the timing of the payment, discuss this with the deed administrator.

How a deed comes to an end

A deed may come to an end because the obligations under the deed have all been fulfilled and the creditors have been paid. Alternatively, the deed may set out certain conditions where the deed will automatically terminate.

The deed may also provide that the company will go into liquidation if the deed terminates due to these conditions being met.

Another way for the deed to end is if the deed administrator calls a meeting of creditors (either on their own initiative or at the direction of creditors or the committee of inspection if one has been formed), and creditors vote to end the deed. This may occur because there has been a breach of the deed or it appears unlikely that the terms of the deed can be fulfilled.

At the same time, creditors may be asked to vote to put the company into liquidation.

The deed may also be terminated if a creditor, the company, ASIC or any other interested person applies to the court and the court is satisfied that:

- creditors were provided false and misleading information on which the decision to accept the deed proposal was made
- the voluntary administrator's report left out information that was material to the decision to accept the deed proposal
- the deed cannot proceed without undue delay or injustice
- the deed is unfair or discriminatory to the interests of one or more creditors or against the interests of creditors as a whole.

If the court terminates the deed as a result of such an application, the company automatically goes into liquidation.

Approval of administrator's fees

Both a voluntary administrator and deed administrator are entitled to be paid for the work they perform. Generally, their fees will be paid from available assets, before any payments are made to creditors. They may have also arranged for a third party to pay any shortfall in their fees if there aren't enough assets.

The fees cannot be paid until the amount has been approved by creditors, a committee of inspection or the court. Creditors, the voluntary administrator/deed administrator or ASIC can ask the court to review the amount of fees

approved. Alternatively, the voluntary administrator or deed administrator may put a proposal to creditors to approve their fees without holding a meeting.

If you are asked to approve fees, either at a general meeting of creditors or at a meeting of a committee of inspection, the voluntary administrator or deed administrator must give you, at the same time as the notice of the meeting, a report that contains sufficient information for you to assess whether the fees claimed are reasonable. This report should be in simple language and set out:

- a summary description of the major tasks performed or likely to be performed
- the costs of completing those tasks and how those costs were calculated
- the periods when funds will be drawn to pay the fees
- the estimated total amount, or range of amounts, of total fees
- an explanation of the likely impact the fees will have on any dividends to creditors
- such other information that will assist in assessing the reasonableness of the fees claimed.

If you are in any doubt about how the fees were calculated, ask for more information.

Apart from fees, the voluntary administrator and deed administrator are entitled to reimbursement for out-of-pocket expenses that have arisen in carrying out their administration. This reimbursement may require creditor, committee of inspection or court approval.

For further information, see [Information Sheet 85 Approving fees: A guide for creditors](#) (INFO 85).

Proposals to creditors without a meeting

Instead of convening a creditors' meeting, the voluntary administrator or deed administrator can put proposals to creditors by giving notice in writing.

This notice must be given to each creditor who would be entitled to receive notice of a meeting and:

- include a statement of the reasons for the proposal and the likely impact the proposal will have on creditors
- invite the creditor to either:
 - vote 'yes' or 'no' for the proposal
 - object to the proposal being resolved without a meeting
- specify a reasonable time for creditors' replies to be received by the administrator.

To vote on the proposal, a creditor must lodge details of their debt or claim with the administrator and complete the voting documents provided by the administrator.

Creditors can vote 'yes' or 'no' on the proposal and/or object to the proposal being resolved without a creditors' meeting. You should return your response to the administrator within the time specified in the notice, which must be at least 15 business days after the notice is given to creditors.

A resolution is passed if the majority of creditors in number and value who responded to the notice voted 'yes' and if not more than 25% in value of the creditors who responded objected to the proposal being resolved without a creditors' meeting.

The administrator should provide creditors enough information to allow them to make an informed decision about the proposal. A creditor should contact the administrator to obtain further information if they think it necessary for them to make a decision.

The administrator must lodge with ASIC a statement about the outcome of the proposal. A copy of the outcome of the proposal may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

Committee of inspection

A committee of inspection may be formed to assist and advise the voluntary administrator or deed administrator. The committee of inspection also monitors the conduct of the voluntary administrator or deed administrator, may approve

certain steps in the voluntary administration or deed administration and may give directions to the voluntary administrator or deed administrator. The voluntary administrator or deed administrator must have regard to, but is not always required to comply with, such directions.

In a voluntary administration, the committee may be formed at the first creditors' meeting.

All creditors are entitled to stand for committee membership. Members appointed to the committee of inspection represent the interests of all creditors.

If a creditor is a company, the creditor can nominate, in writing, an individual to represent it on the committee.

A person can be appointed as a member of the committee of inspection:

- by resolution of creditors
- by a creditor or group of creditors owed at least 10% of the value of creditors' claims
- by an employee or group of employees owed at least 50% in value of outstanding employee entitlements.

A member of the committee of inspection must not directly or indirectly derive any profit or advantage from the external administration of the company.

A committee of inspection has various powers and functions, including to:

- approve the remuneration of the voluntary administrator or deed administrator
- direct the voluntary administrator or deed administrator to convene a meeting of creditors
- request the voluntary administrator or deed administrator to give information, provide a report or produce a document
- obtain specialist advice or assistance (with the prior approval of the voluntary administrator, deed administrator or the court) that the committee considers desirable relating to the conduct of the voluntary administration or the deed administration.

The external administrator or deed administrator is not required to comply with a direction to convene a meeting or give information if that request is not reasonable.

A committee of inspection can determine its own procedures and exercises its powers through resolutions passed at meetings of the committee. A resolution is passed by a majority in number of its members present at a meeting. The committee of inspection can only act if a majority of its members attend.

Minutes of meetings of the committee of inspection must be prepared and lodged with ASIC.

ASIC is entitled to attend a meeting of the committee of inspection.

Directors and voluntary administration

Directors cannot use their powers while the company is in voluntary administration. They must help the voluntary administrator, including providing the company's books and records, and a report about the company's business, property, affairs and financial circumstances, as well as any further information about these that the voluntary administrator reasonably requires.

If the company goes from voluntary administration into a deed of company arrangement, the directors' powers depend on the deed's terms. When the deed is completed, the directors regain full control, unless the deed provides for the company to go into liquidation on completion.

If the company goes from voluntary administration or a deed of company arrangement into liquidation, the directors cannot use their powers. If creditors resolve that the voluntary administration should end, control of the company goes back to the directors.

Other creditor rights

Request for information

Creditors can, by resolution passed at a meeting of creditors or individually, request the voluntary administrator or deed administrator to give information, provide a report or produce a document.

The voluntary administrator or deed administrator must comply with this request if:

- the information, report or document is relevant to the administration
- the voluntary administrator or deed administrator would not breach their duty if they comply with the request
- the request is reasonable.

If the voluntary administrator or deed administrator, acting in good faith, believes it is not reasonable to comply with the request they must notify the requesting party and set out their reason for believing the request is not reasonable.

The voluntary administrator or deed administrator may consider the request not reasonable if, for example, complying with the request would substantially prejudice the interests of one or more creditors, the information would otherwise be privileged from production in legal proceedings or if the administration does not have sufficient funds to pay the cost of complying with the request.

If there are insufficient funds, the voluntary administrator or deed administrator may decide to comply with the request if the requesting party agrees to pay the cost of providing the information.

Appoint a reviewing liquidator

Creditors can resolve to appoint a reviewing liquidator to carry out a review into fees and/or costs incurred by the voluntary administrator or deed administrator. In addition, one or more creditors with the agreement of the voluntary administrator or deed administrator may appoint a reviewing liquidator.

Note: A creditor can also apply to ASIC in the approved form for it to appoint a reviewing liquidator (see Form 5605 *Application for ASIC to appoint a reviewing liquidator*).

This review is limited to:

- remuneration approved within the six months before the reviewing liquidator is appointed
- costs or expenses incurred during the 12-month period before the reviewing liquidator is appointed (unless the voluntary administrator or deed administrator agrees to a longer period).

The reviewing liquidator must be a registered liquidator. A creditor who wishes to appoint a reviewing liquidator must approach a registered liquidator to get a written consent from that person that they would be prepared to act as reviewing liquidator. The person must also make a written declaration about any relationships they or their firm may have that might affect their independence to act as reviewing liquidator.

The voluntary administrator or deed administrator, and their staff, must cooperate with the reviewing liquidator.

If creditors pass a resolution to appoint a reviewing liquidator, the reviewing liquidator's costs form part of the expenses of the external administration of the company. If one or more creditors appoint the reviewing liquidator with the consent of the voluntary administrator or deed administrator without passing a resolution, the reviewing liquidator's costs are borne by the creditor(s) appointing the reviewing liquidator.

Queries and complaints

You should first raise any queries or complaints with the voluntary administrator or deed administrator. If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a report of misconduct with ASIC – see [How to complain](#).

Lodging your report of misconduct online ensures the quickest response from ASIC to your concerns.

ASIC usually does not become involved in matters of a voluntary administrator's or deed administrator's commercial judgement.

Reports of misconduct against companies and their officers can also be made to ASIC.

If you cannot report misconduct to ASIC online, you can contact us on 1300 300 630.

Where can I get more information?

For an explanation of terms used in this information sheet, see [Information Sheet 41 *Insolvency: A glossary of terms*](#) (INFO 41). For more on external administration, see the related information sheets listed in [Information Sheet 39 *Insolvency information for directors, employees, creditors and shareholders*](#) (INFO 39).

Further information is available from the [Australian Restructuring Insolvency & Turnaround Association \(ARITA\) website](#). The ARITA website also contains the [ARITA Code of Professional Practice for Insolvency Practitioners](#).

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.

This is **Information Sheet 74 (INFO 74)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Last updated: 01/09/2017 07:51



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