



**Mikelic Pty Ltd**

**(In Liquidation)**

**A.C.N 606 914 836**

**(“the Company”)**

**Statutory Report to creditors**

7 July 2022

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**Annexures**

**Annexure A** InformalProof of debt form

**Annexure B** Information Sheet – Creditor Rights in Liquidation

1. Executive Summary
	1. **Liquidator’s appointment**

I was appointed Liquidator of the Company on 7 April 2022 pursuant to a resolution passed by the Company’s members.

This report should be read in conjunction with my initial report to creditors dated 11 April 2022.

* 1. **Purpose of this report**

The purpose of this report is to:

* provide you with an update on the progress of the liquidation; and
* advise you of the likelihood of a dividend being paid in the liquidation.

If you have not already done so, creditors are requested to complete and submit to this office a proof of debt form (attached as **Annexure A**).

Creditors have the right to request a meeting that complies with the guidelines set out in the ARITA information sheet “Creditors Rights in Liquidation” as attached as **Annexure B**. I do not propose to hold a meeting of creditors at this time.

* 1. **Summary of investigations**

Based on my review of the Company’s books and records and investigations to date, I have identified the following recovery actions available for me to pursue. Further details of my investigations are detailed in section 5 of this report.

|  |  |  |  |
| --- | --- | --- | --- |
| **Offences/recovery action** | **Corporations Act** | **Parties** | **Claim ($)** |
| Related party loans/debtors |  | Sophia Lane Pty Ltd | TBA |
| Insolvent trading | S588G | Michael McEnearney("the Director") | Not commercial to pursue |
| Division 7A Loan | S588FDA | Michael McEnearney("the Director") | 377,956 |

1. Update on the Liquidation
	1. **Company Background**

The Company was incorporated on 6 July 2015 and provided consultancy services such as appearances at Carriageworks Farmers Market and pop up store with demonstrations. The Company employed two (2) related employees including the director during the trading period.

On 30 March 2020 due to Covid-19 pandemic and decision by the NSW Government, Carriageworks was closed to the public. As a consequence of the pandemic and the NSW government implementing restrictions, the company suffered a significant decline in revenue. Subsequently, the company was informed, Carriageworks appointed voluntary administrators on or about 5 May 2020 and accordingly, the Company lost its major contract. Furthermore, due to the Federal Government, there were restrictions on international travel which forced the closure of the dining outlet at the Sydney International airport.

The Company negotiated a payment plan with the ATO around June 2020. However the inability to generate any sales from August 2021 onwards, the Company was not able to meet its liabilities. Accordingly, I was appointed liquidator on 7 April 2022 and I understand the company and ceased to trade prior to my appointment.

Below is a summary of the ASIC extract of the Company:

|  |  |  |
| --- | --- | --- |
| **Company Details** |  |  |
| Registration Date | 6 July 2015 |  |
| Registered Office | Equil Advisory Pty Ltd, Level 7, 2 Bulletin Place Sydney NSW 2000 |
| Principal Place of Business | 79 Hewlett Street, Bronte NSW 2024 |
| **Director** | **Appointed** | **Ceased** |
| Michael Robert McEnearney | 6 July 2015 | - |
| **Secretary** | **Appointed** | **Ceased** |
| Michael Robert McEnearney | 6 July 2015 | - |
| **Share Structure** | **Amount Paid** | **Amount Unpaid** |
| 120 Ordinary Share | $120.00 | $0.00 |
| **Current Shareholders** | **Shares Held/Type** | **Fully Paid** |
| Michael Robert McEnearney | 120 | Yes |
|  |  |  |

* 1. **Progress of the Liquidation**

Since the date of my appointment, I have attended to the following matters:

* I received a completed a Report on Company Affairs and Property **(“RoCAP”)** from the Director.
* I was provided access to the Company’s accounting system, Xero.
* Requested documents of the Company’s books and records from the director and the Company’s accountant, Equil Advisory.
* Obtained information regarding the Company from the Australian Taxation Office (“ATO”) pursuant to Freedom of Information Act.
* Reviewed the outstanding debtors ledger and related party loan accounts.
* Conducted my preliminary investigations into the affairs of the business and potential voidable transactions that are available to the liquidator.
* Liaised with the Director regarding voidable transaction.
1. Estimated Position Statement

Below is a summary of the assets and liabilities extracted from the directors Report on Company Affairs and Property **(“RoCAP”)** and my estimate of the likely realisable value of the Company’s assets and liabilities.



**Notes**

**Note 1 Secured Interest Parties**

The Company’s ASIC Search revealed that there is not any secured interest registered under the name of the Company.

**Note 2 Cash at Bank**

I understand the Company held two accounts, with the Westpac Banking Group. At the date of my appointment, the balance for the two accounts was in arrears by $37.03 and $0.09 respectively.

**Note 3 Related party debtors/Loan**

The Company’s management accounts recorded related party debtors for loans totalling $37,748 which is indicated as below:

|  |  |
| --- | --- |
| **Party** | **Amount ($)** |
| Loan - Joss & Mike Family Trust | 249 |
| Loan - KBM Restaurant Pty Ltd | 2,427 |
| Loan - Mike IP Unit Trust | 443 |
| Loan - Sophia Lane Pty Ltd | 34,629 |
| **Total** | **37,748** |

On xxxx, a letter of demand was issued to Sophia Lane Pty Ltd. I am waiting for a response. In relation to the other three (3) loan accounts, it would be not commercial to pursue and accordingly I have not taken further action.

The likelihood of return of the related party loans is uncertain and further investigations is required to establish the commerciality of the recoveries. Creditors will be notified should there be any material updates.

**Note 4 Division 7A Loan**

A review of the Company’s records disclosed that the Director received $650,554.06 in relation to Division 7A loan. Please refer to section 5.3 of this report for further details.

**Note 5 Voidable Transactions**

Please refer to section 5.4 of this report.

**Note 6 Liquidators’ Costs**

On 9 May 2022, I received remuneration and disbursements approval from the creditors via proposal without a meeting of $15,000 and $1,000 excluding GST respectively. At this stage I do not propose to seek further fee approval. I reserve my rights to seek further fee approval should it be necessary in future.

**Note 6 Priority Creditors (Employee Entitlements) Distribution**

Employees claims are afforded priority over the claims of other unsecured creditors pursuant to section 556 of the Act and the circulating security interests held by secured creditors pursuant to section 561 of the ACT.

The company employed two full time employees being the Director himself and his wife to carry out the consulting business. Below were the outstanding employees entitlements on the date of my appointment.

|  |  |  |
| --- | --- | --- |
| **Entitlement** | **RoCaP** | **Estimated Amount ($)** |
| Related Party |  |  |
| Michael McEnearney - Super | 22,390 | 2,000 |
| Joscelyn Best - Super | 42,361 | 2,000 |
| **Total** | **64,751** | **4,000** |

Pursuant to Section 5561(A)of the Corporations Act 2001, the priority unsecured entitlements of employees who are directors and relatives of directors are capped at the amount of $2,000 for wages and superannuation and $1,500 for leave and termination entitlements. The balance of the entitlements ranks as an unsecured creditor claim.

**Note 7 Unsecured Creditors**

My investigations and proof of debts received to date consist of the following creditors:

|  |  |
| --- | --- |
| **Creditors**  | **Project Claim ($)** |
| ATO | 208,156 |
| Trade Creditors | 79,534 |
| *Related party Loan* |  |
| KBM License Pty Ltd | 13,532 |
| Mikerest Pty Ltd | 137,753 |
| KBM at Home Pty Ltd | 10,000 |
| **Total** | **448,975** |

The Company’s records indicated that there are 7 ordinary unsecured creditors with claims estimated at $448,975 of which three (3) are related creditors totalling $161,285.

I advise the above list might change pending on further documents and proof of debts received from creditors.

1. Financial Analysis

The financial reports have been extracted for the periods FY17 to YTD FY22 from the Company’s management account Xero. The YTD22 covers the period 1 July 2021 to the date of my appointment on 7 April 2022.

* 1. **Profit and Loss**



My Comments on the comparative profit and loss statement is as follows:

* The Company derived its revenue from providing consultancy services to its related entities and third parties.
* The Company was loss making in FY21 and YTD FY22 due to the negative impact of Covid-19 and Australian government restriction.
* The Company’s gross margin saw a significant drop in FY21, from 95% in FY20 down to 69% in FY21.

Wages and salaries reported the highest operating expenses follow by rental expenses, with an average of 35% and 28% respectively over the past five years. During July 2021 to the date of my appointment, there was insufficient funds to pay wages due to insufficient trading income impacted by the Covid-19 pandemic.

* In FY21, the Company received $40,091 from the ATO for Cash flow boost payment however it was insufficient to meet the trading costs.
	1. **Balance Sheet**



My comments on the comparative Balance Sheet are as follows:

* There is a Division 7A loan with a balance of $650,554 which was paid to the director and his wife in FY22. An offset adjustment has been made to reflect the wages which the director and his wife would have been reasonable be entitled to as employees of the Company. A letter of demand has been issued to the director for $ XX to be paid (after the adjustment). I have received a response from the director disputing the claim and is claiming further outstanding wages and expenses the director incurred on behalf of the company that have yet to be reimbursed.
* With the adjusted Division 7A loan, the company’s asset position was negative and significantly increase between FY20 to FY21.
* The Company was heavily reliant on related party loans for the operations of the business from FY20. As at the date of my appointment, total loan owed by the Company is approximately $218,285, of which $161,285 were provided from the related entities.
1. Investigations
	1. **Company books and records**

Liquidators are required to provide an opinion as to whether the Company’s books and records are maintained in accordance with Section 286 of the Act for a period of seven years. The Act requires that a company maintain financial records that correctly record and explain its transactions, financial position and performance, and enable true and fair financial statements to be prepared.

Failure to maintain books and records may give rise to a presumption of insolvency pursuant to Section 588E of the Act. This presumption may be relied upon by the Liquidator in an application for compensation for insolvent trading and other actions for recoveries pursuant to Part 5.7B of the Act from the directors and related parties.

To date, I have been provided with the following books and records:

* Completed Report on Company Activities and Property (“RoCAP”);
* Completed Summary of Affairs ;
* Access to Xero file;
* Xero management accounts and financials reconciled to date of my appointment;
* Bank statements provided by Westpac for the period 30 April 2021 to 7 April 2022;
* Australia Taxation Office (“ATO”) documentation including the Income Tax Assessment; and the Integrated Client Account statements;
* Income tax return for FY21 and the 2021 December Quarter.

Given the above, I am of the view that the Company’s books and records were kept in a manner that complies with Section 286 of the Act. However, I would have expected the Company to have also maintain the following documents

* Related-party loan and Division 7A loan documents;
* Contracts with employees;
* Contracts for services provided; and
* Invoices for services provided
	1. **Reasons for Failure**

The Director has not indicated the reason for business failure in the RoCAP. However, in my opinion, the business’s failure was attributed to the following:

* Decline in revenue due to Covid-19 pandemic and Australian Government restrictions;
* Unable to meet its statutory and super obligations from June 2020 despite negotiated a payment plan with the ATO; and
* No access to alternative finance other than loans from related-parties.
	1. **Recoveries, offences and voidable transactions**

The liquidator is required to complete and lodge a report with the ASIC pursuant to Section 533 of the Act where it appears to the liquidator that a past or present officer of the Company may have been guilty of an offence in relation to the Company and in other limited circumstances. I intend to lodge a report pursuant to this section of the Act.

Pursuant to Part 5.8B of the Act, a liquidator is permitted to recover transactions that appear to be voidable transactions in respect of money, property or other benefits.

To the extent that information has been available, I have conducted the following preliminary investigations in relation to recoveries, offences and voidable transactions:

* Review books and records to determine whether any creditors have been preferred over the general body of creditors as a result of any transaction during the relation back period, being 7 October 2021 to 7 April 2022.
* Review the movement of related party loan accounts 4 years prior to the appointment of the liquidator to identify any related parties preference payment;
* Investigation into insolvent trading claim;
* Investigations into the Director’s misconducts and breaches of directors duties;

Based on my review of the Company’s books and records, I am of the view that the Company was insolvent since April 2020. Please refer to section 5.4 for insolvency analysis.

1. **Unfair preferences (Section 588FA)**

Unfair preferences are transactions between the Company and a creditor resulting in the creditor receiving more than the creditor would receive if the transaction were set aside and the creditor was to prove for this amount in the winding-up. Voidable transactions must have taken place in the period beginning six (6) months prior to the relation back day and ending on the date of liquidation, being 7 October 2021 to 7 April 2021.

Based on my review of the books and records of the Company, I have not identified any transactions that would be subject to this Section of the Act.

1. **Uncommercial Transactions (Section 588FB)**

Section 588FB of the Corporations Act provides for transactions that were not beneficial or detrimental to the Company as being void. The transaction must have occurred when the Company was insolvent or would become insolvent.

Based on my review of the books and records of the Company, I have not identified any transactions that would be subject to this Section of the Act.

1. **Unfair Loans (Section 588FD)**

Section 588FD of the Act provides for loans to be voided in circumstances where interest or charges are considered extortionate.

Based on my review of the books and records of the Company, I have not identified any transactions that would be subject to this Section of the Act.

1. **Unreasonable Director-Related Transactions (Section 588FDA)**

Section 588FDA of the Corporations Act provides for transactions where 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, detriments and respective benefits to other parties.

**Division 7A Loan**

A Division 7A is part of the Income Tax Assessable Act 1936 (“the Act”) and includes the following elements:

* An advance of money
* A provision of credit or any other form of financial accommodation
* A payment for a shareholder or their associate, on their account, on their behalf, or at their request if they have an obligation to repay the amount, and
* A transaction (whatever its terms or form) that is the same as a loan of money.

The transaction will only categorised under Division 7A if it is:

* Between the Company and one of the Company’s shareholder; and
* The Company which is providing the “loan” to the relevant shareholder

Based on the company books and records, the Director has received a total of $650,554.06 in Division 7A Loan from FY19 to the date of my appointment.

As discussed in section 4.1 above, the Director and the related employee did not receive reasonable wages from FY20 and did not receive any wages during FY YTD22 due to business downturn and Covid-19 pandemic. In this regard, the total Division 7A loan account was adjusted by offsetting a wage that they would have reasonably received based on the historical wages paid.

The table below provides a summary of the Division 7A loan and the wages adjustment.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Financial****Year** | **Div 7A Loan** | **Assumed wages level** | **Actual wages received** | **Wages adjustment**  | **Div 7A loan after adjustment** |
| FY 19 | -58,442.89 | - | - | - | -58,442.89 |
| FY 20 | 284,893.33 | 166,701.00 | 124,670.00 | 42,031.00 | 242,862.33 |
| FY 21 | 370,983.25 | 166,701.00 | 42,375.00 | 124,326.00 | 246,657.25 |
| FY 22 | 53,120.37 | 166,701.00 | Nil | 0.00 | -53,120.37 |
| **Total** | **650,554.06** |  |  | **166,357.00** | **377,956.32** |

The estimated claim for the Division 7A loan after considering the reasonable wages adjustment is estimated to be $377,956.32.

A letter of demand in respect of the loan was issued to the Director on 28 June 2022 and I am currently in the process of negotiating a settlement with the Director. Further updates in relation to the recovery will be provided to creditors in due course.

1. **Related Party Transactions (Section 588FE(4))**

Section 588FE(4) of the Act provides for payments to related parties may be voided where the Company was insolvent at the time of the transaction or entered during the 4 years ending on the relation back day, being 7 April 2022.

See commentary above which may also be subject to this Section of the Act.

* 1. **Insolvent Trading (Section 588G)**

Section 588G of the Act provides that a company’s director(s) has a duty to protect a company from incurring debt when there are reasonable grounds for suspecting that the company will be unable to pay its debts as and when they fall due. Section 588M of the Act provides that a liquidator is able to recover ‘damages’ from the director(s) of an insolvent company, in an amount equal to the loss or damage suffered by the Company as a result of a breach of duty.

Section 95A(1) of the Corporations Act 2001 provides a definition of a solvent entity as follows:

“*A person is Solvent if, and only if, the person is able to pay all of its debts, as and when they become due and payable”*

An insolvent entity if defined under Section 95A(2) of the Corporations Act 2001 as:

*“A person which is not Solvent is Insolvent”*

Section 588V of the Corporations Act states that a holding company can be liable for insolvent trading claims against a liquidator if:

1. The corporation is the holding company of the Company at the time the debts were incurred by subsidiary; and
2. The Company is insolvent at that time; and
3. There were reasonable grounds for suspecting that the Company is insolvent or would become insolvent; and
4. The holding company or at least one of its directors were aware of the grounds for suspecting insolvency.

**Indicators of Insolvency**

I am of the view that the Company became insolvent sometime around of after April 2020 having regard to the statutory definition of Solvency pursuant to section 95A(1), section 286 and 588E of the Act and the information available.

1. **Presumption of Insolvency**

Pursuant to Section 286 of the Act, the Company is required to maintain financial records that would:

* correctly record and explain its transactions and financial position and performance; and
* would enable true and fair financial statements to be prepared and audited for the period of 7 years.

Failure to maintain sufficient books and records will gives rises to presumption of insolvency throughout the period. As mentioned in section 5.1 above, it is my opinion that the books and records have been kept in a manner that complies with Section 286 of the Act.

**b) Balance sheet test/net asset deficiency**

The balance sheet test is commonly used in assessing a company’s solvency as it reviews whether a company has sufficient realisable assets to meet its liabilities. As discussed in section 4.2 of this report, the Company’s management account discloses net assets deficit since FY18. Evidencing liquidity issues.

**c) Working Capital and liquidity ratio**

The current ratio provides useful information regarding a company’s ability to meet short term commitments. In general, a current ratio below one is considered to be an indicator of insolvency as it signifies a company does not have adequate current assets to meet its current liabilities when due and payable.

The below table illustrated the Company’s monthly adjusted working capital excluding Division 7A loan. The Company has negative working capital and its current ratio were below one (1) during FY17 to YTD FY22 which is an indicator of insolvency.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|   |  **FY17** |  **FY18** |  **FY19** |  **FY20** |  **FY21** | **FY YTD 22** |
| Adjusted Net Working Capital | (118,498) | (100,549) | (185,280) | (259,226) | (269,509) | (277,502) |

**d) Failure to lodge Commonwealth and State taxes**

The Australian Taxation Office (“**ATO**”) advised that the Company has yet to lodge PAYG payment summaries for FY18 and FY19, Business Activity Statements for March 2022 quarter, the month of April 2022, income tax return for YTD FY22 and STP declaration for YTD FY22. The ATO has submitted a POD claim in respect to the income tax FY21 liability ($22,077.73) and running balance account (“RBA”) ($186,078.50).

A review of the ATO RBA discloses that the Company had no capacity to meet its obligations from April 2020 and negotiated a payment plan with the ATO in June 2020. The RBA debt increased from August 2020 and the Company incurred interest and penalties of $XXX. Below is the table indicating the movement in the ATO’s RBA balance for the previous five (5) financial years.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **ATO** | **Jun-17** | **Jun-18** | **Jun-19** | **Jun-20** | **Jun-21** | **YTD FY 22** |
| Running Account Balance($) | 29,872 | 9,111 | 0 | 121,543 | 158,627 | 186,079 |

**e) Increase in related-party loans to the Company**

A review of the Company’s record indicated the Company had received $104,655 from its related parties, Mikerest and KBM in FY21 to meet its working capital. The loan was never repaid and as at the date of my appointment, the balance of the related party loans to the Company totalled $161,285.

**5.4.1 Insolvent Trading Quantum/Claim**

* On 24 March 2020, the Coronavirus Economic Response Package Omnibus Bill 2020 was implemented and specifically section 588GAAA was introduced into the Corporations Act 2001 temporary relief for financially distressed businesses. This amendment provides relief for directors from potential personal liability for insolvent trading.
* On 7 September 2020, the Australian Government announced that the temporary relief would be extended until 31 December 2020. Accordingly, the liquidator will not have any ability to pursue the director for insolvent trading for this period.
* Pursuant to section 588GAAA(i) the director would be protected from any insolvent trading claim for any debt incurred in the ordinary course of business during the relief period.
* Accordingly, are granted relief from personal liability for insolvent trading pursuant to the Coronavirus Economic Response Package Omnibus Bill 2020 and section 588GAAA of the Act.

The insolvent trading claim after taking consideration the Covid-19 relief is estimated to be **$92,082.00** and consists of the following debts incurred:

|  |  |
| --- | --- |
| **Unsecured Creditors** | **Amount($)** |
| Priority Amounts |  |
| *Related parties* | 4,000 |
| ATO | 83,077 |
| Trade Creditor | 5,005 |
| **Total** | **92,082** |

Based on my investigations it is in my opinion that it would not be commercial to pursue the insolvent trading claim given the immaterial claim quantum. However, if creditors wish to provide funding or have any further documentations to assist with the insolvent trading claim, please contact our office.

**5.4.2 Insolvent Trading Defences**

There are several defences available to a director pursuant to section 588FGB of the Act include:

* if it is provided that, at the payment time, the person had reasonable grounds to expect, and did expect, that the company was solvent at that time and would remain solvent if the payment was made.
* had reasonable grounds to believe, and did believe:
	+ that a competent and reliable person (*the other person*) was responsible for providing to the first-mentioned person adequate information about whether the company was solvent; and
	+ that the other person was fulfilling that responsibility.
	+ expected, on the basis of information provided to the first-mentioned person by the other person, that the company was solvent at that time and would remain solvent even if it made the payment.
	+ because of illness or for some other good reason, the person did not take part in the management of the company at the payment time.
	+ the person took all reasonable steps to prevent the company from making the payment; or there were no such steps the person could have taken.

When making my assessment of the Company’s insolvency I would also consider the common law principles, some of which include:

* Whether or not a company is insolvent for the purposes of the Corporations Act, ss95A, 459B, 588FC or 588G(1)(b) is a question of fact to be ascertained from the consideration of the company’s financial position taken as a whole.
* In considering the company’s financial position, the court must have regard to the commercial realities. Commercial realities will be relevant in considering what resources are available to the company to meet its liabilities as they fall due, whether the resources other than cash are realisable by sale or borrowing upon security, and when such realisation are achievable.
* The conclusion of insolvency ought to be clear from a consideration of the debtor’s financial position in its entirety and generally speaking ought not to be drawn simply from evidence of temporary lack of liquidity. It is the debtor’s inability, utilising such cash resources as he has or can command through the use of his/her assets, to meet his/her debts as they fall due which indicates insolvency.

**Director’s personal financial position**

The following shows the Director’s directorship and real property held according to ASIC searches.

|  |  |  |  |
| --- | --- | --- | --- |
| **Michael Robert McEnearney** |  |  |  |
| **Company** | **Position** | **Commenced** | **Ceased** |
| Mikelic Pty Ltd | Director & Secretary | 6 Jul 2015 | - |
| KBM Events pty Ltd | Director & Secretary | 1 Nov 2021 | - |
| KBM Food Services Pty td | Director & Secretary | 9 Jan 2017 | - |
| McEnearney & Best Pty Ltd | Director & Secretary | 27 Dec 2018 | - |
| Food Landscape Group Pty Ltd | Director | 12 Feb 2019 | - |
| McEnearney Food Pty Ltd | Director & Secretary | 19 Mar 2019 | - |
| KBM At Home Pty Ltd | Director & Secretary | 12 Aug 2020 | - |
| KBM License Pty Ltd | Director & Secretary | 20 Jul 2015 | - |
| Mikerest Pty Ltd | Director & Secretary | 6 Jul 2015 | - |
| Kitchen by Mike Pty Ltd | Director & Secretary | 8 Mar 2016 | - |
| Sophia Lane Pty Ltd | Director & Secretary | 5 Aug 2016 | - |
|  |  |  |  |
| Koskela Kitchen Pty Ltd | Director | 18 Nov 2011 | 21 Jul 2015 |
|  |  |  |  |
| **Shareholdings** | **Shares** | **Fully Paid**  | **Status** |
| McEnearney & Best Pty Ltd | 50 A Class Shares | Yes | Current |
| McEnearney Food Pty Ltd | 120 Ord Shares | Yes | Current |
| Food Landscape Group Pty Ltd | 50 Ord Shares | Yes | Current |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

According to the NSW Land title search the Director currently does not own any real property.

* 1. **Breach of Directors Duties**

Section 180 to 183 of the Act sets out duties and powers of directors and officers of a company to enable Director’s act in the interest of the Company. The duties include:

* Section 180 – Care and Diligence
* Section 181 – Good Faith
* Section 182 – Use of Position
* Section 183 – Use of Information

**Section 180 – Care and Diligence**

Pursuant to section 180 of the Act a [director](http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s9.html#director) or other officer of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

1. were a director or officer of a corporation in the corporation's circumstances; and
2. occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.

The courts have found that where a director breaches the duty of care and diligence in the performance of their duties, an action can be brought under the tort of negligence.

My investigations and enquiries as at the date of this report does not identify any breaches of this section of the Act.

**Section 181 – Good Faith**

Pursuant to Section 181 of the Act, a director or other officer of a corporation must exercise their powers and discharge their duties:

1. in good faith in the best interest of the corporation; and
2. for a proper purpose

My investigations and enquiries as at the date of this report does not identify any breaches of this section of the Act.

**Section 182 – Use of Position**

Pursuant to Section 182 of the Act, a director or other officer or employee of a corporation must not improperly use their position to:

1. Gain advantage for themselves or someone else; or
2. Cause detriment to the corporation.

Further to the points outlined in this report, my investigations into the nature and history of Company are ongoing to identify any personal advantages and detriments to the Company.

If creditors have any information which may assist my investigations, please email Christine Xiao of my office at cxiao@hogansprowles.com.au or by phone on 02 8020 5858.

1. Receipts and Payments

There has been no receipts and payments from the date of my appointment to date.

1. Costs of the Liquidation

Following my previous report to creditors 11 April 2022, the remuneration of $15,000 (excl GST) and internal disbursements of $1,000 (excl GST) were approved by creditors on 9 May 2022.

At this stage, I will not be seeking further approval of fees from creditors.

1. What happens next?

I will proceed with the liquidation, including, but not limited to:

* Proceed with recovery actions as identified in the report;
* Finalising my investigations;
* Completing my reporting to the corporate insolvency regulator, ASIC; and
* Any other matters relevant to the liquidation.

If I receive a request for a meeting that complies with the guidelines set out in the ARITA information sheet “Creditors Rights in Liquidation” as attached at **Annexure B,** I will hold a meeting of creditors.

As I currently hold limited funds in the liquidation, it is likely that funding would be required to conduct public examinations and pursue the potential recoveries outlined above. I will write to creditors providing and update and formally requesting funding should it be required.

In the interim, if creditors have any further information that would assist in my investigation or wish to fund the liquidation, please contact Christine Xiao of this office on (02) 8020 5858 or by email on cxiao@hogansprowles.com.au.

I anticipate completing this liquidation within the next six (6) to nine (9) months.

1. Where can you get more information?

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

* ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors)
* ASIC at [www.asic.giv.au](http://www.asic.giv.au) (search for “insolvency information sheets”).

If you have any queries, you can contact my office and speak with Christine Xiao of this office on (02) 8020 5858 or by email on cxiao@hogansprowles.com.au.

Yours faithfully

**Mikelic Pty Ltd (In Liquidation)**

Michael Hogan

**Liquidator**