



DEM ASIA GROUP

PMR CRITERION PTY LIMITED

(ADMINISTRATOR APPOINTED)

ACN 609 328 976

TRADING AS THE CRITERION HOTEL

**REPORT TO CREDITORS PURSUANT TO
S439A OF THE CORPORATIONS ACT 2001**

4 JULY 2017



REPORT TO CREDITORS

**PMR CRITERION PTY LIMITED
(ADMINISTRATOR APPOINTED)
ACN 609 328 976**

("THE COMPANY")

On 7 June 2017, I was appointed Administrator of the above Company pursuant to Section 436A of the *Corporations Act 2001* (the "**Act**").

The purpose of this report is to:

- a) provide creditors with information about the Company's business, property, affairs and financial circumstances; and
- b) set out my opinion about the following matters accompanied by my reasons for forming those opinions
 - i) whether it would be in the creditors' interests for the Company to execute a Deed of Company Arrangement;
 - ii) whether it would be in the creditors' interests for the administration to end and for control of the Company to be returned to its directors; or
 - iii) whether it would be in the creditors' interests for the Company to be wound up.

Pursuant to Section 435A of the Act, the objective of a voluntary administration can be summarised as follows:

- a) to maximise the chances of the Company, or as much as possible of its business continuing in existence; or
- b) if it is not possible for the Company or its business to continue in existence, results in a better return for the Company's creditors and members than would result from an immediate winding up of the Company.

RECOMMENDATION STATEMENT

We have not been provided with a Deed proposal for consideration, and as such it is my recommendation that creditors resolve that the Company be wound up at the upcoming meeting of creditors to be held on Wednesday, 12 July 2017.

TABLE OF CONTENTS

1. Disclaimer	7	8.6 Inventory	13
2. Executive Summary.....	7	8.7 Priority Creditor Claims.....	13
2.1 Appointment	7	8.8 Landlord.....	13
2.2 Control of the Company's Assets and Business.....	7	8.9 Creditor Claims	13
2.3 Preliminary Investigations.....	7	9. Financial Information	14
2.4 First Meeting of Creditors.....	7	9.1 Profit and Loss Statement.....	14
2.5 Second Meeting of Creditors	7	9.2 Balance Sheet and Current Ratio	14
2.6 Administrator's Recommendation.....	8	9.2.1 Balance Sheet.....	14
3. Purpose of This Report.....	8	10. Preliminary Investigations.....	15
4. Statement of Independence	8	10.1 Limitations.....	15
5. Company History and Operations.....	8	10.2 Books and Records.....	15
5.1 Company History	8	10.3 Litigation Risk and Proof of Insolvency	16
5.2 Company Operations	8	10.3.1 Litigation Risk.....	16
6. Statutory Information	9	10.3.2 Proof of Insolvency.....	16
6.1 Incorporation.....	9	10.4 Voidable Transactions.....	17
6.2 Former and Current Directors and Secretaries.....	9	10.4.1 Relation-Back Period	17
6.3 Shareholding	9	10.4.2 Unfair Preferences.....	17
6.4 Registered Security Interests	10	10.4.3 Unfair Loans (S588FD).....	17
7. Summary of Administration to Date	10	10.4.4 Uncommercial Transactions (S588FB)	18
8. Summary of the Company's Assets and Liabilities.....	11	10.4.5 Discharge of Related Party Debts (S588FH).....	18
8.1 Estimated Deficiency.....	12	10.4.6 Transactions for the Purpose of Defeating Creditors (S588FE).....	18
8.2 Cash at the Bank	12	10.4.7 Unreasonable Director Related Transactions (S588FDA)	18
8.3 Cash on Hand.....	12	10.4.8 Voidable Charges.....	18
8.4 Plant and Equipment.....	12	10.4.9 Insolvent Trading (S588G)	19
8.5 TAB Bond.....	13	10.4.10 Indicators of Insolvency.....	19
		10.4.11 Directors Defences to an Insolvent Trading Claim.....	20
		10.4.12 Administrator's Preliminary Findings	21

10.4.13	Conclusion.....	21
10.5	Offences.....	21
10.6	Reporting to ASIC.....	21
10.7	Request for Information and Funding	22
11.	Estimated Return to Creditors.....	22
12.	Options Available to Creditors and Administrator’s Recommendation.....	22
12.1	Options Available to Creditors.....	22
12.1.1	The Company execute a Deed of Company Arrangement	23
12.1.2	The Administration should end.....	23
12.1.3	The Company be wound up	23
12.2	Administrator’s Recommendation.....	23
13.	Other Material Information.....	23
14.	Second Meeting of Creditors	23
14.1	Casting Vote.....	23
15.	Remuneration of the Administrator / Liquidator / Deed Administrator.....	24
16.	Early Destruction of Books and Records (IF COMPANY IS IN LIQUIDATION)	24
17.	Finalisation of the Administration	25

INDEX OF ANNEXURES

Annexure Reference	Document Title
Annexure 1	Notice of Second Meeting of Creditors
Annexure 2	Remuneration Request Approval Report
Annexure 3	Statement of Financial Performance (Income Statement)
Annexure 4	Statement of Financial Position (Balance Sheet)
Annexure 5	Estimated Return to Creditors
Annexure 6	ARITA Complaints Investigations Procedures
Annexure 7	Summary of Payments and Receipts
Annexure 8	Form 535 (Proof of Debt)
Annexure 9	Form 532 (Proxy Appointment)

GLOSSARY

Abbreviation	Full Text
Act	<i>Corporations Act 2001</i>
Administrator	Damien Mark Hodgkinson
ASIC	Australian Securities and Investments Commission
Company	PMR Criterion Pty Limited (Administrator Appointed) ACN 609 328 976 trading as The Criterion Hotel
COGS	Cost of Goods Sold
ERV	Estimated Realisable Value
PMSI	Purchase Money Security Interests
PPSR	Personal Property Security Regulation
Premises	148 John Street, Singleton NSW
RATA	Report as to Affairs

1. DISCLAIMER

Whilst every care has been taken in the preparation of this report, I am unable to warrant the accuracy, completeness or reliability of the information contained as it was compiled from the available books and records of the Company and information provided by relevant parties and no audit has been conducted. My conclusions as detailed herein must be regarded as preliminary and subject to change as future investigations are undertaken.

In considering the options available to creditors, in formulating my recommendations, I have forecast asset realisations and costs of recovery and have been required to make estimates of the ultimate quantum of creditors' claims against the Company. These forecasts and estimates will change as:

- my assessment of potential asset realisations progresses; and
- creditors' claims are made and adjudicated upon.

The forecasts and estimates in this report are my best assessment in the circumstances and creditors should note that the Company's ultimate deficiency, and therefore the outcome for creditors, could differ from the information provided in this report.

2. EXECUTIVE SUMMARY

2.1 APPOINTMENT

On 7 June 2017 I, Damien Mark Hodgkinson, was appointed Voluntary Administrator of PMR Criterion Pty Limited, ACN 609 328 976, trading as the Criterion Hotel (hereafter referred to as the "**Company**") by the sole director of the Company, Mr Raymond Paul Wynne, pursuant to Section 436A of the *Corporations Act 2001* (the "**Act**").

2.2 CONTROL OF THE COMPANY'S ASSETS AND BUSINESS

As at the date of my appointment, I assumed control of the Company's assets and its leased premises at 148 John Street, Singleton (the "**Premises**") from which the Company operated its business, the Criterion Hotel. The Company had ceased trading the Hotel on Sunday, 4 June 2017 just prior to my appointment on 7 June 2017.

I had negotiated administration funding from DEM Aspiron Limited a related entity of \$40,000 to fund trading during the administration. The funding was to be provided to assist with a sale of the leasehold for a fixed fee of \$2,000.

Following my appointment, I sought to re-commence trading of the Company's business as soon as practicable to transfer the liquor license with a view to selling the business as a going concern for the benefit of creditors. This was contingent on reaching an agreement with the landlord as to:

- A reduction of the rent payable during the Administration period given that the business would most likely trade at a loss; and
- Negotiating or transferring the existing lease to an incoming purchaser.

An agreement could not be reached with the landlord on the matters noted. Given that the continued operation of the business would require the lease of the Premises to be transferred to an incoming purchaser, it was no longer viable for me to trade on the business to sell it as a going concern. Therefore, I, in my capacity as Administrator, vacated the Premises on 20 June 2017. The business did not trade while the I was in possession of the Premises.

2.3 PRELIMINARY INVESTIGATIONS

I have conducted my preliminary investigations into the affairs of the Company and have identified matters requiring further investigation. Please refer to Section 10 of this report for further details.

2.4 FIRST MEETING OF CREDITORS

The first meeting of the Company's creditors was held on 20 June 2017. At that meeting, creditors considered the appointment of a Committee of Inspection and the appointment of alternative Administrator(s). The creditors did not resolve to form a Committee of Inspection and my appointment as Administrator of the Company was confirmed.

2.5 SECOND MEETING OF CREDITORS

The Second Meeting of Creditors of the Company pursuant to Section 439A of the Act will be held as follows:

Date: Wednesday, 12 July 2017

Time: 11.00 am

Location: DEM Australasia
Level 4, 249 Pitt St
Sydney NSW 2000

Attached as **Annexure 1** is a formal Notice of Second Meeting of Creditors of the Company.

Creditors may attend by teleconference, details follow:

Sydney: 02 8091 0004

National: 1300 337 801

PIN: 001924

Creditors can register for teleconference by emailing Jenny Kim on jenny.kim@demasiagroup.com.

2.6 ADMINISTRATOR'S RECOMMENDATION

It is my recommendation that creditors resolve that the Company be wound up at the upcoming meeting of creditors to be held on Wednesday, 12 July 2017.

Please refer to Section 12 of this report for further comments in this regard.

3. PURPOSE OF THIS REPORT

The purpose of this report is to provide information on the Company's business, property, affairs and financial circumstances, and to provide the Administrator's view on the future of the Company pursuant to Part 5.3A of the Act.

Section 438A of the Act requires that, as soon as practicable, the Administrator must investigate the Company's business, property, affairs and financial circumstances and form an opinion about each of the following matters:

- whether it would be in the creditors' interests for the Company to execute a Deed of Company Arrangement ("DOCA");

- whether it would be in the creditors' interests for the Administration to end; and
- whether it would be in the creditors' interests for the Company to be wound up.

This report has been prepared mainly from information received from the Company's director and the books and records of the Company.

4. STATEMENT OF INDEPENDENCE

Please refer to the Notice to Creditors dated 9 July 2017 for the Declaration of Independence, Relevant Relationships and Independence ("DIRRI"). The DIRRI was tabled at the First Meeting of Creditors of the Company held on 20 June 2017.

At the date of this report there are no changes to the DIRRI.

5. COMPANY HISTORY AND OPERATIONS

5.1 COMPANY HISTORY

The Company was registered on 16 November 2015 in New South Wales.

On 7 December 2015 the Company entered a 25 year lease for the Premises at 148 John Street, Singleton NSW, and began operating its business, the Criterion Hotel.

The Company employed approximately 10 staff members, mostly on a casual basis.

5.2 COMPANY OPERATIONS

The Company traded the Criterion Hotel at the Premises from on or around December 2015 until 4 June 2017, just prior to my appointment on 7 June 2017.

The Company traded one of nine publican hotels operating in Singleton, a town with a population of 16,921 as at June 2015 in the Hunter Valley wine region.

In my review, I determined that several issues impacted the performance of the Company's business:

- The town of Singleton is significantly over serviced for hotels, which has impacted hotel patronage. Any increase in revenue could only be achieved by drawing patrons from competing hotels;

- There was an agreement to complete capital works by the landlord to provide an outside smoking and gaming solution. These works were not completed due to absence/delays in development approvals and as a result, impacted gaming revenue;
- A review of the Company's management accounts from 1 July 2016 to 31 March 2017 indicated that cost of goods sold ("COGS") as a percentage of sales for food was at 67.9% and that the net contribution from Bistro operations was a loss of \$34,411. Profitable hotel operations target a food COGS of 30 -32%.

Similarly COGS as a percentage of bar sales over the same period was 55.8% and that the overall contribution from bar operations was a loss of \$41,163.

The Hotel also operated 14 poker machines, 11 of which were owned by the Landlord and subject to the terms of the lease, and 3 machines acquired from Aristocrat Leisure after the leased commenced. In the nine months to 31 March 2017 net surplus from gaming operations was \$339,104

For the nine months to 31 March 2017, the Company generated a profit of \$19,579 which included a reduced rent of \$64,195. If the Company had paid its contracted lease value of \$157,745 (ex GST) for the nine months it would have generated a loss of \$73,970 before management fees. Refer **Annexure 3** of this report.

6. STATUTORY INFORMATION

Detailed below is a summary of information relating to the Company as recorded by the Australia Securities and Investment Commission ("ASIC") as at the date of my appointment.

6.1 INCORPORATION

Company:	PMR Criterion Pty Limited
ACN:	609 328 976
Date of Incorporation:	16 November 2015
Registered Office:	95 Darby Street, COOKS HILL NSW 2300
Principal Place of Business:	148 John Street, SINGLETON NSW 2330
Business / Trading Names:	The Criterion Hotel

6.2 FORMER AND CURRENT DIRECTORS AND SECRETARIES

A search of the records of ASIC revealed that the directors of the Company since the Company's formation are as follows:

Name of Director	Date Appointed	Date Ceased
Raymond Paul Wynne	28 September 2016	Current
Richard Julian Wynne	16 November 2015	21 February 2017
Raymond Paul Wynne	16 November 2015	13 January 2016

A search of the records of ASIC revealed that the secretaries of the Company since the Company's formation are as follows:

Name of Secretary	Date Appointed	Date Ceased
Raymond Paul Wynne	21 February 2017	Current
Richard Julian Wynne	16 November 2015	21 February 2017
Raymond Paul Wynne	16 November 2015	13 January 2016

6.3 SHAREHOLDING

As at the date of my appointment, there were 1,000 ordinary class shares full paid.

Class	Description	Number Issued	Total Amount Paid	Total Unpaid Amount	Document Number
ORD	Ordinary Shares	1,000	1,000	0.00	2E2735357

The shareholder details follow:

Shareholder	Number Held	Beneficially Held	Paid	Document Number
Raymond Paul Wynne	340 Ordinary Shares	Yes	Fully	2E2735357
Richard Julian Wynne	330 Ordinary Shares	Yes	Fully	2E2733357
Maureen Anne Wynne	330 Ordinary Shares	Yes	Fully	2E2735357

6.4 REGISTERED SECURITY INTERESTS

A search of the Personal Property Securities Register (“PPSR”) which details all registered security interests against the Company and/or its property pursuant to the *Personal Property Securities Act 2009* reveal the following registered security interest:

Security Holder	Registration Number	Registration Start Date	PMSI	Collateral Type
Zac O’Sullivan SMSR Pty Limited	201511260027982	26/11/2015	Yes	All present and after acquired property. No exceptions
TAB Limited	201601070028387	07/01/2016	Yes	Equipment supplied. All present and after acquired property
TAB Limited	201601070028394	07/01/2016	Yes	Equipment supplied. All present and after acquired property
Keno (NSW) Pty Limited	201601070028534	07/01/2016	Yes	Equipment supplied. All present and after acquired property
Keno (NSW) Pty Limited	201601070028547	07/01/2016	Yes	Equipment supplied. All present and after acquired property
Foster’s Australia Pty Limited	201602030031852	03/02/2016	Yes	Goods supplied – All present and after acquired property

Security Holder	Registration Number	Registration Start Date	PMSI	Collateral Type
Global Gaming Industries Pty Limited	201602240032372	24/02/2016	Yes	All goods owned and supplied – All present and after acquired property
Tooheys Pty Limited	201603040004321	04/03/2016	Yes	Goods supplied – All present and after acquired property
The Trustee for Cookers Trust	201608090054646	09/08/2016	Yes	Goods supplied – All present and after acquired property

Further investigation and review is required to ascertain the validity of the registered security interests detailed above. I shall inform creditors of any updates in this regard.

7. SUMMARY OF ADMINISTRATION TO DATE

Following my appointment, I met with employees, the landlord representative and the officeholders of the Company to consider the likely scenarios that may arise through the Voluntary Administration process.

Operational and statutory tasks were attended to for the conduct of the Voluntary Administration. The operational tasks include:

- correspondence with the Insurance Underwriters;
- meeting and liaising with the landlord and their legal representatives;
- meeting and corresponding with officeholders;

- dealing with creditor and employee enquiries;
- circular to creditors and employees regarding my appointment;
- retained a specialist publican for the purposes of trading on the business;
- liaising with the Office of Gaming and Licencing regarding the licence requirements for the potential trading of the business; and
- liaised with the Company's creditors with registered PMSI interests and their legal representatives.

The statutory tasks include:

- preparing and lodging relevant ASIC notices;
- convened the First Meeting of Creditors of the Company;
- convened the Second Meeting of Creditors;
- reviewing security interests registered against the Company;
- realisation of Company's assets;
- commenced preliminary investigations into the affairs of the Company; and
- preparation of this report to creditors.

For a detailed list of tasks attended to please refer to the Remuneration Request Report in **Annexure 2**.

8. SUMMARY OF THE COMPANY'S ASSETS AND LIABILITIES

Pursuant to Section 438B(2) of the Act, the director of the Company is required to submit a Report as to Affairs ("RATA") of the Company that provides information on the financial position of the Company as at the date of my appointment.

As at the date of this Report, the director has not provided me with a copy of the RATA. Failure to do so is a contravention of the Act.

The director ceased operating the Company's business on 4 June 2017 and the control of the Company's business and assets transferred to me upon my appointment on 7 June 2017.

As at the time of issuing this report, I have not received the RATA from the Company director.

Following is a table where I have estimated the deficiency of the Company using the balance sheet for the Company as at 31 March 2017 obtained from the Company's external book keeper (adopted as the Company's Book Value as at 31 March 2017). I have included my estimated realisable values ("ERV") as at the date of my appointment (7 June 2017) on a high and low scenario.

The net proceeds from any asset sale will be subject to my review of the validity of any secured interest registered or claimed the asset(s) in question and/or the Company. My investigations are continuing in this regard.

**PMR Criterion Pty Limited
(Administrator Appointed)
Estimated Deficiency**

	Book Value	Administrator's ERV (Low)	Administrator's ERV (High)	Ref
	As at 31 March 2017 (\$)	As at 7 June 2017 (\$)	As at 7 June 2017 (\$)	
Assets				
Cash at Bank	\$2,268	0	0	8.2
Cash on Hand	\$5,996	0	0	8.3
Plant and Equipment - Owned	\$0	20,000	45,000	8.4
TAB Bond	\$5,000	5,000	5,000	8.5
Inventory	\$23,271	3,821	3,821	8.6
Less ROT - Tooheys		(821)	(821)	8.6
Total Assets	\$36,536	28,000	53,000	
Priority Liabilities				
Priority Creditor Claims - Superannuation	\$47,090	55,412	55,412	8.7
Entitlements	Unknown	Unknown	Unknown	8.7
Employee Entitlements	\$47,090	55,412	55,412	
Creditor Claims				
Landlord	\$0	265,225	265,225	8.8
Other Creditor Claims				
Trade Creditors	\$10,770	36,227	36,227	8.9
OLGR - Gaming Tax	(31,330)	31,584	31,584	
Licence Agreement Claims - Aristocrat		65,267	65,267	
ATO Integrated Account	\$91,425	103,020	103,020	
Director Loan	\$35,765	35,765	35,765	
Total Other Creditor Claims	\$106,631	\$271,863	\$271,863	
Total Creditor Claims	106,631	537,088	537,088	
Total Estimated Deficiency (excluding Administration Costs)	(\$117,185)	(\$564,500)	(\$539,500)	

My observations follow:

8.1 ESTIMATED DEFICIENCY

The Company's estimated deficiency of assets to meet liabilities as at the date of my appointment, prior to any administration costs, is (\$564,500) (Low) and (\$539,500) (High).

8.2 CASH AT THE BANK

Book Value (31 March 2017): \$2,268; Administrator's ERV (7 June 2017): \$Nil (Low and High)

The balance sheet for the Company indicated that the Company had \$2,268 cash at bank as at 31 March 2017. At the date of my appointment, following my confirmation with the Company's bank, there was no funds in the Company's bank accounts.

8.3 CASH ON HAND

Book Value (31 March 2017): \$5,996; Administrator's ERV (7 June 2017): \$Nil (Low and High)

The balance sheet of the Company indicates cash on hand as at 31 March 2017 to be \$5,996 however on the date of my appointment, there was no cash on hand at the Company's Premises.

8.4 PLANT AND EQUIPMENT

Book Value (31 March 2017): \$Nil; Administrator's ERV (7 June 2017): \$20,000 (Low) \$45,000 (High)

The Company's balance sheet does not disclose any plant and equipment owed by the Company. Having conducted a preliminary review of the PMSI records and the assets on the Premises on the date of appointment, it appears that 3 poker machines do not have a security interest registered against them. I have obtained a valuation in relation to the 3 poker machines that may realise an amount up to \$45,000. I am currently arranging for the sale campaign for these assets.

8.5 TAB BOND

Book Value (31 March 2017): \$5,000; Administrator's ERV (7 June 2017): \$5,000 (Low)
\$5,000 (High)

The balance sheet of the Company discloses as an asset of the Company a bond held by TAB Corp in the amount of \$5,000.

I have requested TAB Corp to return the bond to me, which I understand is in progress. The bond amount may be deducted for any outstanding money owed to TAB or related entities. I am not aware of any money owed hence I expect the full amount of \$5,000 to be recovered.

8.6 INVENTORY

Book Value (31 March 2017): \$23,271; Administrator's ERV (7 June 2017): \$3,821 (Low)
\$3,821 (High)

The balance sheet of the Company as at 31 March 2017 discloses an inventory of \$23,271. I query the accuracy of this amount as a balance sheet for the Company as at 31 December 2016 that I have obtained from the books and records of the Company also has an inventory value of \$23,271. As noted, I have not verified the accuracy of the Company's financial records.

Following my appointment, I arranged for a stocktake of all inventory items where the value obtained was \$9,718. Following my vacation of the Company's premises, I negotiated with the Landlord to acquire the inventory for this value. This amount was off-set against the rent payable by me during the administration for the period 7 June 2017 to 20 June 2017 where I sought to re-commence trade of the Company's business.

I estimate a retention of title claim in the amount of \$821 in favour of Tooheys Pty Limited pursuant to a registered PMSI against the Company. Give the determination not to continue to trade the value of inventory realised was only \$3,821.

8.7 PRIORITY CREDITOR CLAIMS

Superannuation

Book Value (31 March 2017): \$47,090; Administrator's ERV (7 June 2017): \$55,412 (Low)
\$55,412 (High)

The balance sheet of the Company discloses superannuation payable by the Company in the amount of \$47,090 as at 31 March 2017. From my preliminary investigations, it appears that the Company did not make any payment in relation to their employees' superannuation entitlements since its incorporation. I am of the view that this claim is likely to have increased over time and have therefore estimated outstanding superannuation entitlements to be \$55,412 as at the date of my appointment based on previous wage expenses.

Other Entitlement Claims

Book Value (31 March 2017): \$Nil; Administrator's ERV (7 June 2017): \$Unknown (Low)
\$Unknown (High)

The books and records of the Company have not disclosed any other entitlements owing to employees such as annual leave etc. The director has maintained in discussions with my staff that there are no outstanding employee entitlements other than superannuation. I have received a claim for annual leave from one previous employee of the Company. This claim requires further review and investigation once further books and records of the Company become available to me.

8.8 LANDLORD

Book Value (31 March 2017): \$Nil; Administrator's ERV (7 June 2017): \$265,225 (Low)
\$265,225 (High)

The Company entered a 25 year lease for the Premises on 7 December 2017. It appears that the Company paid a lesser amount than the monthly rent payable under the lease from the commencement of the lease to the date of my appointment. The amount that I have calculated as owing includes penalties and interest payable on arrears to the landlord pursuant to the terms of the lease.

The landlord had registered a PMSI against the Company in respect of its obligations under the lease. As noted, I am currently assessing and seeking advice as to the validity of any secured interest registered or claimed the Company.

8.9 CREDITOR CLAIMS

Book Value (31 March 2017): \$271,863; Administrator's ERV (7 June 2017): \$271,863
(Low) \$512,616 (High)

Following is a table that summarises the unsecured creditor claims of the Company as at 31 March 2017 from the Company's balance sheet and as at the date of my appointment, 7 June 2017.

Unsecured Creditor Type	Directors' RATA Amount \$ (as at 31 March 2017)	Administrator's ERV (Low) \$ (as at 7 June 2017)	Administrator's ERV (High) \$ (as at 7 June 2017)	Comments
Trade Creditors	10,770	36,227	36,227	My ERV is based on information subsequently provided by the director
Accrued Gaming Tax	(31,330)	31,584	31,584	My ERV is based on the amount notified by the Liquor and Gaming of NSW
Licence Agreement Claims	Nil	65,267	65,267	This amount relates to the termination of a licence gaming agreement with Aristocrat for the 3 poker machines noted at section 8.4
ATO Running Account Balance	91,425	103,020	103,020	I expect this amount to have increased since 31 March
Director Loan	35,765	35,765	35,765	My investigations as to the consideration for this loan is continuing
Total	106,631	271,863	271,863	

The total amount of unsecured trade creditor claims may vary once formal claims are sought and adjudicated upon.

9. FINANCIAL INFORMATION

I have been provided with a copy of the Company's management accounts for years ending 30 June 2016 and current year to March 2017.

It is my preliminary view that the management accounts may not contain all the financial data of the Company and therefore may be incorrect and or underestimate the total liability of the Company. I understand that financial information for the Company is unaudited, therefore I cannot attest to its accuracy or completeness.

Detailed summaries of the Statement of Financial Performance (Income Statement) and the Statement of Financial Position (Balance Sheet) are provided as **Annexure 3** and **Annexure 4** respectively to this report. Provided below is a summary of key findings from my preliminary investigation into the Company's financial statements. A more detailed review will be undertaken by a Liquidator if and when appointed.

9.1 PROFIT AND LOSS STATEMENT

Please refer to **Annexure 3** that details summarises the Company's profit and loss statement for the period July 2016 to March 2017 on a month by month basis.

The Company traded at a loss every month since July 2016 to March 2017 except for January 2017 and March 2017 after adjusting for actual rent payable under the lease;

9.2 BALANCE SHEET AND CURRENT RATIO

9.2.1 Balance Sheet

The table below summarises the Company's balance sheet for the Company as at December 2016 and March 2017.

I note that the Company had a current ratio of 0.16 as at December 2016 and 0.25 as at March 2017 indicating that it had insufficient current assets or liquidity to meet its current liabilities and significant cash flow restraints.

PMR Criterion Pty Limited
(Administrator Appointed)
ACN: 609 328 976
Summary Balance Sheet

	as of December 2016	as of March 2017
Current Assets	\$27,498.58	\$38,536.05
Non-Current Assets	\$0	\$0
Total Assets	\$27,498.58	\$38,536.05
Current Liabilities	\$171,486.73	\$153,721.18
Non-Current Liabilities	\$0	\$0
Total Liabilities	\$171,486.73	\$153,721.18
Net Assets/ (Liabilities)	-\$143,988.15	-\$115,185.13

10. PRELIMINARY INVESTIGATIONS

I have undertaken preliminary investigations into the affairs of the Company to identify any transactions that may be voidable, or other causes of action that may be recoverable under the provisions of the Act.

An Administrator (or Deed Administrator) does not have the power to commence voidable transactions or insolvent trading recovery action. These recoveries can only be actioned by a Liquidator.

The purpose of this section is to inform creditors of potential recoveries that would incorporate additional asset resources that may be available in the event that creditors resolve that the Company be wound up.

10.1 LIMITATIONS

The Act provides a strict timeframe within which the Administrator is to report to creditors on a Company's affairs prior to the Second Meeting of Creditors.

I have conducted a preliminary investigation into the affairs of the Company within the time constraints. Further investigation would be required in the event that the Company is wound up and potential recoveries pursued.

10.2 BOOKS AND RECORDS

I have reviewed the schedule of records of the Company for the purpose of my preliminary investigations.

Section 286 of the Act provides that:

"A company, registered scheme or disclosing entity must keep written financial records that:

- *Correctly record and explain its transactions and financial position and performance; and*
- *Would enable true and fair financial statements to be prepared and audited."*

Section 286(2) of the Act also provides that such records must be retained for seven (7) years after the transactions covered by the records and completed. Failure to comply with Section 286 of the Act creates a presumption of insolvency, and this presumption can be used by a Liquidator in pursuing any potential recovery action for voidable transactions, should the Company be placed into liquidation at the upcoming meeting of creditors or by the Court.

The records of the Company were maintained at the Company's offices located at the Premises, the director's residence and the Company's external book-keeper.

Following my appointment, I have requested access to certain books and records of the Company from the director's and the Company's book keeper to enable me to conduct my preliminary investigations in accordance with the requirements under the Act, however, not all have been made available to me as at the date of this report.

The Company's books and records available to me are adequate for me to form my view and opinions for the purposes of this report. I am, however, unable to verify whether

the books and records of the Company that I have access to are the entirety of the Company's books and records that may exist.

From the books and records of the Company available to me, I am of the opinion that the Company has kept adequate books and records to meet the requirements of Section 286 of the Act.

I note, however, that a set of management accounts provided to the company's hotel broker cannot be reconciled to the accounts provided by the external book-keeper.

10.3 LITIGATION RISK AND PROOF OF INSOLVENCY

10.3.1 Litigation Risk

As noted, if a company is wound up, Part 5.7B of the Act gives Liquidator(s) the right to commence certain legal proceedings to recover money, property or other benefits for the benefit of the unsecured creditors of a company that are otherwise not available to Administrator(s) and/or Deed Administrator(s).

Creditors should note that while recovery actions have the potential to increase the pool of funds available to creditors, it can be an expensive protracted process with unknown outcomes. Even if a recovery action is successful, it will depend on whether defendant(s) have the financial means to satisfy any judgment against them or any insurance policies that may respond to the judgment.

Any successful litigation to recover funds under this section would be subject to the following:

- the availability of further information;
- the ability to secure funding and pay legal costs and disbursements, which may be significant;
- the decision of the matter by the Court;
- any defence by the respondent(s);
- the ultimate costs of the litigation and the winding up;
- the ability of the respondents to financially satisfy any Court orders against them or on the terms of any insurance policy;

- the terms of any insurance policy that may respond to any Court orders; and
- any litigation is also likely to be a lengthy process.

Recovery actions will need to be funded out of the Company's existing assets, or where such assets do not exist, by creditors or by external litigation funders (who are likely to require a significant share of the proceeds of any judgments as a condition of funding the litigation).

If a Liquidator had insufficient funds to undertake litigation, one of the following would have to take effect in order that litigation could be pursued:

- A creditor or creditors may contribute funds for additional investigations and litigation. Such creditors would need to indemnify the Liquidator against any adverse cost orders should the litigation be unsuccessful. However, if the litigation is successful, creditors who have funded the litigation may apply to the court to have their claim met in priority to other creditors not participating in the funding arrangement.
- The Liquidator may request funding from an independent, specialist litigation funding firm. Generally, the litigation funder may require a premium of 30%-40% of any recoveries arising out of the litigation.

10.3.2 Proof of Insolvency

Some of the recovery actions discussed in this section of the report will require the Liquidator to prove that the Company was insolvent at the date of the transaction (or relevant period of time) for the action to be successful. This includes unfair preference claims (Section 10.4.2), and uncommercial transaction claims (Section 10.4.4), but not unreasonable director-related transaction claims (Section 10.4.7).

Proving insolvency is a complicated, extensive and expensive process. Further investigations as to the Company's solvency would be required by the Liquidator when considering pursuing these actions. Based on my preliminary assessment it appears that the Company may have been insolvent shortly after it commenced trading its business given the rental relief it sought from the commencement of the lease and the fact that the Company never met its superannuation obligations.

10.4 VOIDABLE TRANSACTIONS

Voidable transactions include transactions such as unfair preferences, uncommercial transactions, unfair loans, unreasonable director related transactions and floating charges created within six months of the relation-back day, which is the date of the appointment of the Administrator, and were made at a time that the Company was insolvent or likely to become insolvent as a result of the transaction.

These transactions usually relate to the period six months prior to the date of my appointment, however in certain circumstances this period can be extended in relation to transactions with related entities.

10.4.1 Relation-Back Period

I was appointed Administrator of the Company on 7 June 2017. If the Company is placed into liquidation at the upcoming Second Meeting of Creditors, the relation-back date would be 7 June 2017, being the date of my appointment. The six-month period for recovery for unfair preference transactions would therefore be 7 December 2016 to 7 June 2017.

10.4.2 Unfair Preferences

An unfair preference is when the Company and a creditor are parties to a transaction(s) and the creditor receives more than it would receive if the transaction(s) is set aside, and the creditor proved for the debt in the winding up. If it is ultimately determined that certain payments are potentially recoverable as unfair preferences, it would be necessary to establish that:

- The Company was insolvent at the time the payments were made; and
- The recipient creditor had reasonable grounds to suspect that the Company was insolvent at that time or would become insolvent as a result of the payment(s).

Generally, if a Liquidator is appointed, investigations into preferential payments and related parties will continue and recovery action may be pursued if its deemed to be commercially viable to do so. Recipients of any payments considered as preferential may have defences available to them pursuant to the Act.

My investigations into the Company's affairs have identified payments made to preferential creditors during the relation-back period that require further investigations.

The table below sets out a summary of the likely preferential payments recoveries.

	Amount Estimated Optimistic \$	Amount Estimated Pessimistic \$
Total Potential Preferential Payments made during Relation Back Period (7 December 2016 to 7 June 2017)	17,339	9,440
Costs of Recovery including Estimated Liquidators Fees	(5,300)	(5,300)
Potential Recovery	\$12,039	\$4,140

I estimate that the net likely recovery of preferential payments between \$4,140 and \$12,039, most likely overall recovery being \$4,140. It is therefore my preliminary view that the likely recovery from preferential creditors would be immaterial and therefore uncommercial to pursue.

10.4.3 Unfair Loans (\$588FD)

A loan is unfair if it is made to a Company at extortionate interest rates or the charges in relation to the loan are extortionate. In considering whether interests and charges are extortionate, regard must be had to the following:

- risk the lender is exposed to;
- value of the security;
- term;
- repayment schedule; and
- amount of loan.

The company has made a number is payments which could be considered as loans by the company totalling \$20,761.00

The amount that would be recovered is unknown.

10.4.4 Uncommercial Transactions (S588FB)

A transaction is considered uncommercial if it is made at a time when the Company is insolvent and it may be expected that a reasonable person in the Company's circumstances would not have entered into the transaction having regard to:

- the benefits or detriment to the Company of entering into the transaction; and
- the prospective benefits to other parties to the transaction.

My preliminary review of the books and records available to me have not revealed any uncommercial transactions. Further investigation may be required upon receipt of further books and records of the Company (if any).

10.4.5 Discharge of Related Party Debts (S588FH)

A transaction is considered to have discharged a related party's debt if funds from the Company are used to pay that creditor which has had the effect of discharging to the extent of a particular amount, a liability (whether under a guarantee or otherwise) of a related entity of the Company.

My investigations in this regard are ongoing.

10.4.6 Transactions for the Purpose of Defeating Creditors (S588FE)

Transactions involving the removal or concealment of assets of the Company for the purpose of preventing the Liquidator from realising their value are voidable transactions and are recoverable by a Liquidator. These actions may constitute fraud by the director or any other person.

My preliminary investigations to date have not revealed any transactions of this nature, however, my investigations are ongoing. See my further in the section below.

10.4.7 Unreasonable Director Related Transactions (S588FDA)

A transaction is an unreasonable director related transaction of the Company if:

- The transaction is a payment, a conveyance, transfer or disposition of property, the issue of securities, or incurring of an obligation to make a payment, disposition, or issue by the Company.

- The transaction is to a director or close associate of the director or for their benefit.
- A reasonable person in the Company's circumstances would not have entered into the transaction having regard to the benefit or detriment to the Company or other parties involved in the transaction.

The relation back day for director related transaction is four (4) years, as such the applicable date is 16 November 2015, being the date of the Company's incorporation.

My preliminary review of the books and records available to me indicates that the director and his wife (Mr Raymond (Paul) and Mrs Maureen Wynne) loaned funds to the Company in the amount of \$65,849 as at December 2016, reducing to \$35,765 as at March 2017. From the books and records available to me, it is unclear as to what the consideration of this loan was and whether it represents wages that were due to the director and his wife but not paid by the Company. I do not have sufficient books and records of the Company to establish with certainty that the director and his wife were employees of the Company. My investigations are ongoing in respect of director related transactions.

If the director is indeed an employee of the Company, and he has outstanding entitlements owing to him as at the date of my appointment, his claim is subject to the statutory limits. The director has not informed me of any employee entitlements owing to him as at the date of my appointment.

10.4.8 Voidable Charges

Pursuant to Section 588FJ of the Act a charge may be void against a Liquidator if it was created in the period beginning six months prior to the commencement of the administration. However, charges that are created within this period for consideration paid at or after the date of creation of the charge remain valid.

I have reviewed the PPSR and note that none of the security interests were registered within six months of my appointment date and therefore not voidable against the liquidator pursuant to Section 588FJ of the Act. However, I do note that I am currently reviewing the validity of security interests registered against the Company in the PPSR, particularly as to whether the interests registered properly reflect that granted in the underlying agreements and/or documents. My investigations are ongoing.

10.4.9 Insolvent Trading (S588G)

Insolvent trading occurs when a company incurs a debt at a time when there are reasonable grounds to suspect that the company will be unable to pay the debt as and when it falls due.

Directors may be held personally liable for such debts incurred in the above circumstances. Recovery under insolvent trading actions is a remedy available to a Liquidator only.

Despite the recovery of insolvent trading transactions not being available to a Voluntary Administrator, I am required to give my opinion on any possible recoveries that may be available to a Liquidator in order that creditors are informed prior to deciding the company's future at the upcoming meeting.

Section 95A of the Act defines solvency as follows:

"95A(1) [when person is solvent] A person is solvent if, and only if, the person is able to pay all the person's debts, as and when they become due and payable.

95A(2) [insolvent person not solvent] A person who is not solvent is insolvent"

When considering insolvent trading it must be determined at what point the director knew or ought to have suspected insolvency, or when a reasonable person in the director's position would have been aware of or suspected insolvency. It is ultimately the Court's role to determine the actual date of insolvency based on the evidence provided.

The onus is on the liquidator to prove if and when insolvent trading occurred. If a liquidator is appointed, investigations in relation to insolvent trading must be considered in greater detail.

The commerciality of the potential recoveries from directors for insolvent trading must be considered. The liquidator will be required to investigate several indicators for insolvency in more detail which necessitate incurring substantial legal fees.

When considering the costs associated with recovery of those transactions and in addition to the above mentioned associated cost; the personal assets of the directors must also be considered to determine if the directors have sufficient funds available to meet any judgment obtained against them.

The Act imposes an obligation on directors to prevent insolvent trading by the Company. This section provides for a director to be held personally liable for debts incurred whilst the Company was trading whilst insolvent. Section 588G states that if:

- a) a person is a director of the Company at the time when the Company incurs a debt;
- b) the Company is insolvent at that time or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and
- c) at that time, there are reasonable grounds for suspecting that the Company is insolvent, or would so become insolvent, as the case may be.

A director may be held personally liable for a contravention under Section 588G(2) if:

- a) the director was aware at the time there were such grounds for suspecting that the Company is insolvent, or would become insolvent by incurring that debt; or
- b) a reasonable person in a like position in a company in the Company's circumstances would have been aware.

If it can be established that the directors have contravened Section 588G then the director is personally liable under the Act. Section 588M of the Act entitles a Liquidator to recover as a debt due to the company, an amount equal to the amount of the loss or damage incurred by the company.

10.4.10 Indicators of Insolvency

There is extensive judicial commentary on the subject to determining insolvency. One of the leading authorities is the matter of *ASIC v Plymin* which identified fourteen (14) indicators of insolvency as follows:

- i) continuing losses;
- ii) liquidity ratios below 1
- iii) overdue commonwealth and state taxes
- iv) poor relationship with present Bank, including liability to borrow further funds
- v) no access to alternative finance

- vi) inability to raise further equity capital
- vii) suppliers placing company on COD, or otherwise demanding special payments before resuming supply
- viii) creditors unpaid outside trading terms
- ix) issuing of post-dated cheques
- x) dishonoured cheques
- xi) special arrangements with selected creditors
- xii) solicitors' letters, summons(es), judgments or warrants issued against the company
- xiii) payments to creditors of rounded sums which are not reconcilable to specific invoices
- xiv) inability to produce timely and accurate financial information to display the company's trading performance and financial position, and make reliable forecasts.

In 2004 a study of insolvent trading was completed by Clayton Utz and Centre for Corporate Law and Securities Regulation at the University of Melbourne. The study examined 103 cases of insolvent trading from the inception of the company's legislation in 1961.

In the majority of cases where an insolvent trading claim was considered by a court, 74.8% were found guilty, however the median amount of compensation was \$110,600.

Since the study was completed there have been few subsequent insolvent trading cases.

The quantum of the potential claim is \$291,510.

10.4.11 Directors Defences to an Insolvent Trading Claim

Pursuant to Section 588H of the Act, there are several defences available to a director for an insolvent trading claim which we list a few below:

- the director had reasonable grounds at the time the debt was incurred to expect the Company to be solvent and would remain solvent even after the debt was incurred;
- the director relied on another person to provide information about whether or not the Company was solvent;
- the director did not take part in the management of the company at the time due to illness or other good reason and
- the director took reasonable steps to prevent the company from incurring the debt.

It should be noted that pursuing a director for alleged breach of duty to prevent a company from trade whilst insolvent is complex and:

- in invariable involves litigation that is expensive with an uncertain outcome. Funding from creditors and/or a litigation funder may be necessary to pursue a claim;
- any action for insolvent trading would, in my experience, be defended by the director which necessarily involves the administration incurring significant costs and potentially long delays;
- there is a risk that a Court may dismiss any claim with a costs order against the Company, thus reducing the funds available to creditors;
- any return to ordinary unsecured creditors would be contingent upon not only a successful action but also there being property against which to recovery;
- insolvent trading claims are expensive to run, legal costs are generally high and it may be necessary to obtain expert reports in pursuit of a claim. Typically, not all costs, for running such an action, would be recovered; and
- creditors would need to fund this action as the current available assets are insufficient.

The question of potential defence to insolvent trading will ultimately turn upon the directors' reasonable belief that the Company was solvent, which includes the ability to realise assets or fund debts due from other sources of funding and the ability to raise additional capital.

In the same study 63% of directors claimed the defence but only 11% of directors successfully applied the defences noted.

For the purposes of assessment, I have assumed that defence costs are 25% higher but only recover 3/5 on a party-party basis.

In the event the claim is successful, I expect that only 3/5 of my costs would be recovered on a party-party basis by a funder.

10.4.12 Administrator's Preliminary Findings

I have identified a number of indicators of insolvency. Ultimately the issue of insolvency is determined by a Court. My preliminary investigation has revealed that following indicative factors of insolvency:

- Dishonoured Payments – there is a significant number of dishonoured payments recorded in the statements of the Company's bank accounts;
- Rent Reductions - The Company sought relief and a reduction in the rent payable soon after signing the lease for the Premises;
- Lack of working capital - The Company incurred losses, with limited working capital sources or funding options available given the liabilities and corporate failures of the director of previous hotel ventures;
- Superannuation - The Company failed to pay any superannuation entitlements owing to employees since its incorporation;
- Payment Arrangements – the Company entered into payment instalment arrangements with creditors, including the Department of Liquor and Gaming, and failed to meet its obligations under those agreements;
- Creditor Trading Terms – the Company was on cash on delivery or COD terms with a large proportion of creditors, particularly food and beverage suppliers vital to the Company's business operations.

10.4.13 Conclusion

A Liquidator, if appointed, would need to further investigate this matter with a view to assessing the merits of a claim. Any litigation would carry significant risk as the onus of proof rests with the Liquidator.

When assessing any potential litigation for insolvent trading, the Liquidator must assess the directors' financial position and their ability to meet any insolvent trading claim should be successfully proven. I am not empowered at law to demand from the director's statements as to their personal financial position.

I have conducted a property search on the director which reveals no real property owned by the director reducing the likelihood of recovery for an insolvent trading claim.

Given the quantum of the insolvent trading claim and estimated costs it would be unlikely any recovery would be made and as such the commercial value is nil.

10.5 OFFENCES

Pursuant to Sections 180 to 183 of the Act, directors and officers are required to:

- exercise their powers and discharge their duties with the degree of care and diligence of a reasonable person in their position;
- discharge their duties and exercise their powers in good faith and in the best interest of the Company and for a proper purpose; and
- not improperly use their position and information about the Company to gain an advantage for themselves or others or cause detriment to the Company.

Pursuant to Section 438D of the Act, I am required to report to ASIC on:

- i) offences committed by past or present officers or members of the Company; and
- ii) misapplication, retention, liabilities, accountability, negligence, default, breach of duty or breach of trust by persons who have taken part in the formation, promotion, administration, management or the winding up of a company.

On the basis of my investigations to date, my preliminary view is that the director of the Company may have contravened the requirements of Sections 180 to 183 of the Act.

10.6 REPORTING TO ASIC

Pursuant to Section 438D of the Act, if it appears to me as Administrator that a part or present officer, employee or member may be guilty of an offence; or a person who has taken part in the formation, promotion, management or winding up of the Company

may have misapplied or retained Company property or been guilty of negligence, default, breach of duty or trust; I am required to lodge a report on the matter with ASIC.

Should the Company go into liquidation, the Liquidator is required to complete an investigation into the Company's affairs and, if offences are identified, or if the Company is unable to pay its creditors more than 50 cents in the dollar, lodge a further report with ASIC pursuant to Section 533 of the Act. If I become aware of any information from my future investigations into the affairs of the Company that require me to lodge an updated report with ASIC, I will do so. If a report is lodged with ASIC, the contents are confidential.

10.7 REQUEST FOR INFORMATION AND FUNDING

To assist in my investigations into the affairs of the Company, creditors are requested to provide details, in writing, of the following:

- 1) evidence of indicators of insolvency such as letters of demand, statutory demands, bounced cheques, and instalment payment agreements;
- 2) evidence of fraud or misconduct by any party associated with the Company; and
- 3) details of all known assets.

Creditors are requested to advise in writing, if they may be willing to fund any recovery actions available to a liquidator, if appointed. Pursuant to Section 564 of the Act, the Court can effectively alter the priority of payment of funds recovered to give an indemnifying creditor an advantage over others in consideration of the risk assumed by the indemnifying creditor. Creditors should be aware that orders by the Court are discretionary.

The above assessment is only a preliminary assessment and is not an exhaustive list of the issues considered to determine if the Company traded whilst insolvent. If the Company is placed into liquidation, this will be investigated further.

If the Company is placed into liquidation, given the potential lack of funding available from asset realisations and the likely costs required to conduct insolvent trading proceedings, I am unlikely to pursue any civil proceedings against the director for insolvent trading without funding and the appropriate indemnities from creditors or other parties.

11. ESTIMATED RETURN TO CREDITORS

Please refer to **Annexure 5**, a summary comparative of the potential dividend distributions to creditors under a liquidation scenario based on my investigations and best estimates at the date of this report.

12. OPTIONS AVAILABLE TO CREDITORS AND ADMINISTRATOR'S RECOMMENDATION

Pursuant to Section 439A of the Act, I am required to convene a meeting of creditors within five (5) business days before or after the period of twenty (20) business days beginning on the day after my appointment. At this meeting, creditors may resolve one of the following options:

- 1) that the administration should end;
- 2) that the Company execute a Deed of Company Arrangement;
- 3) that the Company be wound up; or

Creditors may consider a resolution that the second meeting of creditors be adjourned for an aggregate period of up to 45 business days, for example, to consider any Deed of Company Arrangement proposals submitted subsequent to the issuance of this report.

Pursuant to Section 439A(4)(b) of the Act I am required to make a statement and give the reasons for my opinions in relation to the following matters:

- 1) whether it would be in the creditors' interests for the Company to execute a Deed of Company Arrangement; or
- 2) whether it would be in the creditors' interests for the administration to end; or
- 3) whether it would be in the creditors' interests for the Company to be wound up.

12.1 OPTIONS AVAILABLE TO CREDITORS

It should be noted that regardless of the recommendations of the Administrator, the future of the Company will be decided by the creditors of the Company by resolution at the meeting to be held on 12 July 2017 (or any adjourned meeting thereof); or by the Court.

12.1.1 The Company execute a Deed of Company Arrangement

As noted, as at the date of this report I have not received a Deed of Company Arrangement proposal. Therefore, this option is not available to creditors.

12.1.2 The Administration should end

Creditors may resolve that the Administration of the Company should end and that control of the Company should be handed back to its director. In my opinion, the Company is not in possession of the Premises to continue to operate. The Company would not be in a position to trade and its liabilities would continue to increase. Accordingly, I do not recommend this option.

12.1.3 The Company be wound up

The appointment of a liquidator to the Company will allow further investigations to be conducted and voidable transactions to be pursued if it is commercially viable to do so. Given that there is no proposal for a Deed of Company Arrangement and that the Company is insolvent, I am of the opinion that this is the only viable option for creditors.

12.2 ADMINISTRATOR'S RECOMMENDATION

It is my opinion that it would be in the best interests of creditors for the Company to be wound up.

13. OTHER MATERIAL INFORMATION

I am not aware of any other information that is materially relevant to creditors being able to make an informed decision on the Company's future.

14. SECOND MEETING OF CREDITORS

A Second Meeting of Company creditors has been called for Wednesday, 12 July 2017 at 11.00 am, to be held at the offices of DEM Australasia Pty Limited, Level 4, 249 Pitt Street, Sydney NSW 2000. Please refer to **Annexure 1** being the Notice of Second Meeting of Creditors.

The purpose of this meeting is to:

- discuss this report and the position of the administration;

- determine the future of the Company;
- consider the appointment of a Committee of Inspection and where desired to appoint member to that Committee;
- consider and pass resolutions in respect of my remuneration; and
- consider and pass a resolution for the early destruction of the Company's books and records.

A Notice of Meeting of Creditors in accordance with Corporations Regulation 5.6.12(2), Form 535 - Formal Proof of Debt, Form 532 - Appointment of Proxy forms are enclosed (**Annexures 8 and 9** respectively).

In accordance with Corporations Regulation 5.6.23, only those creditors who have lodged a formal Proof of Debt or Claim are entitled to vote at the meeting of creditors.

Creditors who have not lodged a Proof of Debt form to date are requested to complete this form and lodge it with my office or alternatively with the Chairperson at the meeting of creditors. Where the creditor is a company, the attendee is required to hold an Appointment of Proxy form in the name of the company.

I request that all documentation is received by me no later than 11 July 2017, 4.00pm AEST to facilitate checking and recording.

Telephone facilities will be made available at this meeting. Please contact Hamish Lawson of this office should you wish to attend the meeting by telephone and further instructions will be provided.

14.1 CASTING VOTE

Creditors should note that at the second meeting of creditors of the Company, all motions will be resolved on the voices, unless a poll is demanded pursuant to Corporations Regulations 5.6.19 and 5.6.20:

A poll could be demanded before or on the declaration of a result on the voices by:

- a) the Chairperson; or*
- b) at least two persons present in person, by proxy or by attorney and entitled to vote at the meeting; or*

- c) *a person present in person, by proxy or by attorney and representing not less than 10% of the total voting rights of all creditors entitled to vote at the meeting.*

A resolution on a poll is carried if:

- a) a majority of the creditors voting (whether in person or by attorney or by proxy) vote in favour of; and
- b) the value of the debts owned by the corporation to those voting in favour is more than half the debts owed to all creditors voting.

The Chairperson may exercise a "casting vote" if no result was reached for or against a resolution on a poll (Corporations Regulations 5.6.21(4)). It is anticipated that the Chairperson may have to exercise a "casting vote" when creditors shall consider the future of the Company, particularly when contemplating the DOCA proposal. In this regard please find attached as **Annexure 6** the ARITA Complaints Investigations Procedures for creditors' reference.

15. REMUNERATION OF THE ADMINISTRATOR / LIQUIDATOR / DEED ADMINISTRATOR

Section 449E(1) of the Act states as follows:

"The Administrator of a company under administration, or of a deed of company arrangement, is entitled to:

- a) *such remuneration as is fixed by a resolution of the company's creditors passed at a meeting convened under Section 439A, or under Section 439A of 445F, as the case may be; or*
- b) *if no remuneration is fixed – such remuneration as the Court fixes on the application of the Administrator"*

A computer printout of my and my staff's time costs will be tabled at the meeting of creditors.

I will be seeking approval of the following resolutions at the upcoming meeting of creditors.

- remuneration as Voluntary Administrator from 7 June 2017 to the conclusion of the Voluntary Administration in the amount of \$30,000 plus GST; and

- remuneration as Liquidator (if applicable) set on an interim basis at an upper limit of \$12,500 plus GST; and

It will be necessary to convene a further meeting of creditors to obtain approval of any additional fees, or obtain Court approval or the approval of a Committee of Inspection to draw any additional fees as Liquidator.

Creditors should note that the extent of remuneration will be limited to the funds available and may be less than the remuneration approval being sought.

Attached as **Annexure 7** is a Summary of Payments and Receipts during the administration period as at the date of this report.

Attached as **Annexure 2** is the Remuneration Request Approval Report for creditors perusal.

16. EARLY DESTRUCTION OF BOOKS AND RECORDS (IF COMPANY IS IN LIQUIDATION)

Where a company has been wound up, the liquidator is required to retain all books and records of the company and of the Liquidator that are relevant to the affairs of the company at or subsequent to the commencement of the winding up for a period of five (5) years from the date of deregistration of the Company.

This requirement may however be modified by permission and is subject to the provisions of the *Income Tax Assessment Act*.

Furthermore, the directors of the company immediately before deregistration must keep the Company's books and records (other than those referred to in the previous paragraph) for three (3) years after deregistration of the Company.

The Income Tax Assessment Act requires every person carrying on a business to keep sufficient records and retain such records for a period of at least five (5) years after the completion of transactions, acts or operations to which those records relate. Such records do not need to be preserved if they are records of a company which has gone into liquidation and which has been finally dissolved.

Consequently, once dissolution has occurred, the provisions of the *Income Tax Assessment Act* do not require a liquidator or directors to preserve the books and records.

Pursuant to Section 542 of the Act, a Liquidator in a creditors' voluntary winding up may reduce the five (5) year retention period required after deregistration by seeking approval from creditors and ASIC of such a proposed action.

At the forthcoming meeting of creditors, I will be asking creditors to consider the following resolution should the Company be placed into liquidation:

"to authorise the liquidator to apply to the Australian Securities & Investments Commission, at their discretion, for the destruction of the books and records of the company within a period of less than five (5) years after the deregistration of the Company".

17. FINALISATION OF THE ADMINISTRATION

I will correspond with creditors further upon conclusion of the voluntary administration and the outcome of the Second Meeting of Creditors.

If you have any queries with respect to the administration, please do not hesitate to contact Ms Lucy Vecchio of this office on (02) 8004 4313.

Dated this 4th day of July 2017.



Damien M Hodgkinson
Administrator



DEM ASIA GROUP

WWW.DEMASIAGROUP.COM

SYDNEY HONG KONG LOS ANGELES

LEVEL 4, 249 PITT ST SYDNEY NSW 2000

Liability limited by a scheme approved under Professional Standards Legislation



DEM ASIA GROUP

4 JULY 2017

**ANNEXURE 1: NOTICE OF SECOND MEETING OF
CREDITORS**





DEM ASIA GROUP

FORM 529

CORPORATIONS ACT 2001

Section 439A

Subregulation 5.6.12(6)

**NOTICE OF MEETING OF CREDITORS
OF COMPANY UNDER ADMINISTRATION**

**PMR CRITERION PTY LIMITED
(ADMINISTRATOR APPOINTED)**

ACN 609 328 976

("the Company")

NOTICE is given that a meeting of the creditors of the Company will be held at the office of DEM Australasia at Suite 4.02, Level 4, 249 Pitt Street, SYDNEY NSW 2000 on Wednesday, 12 July 2017 at 11:00am.

AGENDA

1. To receive a statement about the Company's business, property, affairs and financial circumstances.
2. To receive the report of the Administrator.
3. Questions from creditors.
4. For creditors to resolve:
 - a. that the Company execute a Deed of Company Arrangement; or
 - b. that the administration should end; or
 - c. that the Company be wound up.
5. To fix the remuneration of the Administrator.
6. If the Company is to execute a Deed of Company Arrangement to fix the remuneration of the Deed Administrator.
7. If the Company is wound up, to consider appointing a Committee of Inspection.
8. If no Committee is appointed, to fix the remuneration of the Liquidator.
9. If no Committee is appointed, to consider the destruction of the books and records at the conclusion of the winding up.
10. Any other business that may be lawfully brought forward.

Proxies to be used at the meeting should be lodged at the office of the Administrator by 4.00pm on the day prior to the meeting. A creditor can only be represented by proxy or by an attorney pursuant to corporations Regulations 5.6.28 and 5.6.32 (inclusive) and is a body corporate by a representative appointed pursuant to Section 250D.



Telephone conference facilities will be available for the creditors meeting, details as follows:

National: 1300 337 801
Sydney: 02 8091 0004
PIN: 001924

If you wish to attend by telephone, please advise this office by email to jenny.kim@demasiagroup.com by 4.00pm on Tuesday, 11 July 2017.

In accordance with Regulation 5.6.23(1) of the Corporations Regulations, creditors will not be entitled to vote at this meeting unless they have previously lodged particulars of their claim against the Company in accordance with the Corporations Regulations and that claim has been admitted for voting purposes wholly or in part by the voluntary administrator.

Dated: 4 July 2017

Yours faithfully

A handwritten signature in black ink, appearing to read 'Damien Hodgkinson', written over a light blue horizontal line.

Damien Hodgkinson
Administrator



DEM ASIA GROUP

4 JULY 2017

**ANNEXURE 2: REMUNERATION REQUEST APPROVAL
REPORT**





DEM ASIA GROUP

REMUNERATION REQUEST APPROVAL REPORT

PMR CRITERION PTY LIMITED
(ADMINISTRATOR APPOINTED)

ACN: 609 328 976
("THE COMPANY")

PART 1 DECLARATION

I have undertaken a proper assessment of this remuneration claim for my appointment as Administrator of the Company in accordance with the law and applicable professional standards. I am satisfied that the remuneration claimed is in respect of necessary work, properly performed in the conduct of the administration.

PART 2 EXECUTIVE SUMMARY

To date, no remuneration has been approved in this administration. This remuneration report details approval sought for the following fees:

Period	Report Reference	Amount (GST excl.)
Current Remuneration Approval Sought		
Voluntary Administration		
Resolution 1: 7 June 2017 to Conclusion - \$42,043 to 3 July 2017 but say	Part 3	\$30,000
Total – Voluntary Administration		\$30,000
Liquidation		
Resolution 2: Commencement of Liquidation to Conclusion*	Part 5	\$12,500
*Approval for 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		

PART 3 DESCRIPTION OF WORK COMPLETED

RESOLUTION 1

Company: PMR Criterion Pty Limited
(Administrator Appointed)

Type of Administration: Voluntary Administration

Administrator: Damien M Hodgkinson of DEM Australasia Pty Limited

Period: 7 June 2017 to Conclusion

Following is a summary of the work undertaken by my partners, staff and myself for the period 7 June 2017 to Conclusion inclusive:

Task Area	General Description of Tasks	Additional Description
Assets 4.8 hours (<i>Actual to 3 July 2017</i>) \$2,272 (<i>Actual to 3 July 2017</i>)	Company Assets	<ul style="list-style-type: none"> Conduct and review results of property searches. Liaise with valuer regarding assets
	Other Assets	<ul style="list-style-type: none"> Conduct searches / enquiries.
Creditors 14.7 hours (<i>Actual to 3 July 2017</i>) \$5,835 (<i>Actual to 3 July 2017</i>)	Creditor Enquiries	<ul style="list-style-type: none"> Receive, address and follow up creditor enquiries. Maintain file notes on creditor enquiries. Review and prepare correspondence to creditors and their representatives via facsimile, email and post.
	Landlord	<ul style="list-style-type: none"> Responding to creditor's queries. Provide regular updates by telephone to creditor and solicitor.
	Creditor Reports	<ul style="list-style-type: none"> Prepare and send initial notification to creditors. Prepare and send further reports to creditors. Preparing Section 439A report, investigation, meeting and general report to creditors.
	Dealing with Proofs of Debt	<ul style="list-style-type: none"> Receipting and filing Proofs of Debt.
	Meeting of Creditors	<ul style="list-style-type: none"> Preparation of meeting notices, proxies and advertisements. Forward notice of meeting to all known creditors. Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting. Conduct meeting of creditors.



Task Area	General Description of Tasks	Additional Description
		<ul style="list-style-type: none"> Preparation and lodgement of minutes of meetings with ASIC. Responding to stakeholder queries and questions immediately following meeting.
Investigation 1.9 hours (<i>Actual to 3 July 2017</i>) \$931.00 (<i>Actual to 3 July 2017</i>)	Conducting Investigation	<ul style="list-style-type: none"> Collection of Company books and records. Reviewing Company's books and records. Review and preparation of Company nature and history. Conducting and summarising statutory searches. Preparation of file notes of telephone calls with director regarding business operations etc.
Administration 13.8 hours (<i>Actual to 3 July 2017</i>) \$5,606 (<i>Actual to 3 July 2017</i>)	Correspondence	<ul style="list-style-type: none"> General correspondence regarding appointment. Various correspondence with director via email and telephone.
	Insurance	<ul style="list-style-type: none"> Identification of potential issues requiring attention of insurance specialists. Correspondence with insurer regarding initial and ongoing insurance requirements. Reviewing insurance policies.
	ASX	<ul style="list-style-type: none"> Lodgements as required.
	ASIC Form 524 and Other Forms	<ul style="list-style-type: none"> Prepare and lodge ASIC forms.
	ATO and Other Statutory Reporting	<ul style="list-style-type: none"> Notification of appointment. Register for GST. ATO FOI Request.
	Planning & Reviews	<ul style="list-style-type: none"> Reviews / discussions regarding status of administration. General periodic file reviews.
	Books and Records	<ul style="list-style-type: none"> Request books & records from accountant and solicitor.
Trade on 88.8 hours (<i>Actual to 3 July 2017</i>) \$27,349 (<i>Actual to 3 July 2017</i>)		<ul style="list-style-type: none"> Liaising with landlord Liaising with regulatory bodies regarding licensing requirements for recommencing trade Cashflow and budgets Securing funding for trading Liaising with suppliers
Employees		<ul style="list-style-type: none"> Terminate employee contracts



Task Area	General Description of Tasks	Additional Description
0.5 hours (<i>Actual to 3 July 2017</i>) \$245.00 (<i>Actual to 3 July 2017</i>)		<ul style="list-style-type: none">• Receive and follow up enquiries and correspondence with employees• Consider outstanding entitlements

PART 4 RESOLUTION 1: CALCULATION OF REMUNERATION

Employee	Position	\$ / hour (excl. GST)	Total actual hours	Total (\$)	Task Area						
					Assets hrs (\$)	Creditors hrs (\$)	Employees hrs (\$)	Trade On hrs (\$)	Investigation hrs (\$)	Dividend hrs (\$)	Admin hrs (\$)
Damien M Hodgkinson	Appointee	490	40.4	19,796.00	4.0 Hours 1,960.00	5.7 Hours 2,793.00	0.5 Hours 245.00	22.2 Hours 10,878.00	1.9 Hours 931.00		6.1 Hours 2,989.00
Lucy Vecchio	Director	390	24.7	9,633.00	0.8 Hours 312.00	7.2 Hours 2,808.00		10.7 Hours 4,173.00			6.0 Hours 2,340.00
Brett Tozer	Supervisor	220	55.9	12,298.00				55.9 Hours 12,298.00			
Jamal Walker	Senior 1	200	0.8	160.00							0.8 Hours 160.00
Jenny Kim	Intermediate 2	130	2.7	351.00		1.8 Hours 234.00					0.9 Hours 117.00
Actual Total up to and including 3 July 2017 (excluding GST)				\$42,238	\$2,272	\$5,835	\$245.00	\$27,349	\$931	\$Nil	\$5,606
<i>Number of Hours Worked (Actual)</i>				130.3	4.8 hrs	14.7 hrs	0.5 hrs	88.8 hrs	1.9 hrs		13.8 hrs

But say - \$30,000.00 (excluding GST) to conclusion of Voluntary Administration (expected to be 12 July 2017)



RESOLUTION 3 - LIQUIDATION

Should the Company be placed into liquidation, I will be seeking approval of my professional fees as Liquidator for the period from the commencement of the liquidation to the conclusion of the liquidation on an interim basis at \$12,500 plus GST to be drawn progressively as earned.

If necessary, I will seek further approval from creditors by convening a meeting of creditors or obtain Court approval to obtain approval of any additional fees.

The extent of remuneration will be limited to the funds available and may be less than the remuneration approval being sought.

Company: PMR Criterion Pty Limited
(Administrator Appointed)

Type of Administration: Liquidation

Administrator: Damien M Hodgkinson of DEM Australasia Pty Limited

Period: Commencement of Liquidation to Conclusion of Liquidation

Task Area	General Description	Includes
Assets 6 hours \$1,741.14	Sale	<ul style="list-style-type: none">
	Other Assets	<ul style="list-style-type: none"> Conduct searches / enquiries.
Creditors 15.075 hours \$4,374.61	Creditor Enquiries	<ul style="list-style-type: none"> Receive, address and follow up creditor enquiries. Maintain file notes on creditor enquiries / claims. Maintain creditor register. Review and prepare correspondence to creditors and their representatives via facsimile, email and post.
	Secured Creditor Reporting	<ul style="list-style-type: none"> Preparing reports to secured creditor. Responding to secured creditor's queries.
	Creditor Reports	<ul style="list-style-type: none"> Prepare and send initial notification to creditors. Prepare and send statutory reports to creditors.
	Dealing With Proofs of Debt	<ul style="list-style-type: none"> Receipting and filing Proofs of Debt. Maintain Proof of Debt register. Correspondence with creditors RE: Proofs of Debt.
	Meeting of Creditors	<ul style="list-style-type: none"> Preparation of meeting notices, proxies and advertisements. Forward notice of meeting to all known creditors. Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting. Conduct meeting of creditors.



Task Area	General Description	Includes
		<ul style="list-style-type: none"> Preparation and lodgement of minutes of meetings with ASIC. Responding to stakeholder queries and questions immediately following meeting.
Investigation 17 hours \$4,933.23	Conducting Investigation	<ul style="list-style-type: none"> Reviewing company's books and records. Conducting and summarising statutory searches. Review of specific transactions. Liaising with directors regarding certain transactions. Preparation of investigation file. Lodgement of investigation report with the ASIC. Preparation and lodgement of supplementary report, if required.
	Litigation / Recoveries	<ul style="list-style-type: none"> Internal meetings to discuss status of litigation. Preparing brief to solicitors. Liaising with solicitors regarding recovery actions. Attending to negotiations. Attending to settlement matters.
	ASIC Reporting	<ul style="list-style-type: none"> Preparing statutory investigation reports. Preparing affidavits seeking non lodgements assistance. Liaising with ASIC.
Administration 5 hours \$1,450.95	Correspondence	<ul style="list-style-type: none"> General correspondence RE: appointment including shareholders.
	Insurance	<ul style="list-style-type: none"> Correspondence with insurer regarding initial and ongoing insurance requirements. Reviewing insurance policies.
	Bank Account Administration	<ul style="list-style-type: none"> Correspondence closing accounts. Process receipts and payments for appointment. Request bank statements. Bank account reconciliations.
	ASIC Form 524 and Other Forms	<ul style="list-style-type: none"> Prepare and lodge ASIC forms.
	ATO and Other Statutory Reporting	<ul style="list-style-type: none"> Notification of appointment. Complete BAS.
	Finalisation	<ul style="list-style-type: none"> Notify ATO of finalisation. Cancel ABN / GST / PAYG registration. Complete checklists. Notify Directors / relevant parties of finalisation.



Task Area	General Description	Includes
		<ul style="list-style-type: none"> Finalise WIP.
	Planning & Reviews	<ul style="list-style-type: none"> Reviews / discussions regarding status of administration. General periodic file reviews. Prepare & maintain file checklists. Filing of documents.

CALCULATION OF ESTIMATED FUTURE REMUNERATION

My estimate of the upper limit (exclusive of GST) has been determined as follows:

Employee Name	Title	\$ rate per hour (excl. GST)	Total hours	Total (ex GST)
Damien M Hodgkinson	Appointee / Director	490	7	3,430
Lucy Vecchio	Director	390	8.5	3,315
Supervisor	Supervisor	220	12	2,640
Senior 1	Senior 1	200	15.575	3,115
Total Excluding GST				12,500
Average hourly rate			43.075	\$290.19



PART 5 STATEMENT OF REMUNERATION CLAIM

At the forthcoming meeting of creditors:

- I will table full details of the costs and work performed by my staff and myself;
- Resolution 1 - I will be seeking the following resolution from creditors for my professional fees as Administrator:

"that the remuneration of the Administrator, his partners and staff is approved from 7 June 2017 to the conclusion of the voluntary administration in the sum of \$30,000 plus GST to be calculated by reference to the hourly rates applicable to the grades or classifications set out in the Remuneration Request Approval Report dated 4 July 2017, and that the Administrator be authorised to draw that amount."

- Resolution 2 – I am also seeking approval of my future professional fees as Liquidator contained in the following resolution from creditors, in the event the company is placed into liquidation:

"that the remuneration of the Liquidator, his partners and staff from the commencement of the liquidation to the conclusion of the liquidation is set on an interim basis in the sum of \$12,500 plus GST, to be calculated by reference to the hourly rates applicable to the grades or classifications set out in the Remuneration Request Approval Report dated 4 July 2017, such remuneration to be subject to review by the Court on the application of any creditor in accordance with Section 504 of the Corporations Act 2001 and that the Liquidator be authorised to draw that amount as when incurred."

Creditors should note that if my future remuneration is less than this amount, the lesser amount will only be claimed. If the company were to be placed in to liquidation, I expect the liquidation will run for at least twenty-four (24) months.

It will be necessary for me to convene a further meeting of creditors to obtain approval of any additional fees, or obtain Court approval or the approval of a Committee of Creditors to draw any additional fees as Voluntary Administrator or Liquidator.

PART 6 REMUNERATION RECOVERABLE FROM EXTERNAL SOURCES

Remuneration payments received in relation to the *Fair Entitlements Guarantee Act 2012* ("FEG") or the preceding scheme ("GEERS") are considered a separate arrangement involving a limited or partial funding agreement. Where higher fees are incurred than the amount covered by the funding agreement there is no restriction in the administration being charged for the shortfall on the basis that all remuneration claimed is necessary and properly incurred in accordance with the ARITA Code.

While the money received under the funding arrangement is not subject to creditor approval and can be paid directly to the practitioner, any shortfall must be appropriately approved in accordance with the Corporations Act prior to drawing. In seeking creditor approval for any shortfall, the ARITA recommends that specific disclosure of the total time charged, funding receipt(s) and shortfall amount be made in the remuneration report. Particular care must be taken to ensure that the administration is not charged for amounts recovered from under the funding.

In relation to Resolution 1, work completed for the period of 7 June 2017 to the conclusion of the Voluntary Administration in the sum of \$30,000 plus GST does not include time relating to FEG.



In relation to Resolution 2, work to be completed from the commencement of the Liquidation to the conclusion of the Liquidation in the sum of \$12,500 plus GST is likely to include time relating to FEG. At the date of this report I am unable to quantify an amount that I am likely to receive that relates to FEG.

While there is no requirement to obtain creditor approval for funding received from the Assetless Administration Fund, the ARITA recommends that specific disclosure of the amount of funding received/receivable and the basis on which the funding was/is provided is disclosed in the remuneration report.

In relation to Resolution 2, work to be completed from the commencement of the Liquidation to the conclusion of the Liquidation in the sum of \$12,500 plus GST is unlikely to include time relating to ASIC funding.

PART 7 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 such as travel, accommodation and search fees. These are recovered at cost.

Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying 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.

DISBURSEMENTS PAID

As there have been no realisations to date, no disbursements have been paid from this administration.

FUTURE DISBURSEMENTS

Future external disbursements (both professional and non-professional) may be required and incurred in the remainder of the liquidation. I am unable to estimate the amount of future external disbursements. Any future external disbursements will be charged at cost.

The following future internal disbursements are expected to be incurred on the following basis:



Internal Disbursement	Basis (GST Excl.) (\$)
Telephone and Facsimiles	At Cost
Photocopying	At Cost
Postage	At Cost
Stationary and Consumables	At Cost
Books and Records Storage	At Cost
Books and Records Transportation	At Cost
Staff Vehicle Use	ATO Standard Rate per km

Scale applicable for financial year commencing 1 July 2017.

PART 8 REPORT ON PROGRESS OF THE ADMINISTRATION

Please refer to my report for particulars regarding the status and progress of the administration.

If you have any queries or require additional information, please do not hesitate to contact Lucy Vecchio (lucy.vecchio@demasiagroup.com) of this office on (02) 8004 4313.

PART 9 QUERIES

Creditors are welcome to contact Lucy Vecchio (lucy.vecchio@demasiagroup.com) of this office on (02) 8004 4313 if they have any queries or require additional information.



PART 10 INFORMATION SHEETS

A copy of the Information Sheet titled Approving Fees: A Guide for Creditors is attached to this Remuneration Request Approval Report.

The insolvency partners of DEM Australasia are members of the Australian Restructuring Insolvency & Turnaround Association and follow the ARITA Code of Professional Practice ("COPP").

A copy of the COPP can be found at the ARITA Website (www.arita.com.au).

DATED this 4th day of July 2017.

A handwritten signature in black ink, appearing to read 'Damien M Hodgkinson'.

Damien M Hodgkinson
Administrator



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 85

Approving fees: a guide for creditors

If a company is in financial difficulty, it can be put under the control of an independent external administrator.

This information sheet gives general information for creditors on the approval of an external administrator's fees in a liquidation of an insolvent company, voluntary administration or deed of company arrangement (other forms of external administration are not discussed in this information sheet). It outlines the rights that creditors have in the approval process.

Entitlement to fees and costs

A liquidator, voluntary administrator or deed administrator (i.e. an 'external administrator') is entitled to be:

- paid reasonable *fees*, or remuneration, for the work they perform, once these fees have been approved by a creditors' committee, creditors or a court, and
- reimbursed for out-of-pocket *costs* incurred in performing their role (these costs do not need creditors' committee, creditor or court approval).

External administrators are only entitled to an amount of fees that is reasonable for the work that they and their staff properly perform in the external administration. What is reasonable will depend on the type of external administration and the issues that need to be resolved. Some are straightforward, while others are more complex.

External administrators must undertake some tasks that may not directly benefit creditors. These include reporting potential breaches of the law and lodging a detailed listing of receipts and payments with ASIC every six months. The external administrator is entitled to be paid for completing these statutory tasks.

For more on the tasks involved, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors* and INFO 74 *Voluntary administration: a guide for creditors*.

Out-of-pocket costs that are commonly reimbursed include:

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. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

- legal fees
- valuer's, real estate agent's and auctioneer's fees
- stationery, photocopying, telephone and 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 level of fees and costs, as the external administrator will, generally, be paid from the company's available assets before any payments to creditors. If there are not enough assets, the external administrator may have arranged for a third party to pay any shortfall. As a creditor, you should receive details of such an arrangement. If there are not enough assets to pay the fees and costs, and there is no third party payment arrangement, any shortfall is not paid.

Who may approve fees

Who may approve fees depends on the type of external administration: see Table 1. The external administrator must provide sufficient information to enable the relevant decision-making body to assess whether the fees are reasonable.

Table 1: Who may approve fees

	Creditors' committee	Creditors	Court
Administrator in a voluntary administration	✓ ¹	✓	✓
Administrator of a deed of company arrangement	✓ ¹	✓	✓
Creditors' voluntary liquidator	✓ ¹	✓ ⁵	✗ ³
Court-appointed liquidator	✓ ¹	✓ ^{4, 5}	✓ ²

¹ If there is one.

² If there is no approval by the committee or the creditors.

³ Unless an application is made for a fee review.

⁴ If there is no creditors' committee or the committee fails to approve the fees.

⁵ If insufficient creditors turn up to the meeting called by the liquidator to approve fees, the liquidator is entitled to be paid up to a maximum of \$5000, or more if specified in the Corporations Regulations 2001.

Creditors' committee approval

If there is a creditors' committee, members are chosen by a vote of creditors as a whole. In approving the fees, the members represent the interests of all the creditors, not just their own individual interests.

There is not a creditors' committee in every external administration. A creditors' committee makes its decision by a majority in number of its members present at a meeting, but it can only act if a majority of its members attend.

To find out more about creditors' committees and how they are formed, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors*, INFO 74 *Voluntary administration: a guide for creditors* and INFO 41 *Insolvency: a glossary of terms*.

Creditors' approval

Creditors approve fees by passing a resolution at a creditors' meeting. Unless creditors call for a poll, the resolution is passed if a simple majority of creditors present and voting, in person or by proxy,

indicate that they agree to the resolution. Unlike where acting as committee members, creditors may vote according to their individual interests.

If a poll is taken, rather than a vote being decided on the voices or by a show of hands, a majority in *number* and *value* of creditors present and voting must agree. A poll requires the votes of each creditor to be recorded.

A separate resolution of creditors is required for approving fees for an administrator in a voluntary administration and an administrator of a deed of company arrangement, even if the administrator is the same person in both administrations.

A proxy is where 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 as they wish 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, their partners or staff must not use a general proxy to vote on approval of their fees; they must hold a special proxy in order to do this. They must vote all special proxies as directed, even those against approval of their fees.

Calculation of fees

Fees may be calculated using one of a number of different methods, such as:

- on the basis of *time spent* by the external administrator and their staff
- a quoted *fixed fee*, based on an upfront estimate, or
- a percentage of asset realisations.

Charging on a time basis is the most common method. External administrators have a scale of hourly rates, with different rates for each category of staff working on the external administration, including the external administrator.

If the external administrator intends to charge on a time basis, you should receive a copy of these hourly rates soon after their appointment and before you are asked to approve the fees.

The external administrator and their staff will record the time taken for the various tasks involved, and a record will be kept of the nature of the work performed.

It is important to note that the hourly rates do not represent an hourly wage for the external administrator and their staff. The external administrator is running a business—an insolvency practice—and the hourly rates will be based on the cost of running the business, including overheads such as rent for business premises, utilities, wages and superannuation for staff who are not charged out at an hourly rate (such as personal assistants), information technology support, office equipment and supplies, insurances, taxes, and a profit.

External administrators are professionals who are required to have qualifications and experience, be independent and maintain up-to-date skills. Many of the costs of running an insolvency practice are fixed costs that must be paid, even if there are insufficient assets available to pay the external administrator for their services. External administrators compete for work and their rates should reflect this.

These are all matters that committee members or creditors should be aware of when considering the fees presented. However, regardless of these matters, creditors have a right to question the external administrator about the fees and whether the rates are negotiable.

It is up to the external administrator to justify why the method chosen for calculating fees is an appropriate method for the particular external administration. As a creditor, you also have a right to question the external administrator about the calculation method used and how the calculation was made.

Report on proposed fees

When seeking approval of fees, the external administrator must send committee members/creditors a report with the notice of meeting setting out:

- information that will enable the committee members/creditors to make an informed assessment of whether the proposed fees are reasonable
- a summary description of the major tasks performed, or to be performed, and
- the costs associated with each of these tasks.

Committee members/creditors may be asked to approve fees for work already performed or based on an estimate of work yet to be carried out.

If the work is yet to be carried out, it is advisable to set a maximum limit ('cap') on the amount that the external administrator may receive. For example, future fees calculated according to time spent may be approved on the basis of the number of hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X. If the work involved then exceeds this figure, the external administrator will have to ask the creditors' committee/creditors to approve a further amount of fees, after accounting for the fees already incurred.

Deciding if fees are reasonable

If asked to approve an amount of fees either as a committee member or by resolution at a creditors' meeting, your task is to decide if that amount of fees is reasonable, given the work carried out in the external administration and the results of that work.

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

- the method used to calculate fees
- the major tasks that have been performed, or are likely to be performed, for the fees
- the fees/estimated fees (as applicable) for each of the major tasks
- the size and complexity (or otherwise) of the external administration
- the amount of fees (if any) that have previously been approved
- if the fees are 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 fees are for work that has already been carried out, the time spent by each level of staff on each of the major tasks
 - if the fees are for work that is yet to be carried out, whether the fees are capped.

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

What can you do if you think the fees are not reasonable?

If you do not think the fees being claimed are reasonable, 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 fees.

Generally, if fees are approved by a creditors' committee/creditors and you wish to challenge this decision, you may apply to the court and ask the court to review the fees. Special rules apply to court liquidations.

You may wish to seek your own legal advice if you are considering applying for a court review of the fees.

Reimbursement of out-of-pocket costs

An external administrator should be very careful incurring costs that must be paid from the external administration—as careful as if they were dealing with their own money. Their report on fees should also include information on the out-of-pocket costs of the external administration.

If you have questions about any of these costs, you should ask the external administrator and, if necessary, bring it up at a creditors' committee/creditors' meeting. If you are still concerned, you have the right to ask the court to review the costs.

Queries and complaints

You should first raise any queries or complaints with the external administrator. If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ASIC at www.asic.gov.au/complain, or write to:

ASIC Complaints
PO Box 9149
TRARALGON VIC 3844

ASIC will usually not become involved in matters of commercial judgement by an external administrator. Complaints against companies and their officers can also be made to ASIC. For other enquiries, email ASIC through infoline@asic.gov.au, or call ASIC's Infoline on 1300 300 630 for the cost of a local call.

To find out more

For an explanation of terms used in this information sheet, see ASIC's information sheet INFO 41 *Insolvency: a glossary of terms*. For more on external administration, see ASIC's related information sheets at www.asic.gov.au/insolvencyinfosheets:

- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 75 *Voluntary administration: a guide for employees*
- INFO 45 *Liquidation: a guide for creditors*
- INFO 46 *Liquidation: a guide for employees*
- INFO 54 *Receivership: a guide for creditors*
- INFO 55 *Receivership: a guide for employees*
- INFO 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*

These are also available from the Insolvency Practitioners Association (IPA) website at www.ipaa.com.au. The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.



DEM ASIA GROUP

4 JULY 2017

**ANNEXURE 3: STATEMENT OF FINANCIAL
PERFORMANCE (INCOME STATEMENT)**

PMR Criterion Pty Ltd
(Administrator Appointed)
ACN: 609 328 976

Statement of Financial Performance (Profit and Loss Statement)

Account Name	July 2016	August 2016	September 2016	October 2016	November 2016	December 2016	January 2017	February 2017	March 2017	Total
Superannuation	\$3,074.21	\$2,460.54	\$2,778.55	\$3,339.27	\$2,457.03	\$2,350.76	\$2,369.47	\$1,860.39	\$1,992.67	\$22,682.89
Bar Operations										
Bar Beverage Sales	\$22,674.31	\$22,844.08	\$21,571.78	\$28,838.97	\$22,411.66	\$25,222.66	\$17,847.37	\$18,197.66	\$22,974.69	\$202,583.18
Less COGS										
Foster Purchases	\$0.00	\$654.55	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$654.55
Toohays Purchases	\$3,766.43	\$7,954.31	\$7,339.71	\$7,322.92	\$3,665.22	\$4,060.78	\$4,060.78	\$4,450.13	\$3,997.54	\$46,617.82
Beverage Carlton	\$1,327.18	\$0.00	\$976.06	\$3,134.91	\$664.29	\$1,684.22	\$677.28	\$0.00	\$786.24	\$9,250.18
Other Beverage Purchases	\$5,122.33	\$5,423.02	\$7,648.45	\$5,406.30	\$7,155.74	\$4,495.13	\$2,317.15	\$2,839.94	\$2,402.95	\$42,811.01
Softdrink and Water Purchases	\$954.77	\$876.36	\$1,790.82	\$1,657.10	\$1,899.52	\$1,162.09	\$797.00	\$357.80	\$0.00	\$9,495.46
Bar Item Purchases	\$0.00	\$0.00	\$117.25	\$42.14	\$46.01	\$0.00	\$0.00	\$0.00	\$0.00	\$205.40
Beer Gas	\$159.41	\$59.41	\$0.00	\$0.00	\$0.00	\$1,753.65	\$0.00	\$1,432.33	\$646.73	\$4,051.53
Cost of Beverages	\$11,330.12	\$14,967.65	\$17,872.29	\$17,563.37	\$13,430.78	\$13,155.87	\$7,852.21	\$9,080.20	\$7,833.46	\$113,085.95
Gross Profit Bar Sales	\$11,344.19	\$7,876.43	\$3,699.49	\$11,275.60	\$8,980.88	\$12,066.79	\$9,995.16	\$9,117.46	\$15,141.23	\$89,497.23
COGS as Percentage of Sales	49.97%	65.52%	82.85%	60.90%	59.93%	52.16%	44.00%	49.90%	34.10%	55.82%
Less Bar Payroll	\$17,135.10	\$14,586.38	\$15,984.28	\$18,638.13	\$11,744.18	\$11,158.03	\$10,774.25	\$9,176.75	\$10,187.68	\$119,384.78
Less Bar Superannuation	\$1,528.19	\$1,223.13	\$1,381.22	\$1,659.95	\$1,211.39	\$1,168.56	\$1,177.86	\$924.80	\$990.56	\$11,275.66
Net Profit from Bar Operations	(\$7,319.10)	(\$7,933.08)	(\$13,666.01)	(\$9,022.48)	(\$3,984.69)	(\$259.80)	(\$1,956.95)	(\$984.09)	\$3,962.99	(\$41,163.21)
Bistro Operations										
Bistro Food Sales	\$30,150.54	\$29,231.83	\$32,594.50	\$35,759.30	\$26,099.89	\$26,201.60	\$22,362.06	\$19,629.99	\$25,746.32	\$247,776.03
Less COGS	\$19,192.68	\$22,292.80	\$25,673.16	\$22,293.17	\$18,609.74	\$18,436.42	\$14,518.54	\$12,943.61	\$14,238.41	\$168,198.53
Gross Profit from Bistro	\$10,957.86	\$6,939.03	\$6,921.34	\$13,466.13	\$7,490.15	\$7,765.18	\$7,843.52	\$6,686.38	\$11,507.91	\$79,577.50
COGS as Percentage of Sales	63.7%	76.3%	78.8%	62.3%	71.3%	70.4%	64.9%	65.9%	55.3%	67.9%
Less Bistro Payroll	\$12,463.50	\$10,347.98	\$11,460.27	\$14,309.78	\$12,548.91	\$11,862.69	\$12,360.79	\$9,549.99	\$9,254.85	\$104,158.76
Less Bistro Superannuation	\$1,332.27	\$1,066.32	\$1,204.14	\$1,447.14	\$1,064.80	\$1,018.75	\$1,026.86	\$806.24	\$863.56	\$9,830.08
Net Profit from Bistro Operations	(\$2,837.91)	(\$4,475.27)	(\$5,743.07)	(\$2,290.79)	(\$6,123.56)	(\$5,116.26)	(\$5,544.13)	(\$3,669.85)	\$1,389.50	(\$34,411.34)
Gaming Operations										
Pokies Net Banking	\$35,757.25	\$35,550.59	\$43,612.29	\$41,785.34	\$49,764.48	\$35,884.61	\$40,319.10	\$31,603.25	\$37,481.10	\$351,758.01
Less Pokie Tax	\$0.00	(\$275.00)	\$0.00	\$0.00	\$0.00	\$0.00	(\$3,050.00)	\$0.00	\$0.00	(\$3,325.00)
ATM Rebate	\$0.00	\$0.00	\$0.00	\$0.00	\$497.45	\$0.00	\$649.64	\$18.18	\$0.00	\$1,165.27
Keno Commission and charges	\$898.17	\$1,935.32	\$360.07	\$1,561.24	(\$593.95)	(\$362.74)	\$931.35	(\$1,115.42)	(\$511.44)	\$3,102.60
Sundry Income	\$50.00	\$725.91	\$0.00	\$0.00	\$0.00	\$1,307.73	\$0.00	\$0.00	\$0.00	\$2,083.64
TAB commission and charges	(\$183.48)	(\$1,542.04)	(\$761.13)	\$1,671.55	(\$13,121.91)	(\$3,283.84)	\$2,135.19	(\$2,802.27)	\$976.09	(\$16,911.84)
Gaming Income	\$36,521.94	\$36,394.78	\$43,211.23	\$45,018.13	\$36,546.07	\$33,545.76	\$40,985.28	\$27,703.74	\$37,945.75	\$337,872.68
Data Monitoring Expenses	\$586.46	\$603.40	\$603.40	\$603.40	\$603.40	\$603.40	\$0.00	\$604.80	\$604.80	\$4,813.06
Pokie Global gaming	\$0.00	\$0.00	\$0.00	\$0.00	\$106.70	\$0.00	\$0.00	\$0.00	\$0.00	\$106.70
GGI fees	\$1,710.96	\$1,710.96	\$1,710.96	\$1,555.42	\$1,710.96	\$1,710.96	\$1,710.94	\$242.00	\$242.00	\$12,305.16
Aristocat	\$1,137.40	\$1,137.40	\$1,137.40	\$1,137.40	\$1,137.40	\$1,137.40	\$1,137.40	\$1,650.00	\$0.00	\$9,611.80
Aristocat Maintenance	\$0.00	\$510.02	\$952.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,462.02
Net Profit from Gaming	\$37,095.50	\$36,458.32	\$42,832.79	\$45,436.15	\$37,119.63	\$34,119.32	\$41,558.82	\$26,295.74	\$38,187.75	\$339,104.02
Gross Profit from All Areas	\$26,938.49	\$24,049.96	\$23,423.71	\$34,122.88	\$27,011.38	\$28,743.26	\$34,057.74	\$21,641.80	\$43,540.24	\$263,529.46
Total Expenses	\$36,237.60	\$27,861.17	\$32,570.12	\$26,714.23	\$26,764.71	\$29,744.27	\$16,477.08	\$14,707.29	\$31,744.82	\$242,821.29
Operating Profit	(\$9,299.11)	(\$3,811.21)	(\$9,146.41)	\$7,408.65	\$246.67	(\$1,001.01)	\$17,580.66	\$6,934.51	\$11,795.42	\$20,708.17
Other Income										
Interest Received	\$0.00	\$0.00	\$0.40	\$0.00	\$0.00	\$0.00	\$0.19	\$0.00	\$0.00	\$0.59
Total Other Income	\$0.00	\$0.00	\$0.40	\$0.00	\$0.00	\$0.00	\$0.19	\$0.00	\$0.00	\$0.59
Other Expenses										
Bank Loan Interest	\$11.37	\$18.32	\$9.48	\$0.00	(\$885.20)	\$66.82	\$65.12	\$2.51	\$1,840.65	\$1,129.07
Total Other Expenses	\$11.37	\$18.32	\$9.48	\$0.00	(\$885.20)	\$66.82	\$65.12	\$2.51	\$1,840.65	\$1,129.07
Net Profit /(Loss)	(\$9,310.48)	(\$3,829.53)	(\$9,155.89)	\$7,408.65	\$1,131.87	(\$1,067.83)	\$17,515.54	\$6,932.00	\$9,954.77	\$19,579.10
Reversal of Rent	\$17,527.28	\$1,981.82	\$12,486.36	\$6,536.36	\$8,809.09	\$990.91	\$136.36	\$1,400.00	\$14,327.44	\$64,195.62
Actual Rent under lease	(\$17,527.28)	(\$17,527.28)	(\$17,527.28)	(\$17,527.28)	(\$17,527.28)	(\$17,527.28)	(\$17,527.28)	(\$17,527.28)	(\$17,527.28)	(\$157,745.52)
Actual Loss at Total Rent	(9,310.48)	(19,374.99)	(14,196.81)	(3,582.27)	(7,586.32)	(17,604.20)	124.62	(9,195.28)	6,754.93	(73,970.80)



DEM ASIA GROUP

4 JULY 2017

**ANNEXURE 4: STATEMENT OF FINANCIAL POSITION
(BALANCE SHEET)**

PMR Criterion Pty Ltd
(Administrator Appointed)
ACN: 609 328 976
Balance Sheet

	as of December 2016	as of March 2017
	\$	\$
Assets		
ANZ Trading 401728158	(4,100.78)	1,872.13
ANZ Tab Acct 401728123	(3,722.84)	395.94
ANZ GST Acct 401728107	(1,986.35)	-
ANZ Online Saver 404045301	40.57	-
Cash on Hand - floats	4,996.00	4,996.00
Pokie Float	3,000.50	2,000.50
Cash on Hand	1,000.00	1,000.00
TAB Deposit Held	5,000.00	5,000.00
Inventory Beverages	23,271.48	23,271.48
Total Assets	27,498.58	38,536.05
Liabilities		
Other Creditors	10,770.00	10,770.00
Accrued Gaming Tax	(23,430.64)	(31,329.64)
Superannuation Payable	40,867.37	47,089.90
PAYG Payable (IAS)	10,776.43	0.43
GST Collected	11,860.34	(0.49)
GST Paid	(8,951.49)	(0.03)
ATO Running Balance account	67,145.00	91,425.48
Loan P & M Wynne	65,849.72	35,765.53
Queries	(3,400.00)	-
Total Liabilities	171,486.73	153,721.18
Net Assets	(143,988.15)	(115,185.13)
Equity		
Share Capital	21,000.00	21,000.00
Retained Earnings	(126,234.74)	(126,234.74)
Current Year Earnings	(38,753.41)	(9,950.39)
Total Equity	(143,988.15)	(115,185.13)



DEM ASIA GROUP

4 JULY 2017

ANNEXURE 5: ESTIMATED RETURN TO CREDITORS

**PMR Criterion Pty Limited
(Administrator Appointed)
Estimated Return to Creditors**

	Book Value Amount (\$)	CVL Low Scenario Amount (\$)	CVL High Scenario Amount (\$)
Assets			
Cash at Bank	\$2,268	0	0
Cash on Hand	\$5,996	0	0
Plant and Equipment - Owned	\$0	20,000	45,000
TAB Bond	\$5,000	5,000	5,000
Inventory	\$23,271	3,821	3,821
Less ROT - Tooheys		(821)	(821)
Total Circulating Assets	\$36,535	\$28,000	\$53,000
Less: Costs of External Administration			
Administrator's Remuneration		30,000	30,000
Administrator's Disbursements		7,500	7,500
Total Costs of Administration		37,500	37,500
Assets Available to Priority Creditors		Nil	15,500
Priority Creditor Claims - Superannuation	\$47,090	55,412	55,412
Priority Creditor Claims - Other Entitlements	Unknown	Unknown	Unknown
Employee Entitlements	\$47,090	55,412	55,412
Circulating Assets Available to Secured Creditor		Nil	Nil
Landlord (refer to section 8.8 of the Report)		265,225	265,225
Total		265,225	265,225
Surplus / Shortfall to Secured Creditor		265,225	265,225
Voidable Transactions - Preferences Transactions		9,440	17,339
Insolvent Trading		Unknown	Unknown
Total Realisations Available to Priority and Unsecured Creditors		9,440	17,339
Liquidator's Costs		10,000	12,500
Liquidators' Disbursements		2,500	2,500
Total Costs of Administration		12,500	15,000
Assets Available to Priority Creditors		Nil	2,339
Unsecured Creditors			
Shortfall - Employees		55,412	37,573
Trade Creditors	\$170,831	170,831	170,831
Lease Claims - Aristocrat	\$65,267	65,267	65,267
Directors Loans		35,765	35,765
Shortfall of Landlord's Claim		265,225	265,225
Total Unsecured Creditor Claims		592,500	574,661
Estimated Deficiency		(660,472)	(612,234)



DEM ASIA GROUP

4 JULY 2017

**ANNEXURE 6: ARITA COMPLAINTS INVESTIGATIONS
PROCEDURES**



ARITA Complaints Investigation Procedures

Purpose

This document sets out ARITA's conduct and disciplinary procedures for the investigation of complaints about the professional conduct of an ARITA member in accordance with clause 8.1(b) of the ARITA Constitution. ARITA's conduct and disciplinary processes can be found in clause 8 of the ARITA Constitution and clause 5 of the ARITA Regulations.

This document should be read in conjunction with the *ARITA Complaints Investigation Process - Overview* flow diagram that generally explains how the conduct and disciplinary regime operates.

The purpose of this document is to provide further clarity in relation to the internal protocols in place.

Complaints

A complaint under the ARITA Constitution is a written complaint made to ARITA about the professional conduct of a member as a practitioner. This refers to the conduct of work of a registered trustee, registered liquidator, other insolvency practitioner, or a legal practitioner.

An ARITA member includes:

- all classes of members; and
- all members except those that have had their membership terminated in accordance with Clause 7 of the ARITA Constitution.¹

Notwithstanding the above, if a member's membership has been terminated, ARITA may still investigate a complaint against the member if the alleged conduct took place at a time when the membership was active.

Joint Appointments and Firm Procedures

The following scenarios and approaches are taken in relation to complaints received by ARITA involving joint appointments or firm procedures:

Scenario	Approach
Administrations conducted jointly by ARITA members	Where a complaint relates to matters regarding the conduct of the administration, ARITA will investigate all of the ARITA members appointed to the administration on a joint basis. Where a complaint relates to matters regarding the personal conduct of an ARITA member, ARITA will investigate the matter on an individual basis.

¹ Constitution 1.1, 6.2

Scenario	Approach
Administrations conducted jointly by ARITA members and non-members	<p>Where a complaint relates to matters regarding the conduct of the administration, ARITA will investigate the conduct of the administration on the basis that at least one of the appointees is a member. ARITA is unable to investigate practitioners who are not members of ARITA.</p> <p>Where a complaint relates to matters regarding the personal conduct of an ARITA member, ARITA will investigate the matter on an individual basis.</p> <p>Where a complaint relates to matters regarding the personal conduct of a non-member, ARITA will be unable to investigate the matter.</p>
Firm procedural issues involving administrations conducted by ARITA non-members	<p>ARITA is unable to investigate complaints related to administrations that are conducted by practitioners who are not members of ARITA.</p> <p>Where a complaint relates to firm procedural issues of firms that have ARITA members who are registered liquidators and trustees, ARITA may commence a concern and investigate these matters further.</p>

Making a complaint

Complaints may be made to ARITA by completing the ARITA complaint form, which can be downloaded from ARITA's website, attaching any relevant documents, and sending it to:

Email: complaints@arita.com.au	Mail: CEO ARITA GPO Box 9985 SYDNEY NSW 2001	Facsimile: +61 2 9290 2820
--------------------------------------------------------------------------------	----------------------------------------------------------	-------------------------------

The complaint form details the information that should be provided with it when it is submitted.

Acknowledgement and allocation of Technical Specialist

All complaints received by ARITA are recorded on ARITA's database and acknowledged in writing.

Complaints are allocated to one of ARITA's Technical Specialists for attention. Technical Specialists are selected to ensure that they are free from actual or perceived conflicts of interest. The following considerations are taken into account when determining a Technical Specialist's independence:

- whether the Technical Specialist has worked directly for or with the member, the complainant or a firm where the member or complainant is or was a Partner or Principal, in the preceding two years;

- whether the Technical Specialist has a relationship with the member or complainant, unless that relationship is trivial²;
- whether there is a history of animosity between the Technical Specialist and the member or complainant; and
- whether there are any other relationships between the Technical Specialist and the member or complainant.

The above independence guidelines also apply in relation to members participating in ARITA's Professional Conduct Committee ("PCC") and any meetings of the National Committee ("NC") to consider matters referred to the NC by the PCC.

Consideration of independence is an on-going process.

Investigations

Investigations are conducted in accordance with the steps detailed in ARITA's Complaints Investigation Process – Overview flow diagram. Investigations may be conducted in writing, in person and/or via the telephone.

Generally, the investigation steps followed by the relevant Technical Specialist include, but are not limited to, the following:

- confirmation of the basis of complaint and consent to contact the member sought from complainant;
- provision of details of the complaint to the member with a request made for a response to the complaint including any relevant documentation;
- a meeting with the member and/or inspection of their files and/or firm processes, where this is considered warranted.

After consideration of the information provided, the Technical Specialist in consultation with ARITA's National Secretary, will determine whether the complaint should be:

- resolved without further referral to the PCC or NC – that is, that the complaint is dismissed, or it is upheld. If it is upheld, one outcome may be remedial action by the member or the member's firm; or
- by decision of the National Secretary, referred to the PCC for ARITA disciplinary proceedings to be commenced against the member.

Consultation with others

From time to time the Technical Specialist may consult with ARITA's other Technical Specialists, the National Secretary or other subject matter experts when considering a complaints matter, subject to any issues of confidentiality or conflict of interest (point 4).

In addition, the National Secretary may consult the members of the PCC prior to determining whether it is necessary to commence ARITA disciplinary proceedings.

² Refer to Clause 6.5 of the ARITA Code of Professional Practice for guidance on trivial relationships

ARITA may from time to time provide information regarding a complaint to and consult with regulators as part of the investigation process.

Professional Conduct Committee

The PCC comprises at least three members, two of which must be members of the National Committee, subject to any limitations resulting from conflicts of interest (refer point 4)³.

Investigations by the PCC may comprise a review of the information collated by the Technical Specialist as well as any additional information (letters, emails or other documents) requested from the member.

The PCC may determine that:

- The complaint is unsubstantiated⁴;
- The complaint is substantiated but no further action is appropriate as the matter has already been addressed and/or it is not in the interests of the public, the member, ARITA or the insolvency profession that any penalty be applied⁵; or
- The complaint warrants being referred to the NC.

The member is advised of the intention to refer the matter to the NC and is given the opportunity to make a submission to the PCC as to why the matter should not be referred.

Based on further information provided by the member, the PCC may reconsider its decision to refer the matter to the NC on the basis that the matter has already been addressed and/or it is not in the interests of the public, the member, ARITA or the insolvency profession that any penalty be applied.

Where a matter is referred to the NC, the PCC must provide reasons for its determinations and provide detailed advice to the NC in relation to the matter. The PCC may also recommend to the NC that the matter be referred to a Regulator or a Foundation body or appropriate law enforcement body should there appear to be a fraud, serious misconduct or breach of the law alleged and about which the member has not given a satisfactory response to ARITA.⁶

National Committee

The NC may review the PCC's investigation and findings and determine whether:

- there has been a breach of professional conduct; and/or
- a member has brought ARITA or the insolvency profession into disrepute.

The following penalties may be applied as a result of the NC's determination:

- termination of membership, or suspension of membership for a period;
- a reprimand, which will also be recorded on the member's disciplinary record and may be taken into account in considering penalties should the member be subject to any future ARITA disciplinary proceedings;

³ ARITA Constitution clause 8.2(b)

⁴ Remedial action may be required by the member or the member's firm

⁵ Remedial action may be required by the member or the member's firm

⁶ ARITA Regulations 5.2(e) and 5.2(g)

- a direction that the member attend specific continuing professional education courses;
- requiring the member to source peer review by another member;
- seeking agreement to other limitations on the member’s professional practice; and/or
- attaching one or more conditions to the member’s membership.

Notwithstanding the above, the NC may, in its discretion, not impose a penalty.

Notification and Publication

The NC may also determine whether any decision in relation to disciplinary proceedings and any penalty imposed should be:

- given to a Regulator, Foundation Organisation and any other bodies; and/or
- published in the official publication of ARITA and on ARITA’s website or otherwise in such a manner and form as may be authorised by the NC.

Communication

At a minimum the complainant and member will be advised of the progress of the complaint at the following stages:

Complainant	<ol style="list-style-type: none"> 1 Initial receipt of complaint 2 Initial review by Technical Specialist 3 Final determination of complaint
Member	<ol style="list-style-type: none"> 1 Initial review by Technical Specialist 2 Referral to PCC, if applicable 3 Intention to refer to NC, if applicable 4 Referral to NC, if applicable 5 Intention to impose penalty, if applicable 6 Final determination of complaint and intention to refer to Regulator and/or Foundation Body, if applicable 7 Referral to Regulator and/or Foundation Body, if applicable



DEM ASIA GROUP

4 JULY 2017

ANNEXURE 7: SUMMARY OF PAYMENTS AND RECEIPTS

PMR Criterion Pty Limited
(Administrator Appointed)
ACN 609 328 976
Summary of Receipts and Payments
7 June 2017 to 3 July 2017 inclusive

	\$
Receipts	Nil
Payments	Nil
Balance as at 3 July 2017	<u>Nil</u>



DEM ASIA GROUP

4 JULY 2017

ANNEXURE 8: FORM 535 (PROOF OF DEBT)



FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Administrator of **PMR CRITERION PTY LIMITED (Administrator Appointed)**

1. This is to state that the company was at **7 June 2017** and still is justly and truly indebted to
 (1)
 of
 in the sum of dollars and cents.
 ABN of Creditor:
 Particulars of the debt are:

Date	Consideration (2)	Amount \$ €	Remarks (3)
------	----------------------	----------------	----------------

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: (4)

Date	Drawer	Acceptor	Amount \$ €	Due Date
------	--------	----------	----------------	----------

- *3. 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.
- *3. I am the creditor's agent duly authorised in writing to make this statement in writing. 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.

DATED this day of 2017.

Signature: Telephone No.

*** Do not complete if this proof is made by the creditor personally.**

- (1) Insert full name and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor.
 (2) State how the debt arose, for example "goods sold to company between the dates of".
 (3) Include details of vouchers substantiating payment.
 (4) Insert particulars of all securities held. Where the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, specify them.

Office Use Only				
File No.		Accepted	\$	
Processed By:		Rejected	\$	Date Sent :
Date Processed:		Under Consideration	\$	
		Rejection Appealed	No / Yes / N/A	



DEM ASIA GROUP

4 JULY 2017

ANNEXURE 9: FORM 532 (PROXY APPOINTMENT)

Corporations Act 2001

APPOINTMENT OF PROXY

(1) *I / *We
of
a creditor of **PMR CRITERION PTY LIMITED (ADMINISTRATOR APPOINTED)**

appoint (2) or in their absence, the Chairperson of the meeting
as *my / *our *general / *special proxy to vote at the meeting of creditors to be held at **DEM Australasia, SUITE 4.02, Level 4, 249 PITT STREET, SYDNEY NSW 2000** on **Wednesday, 12 July 2017 at 11:00AM (AEST)** or at any adjournment of that meeting, and to vote: (3)

*1. generally as he / she determines on *my / *our behalf

OR

*2. generally as he / she determines on *my / *our behalf and specifically in accordance with the following special instructions: *(tick the appropriate alternative)*

With regard to the following resolutions:

	FOR	AGAINST	ABSTAIN
Accept the proposal for a Deed of Company Arrangement			
Administrator to be appointed Deed Administrator			
The liquidation of the Company			
Ending of the Administration			
The appointment of a Committee of Inspection			
Approve the early destruction of the books and records of the company pursuant to Section 542 of the Corporations Act 2001 (should the company be placed into liquidation)			
"that the remuneration of the Administrator, his partners and staff is approved from 7 June 2017 to the conclusion of the Voluntary Administration in the sum of \$30,000 plus GST to be calculated by reference to the hourly rates applicable to the grades or classifications set out in the Remuneration Request Approval Report dated 4 July 2017, and that the Administrator be authorised to draw that amount "			
"that the remuneration of the Liquidator, his partners and staff from the commencement of the liquidation to the conclusion of the liquidation is set on an interim basis in the sum of \$12,500 plus GST, to be calculated by reference to the hourly rates applicable to the grades or classifications set out in the Remuneration Request Approval Report dated 4 July 2017, such remuneration to be subject to review by the Court on the application of any creditor in accordance with Section 504 of the Corporations Act 2001 and that the Liquidator be authorised to draw that amount as when incurred." (should the company be placed into liquidation)			

DATED this day of 2017.

Signature:

* Cross out whichever does not apply.

- (1) If a firm, strike out "I" and set out the full name of the firm.
- (2) Insert the name, address and description of the person appointed.
- (3) If a special proxy add the words "to vote for" or the words "to vote against" and specify the particular resolution.

Proxy forms should be completed and returned by no later than **4:00 PM** on **11 July 2017** to be eligible to vote at the meeting.

Return to: **DEM Australasia, Suite 4.02 Level 4, 249 PITT STREET, Sydney NSW 2000**

Email: jenny.kim@demasiagroup.com