

**BRI Ferrier**

## **STATUTORY REPORT TO CREDITORS**

**ENA DEVELOPMENT PTY. LTD. (IN LIQUIDATION)  
ACN: 105 235 363 ("THE COMPANY")**

**IN ITS OWN RIGHT AND AS TRUSTEE FOR:**

**ENA DEVELOPMENT TRUST  
(RECEIVER AND MANAGER APPOINTED)  
ABN 97 105 235 363 ("THE TRUST")**

**27 April 2022**

**PETER KREJCI  
LIQUIDATOR**

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## INTRODUCTION

I refer to my initial report to creditors dated 24 February 2022 in which my appointment as Liquidator of the Company and Receiver of the assets of the Trust was advised along with your rights as a creditor in the liquidation.

The purpose of this report is to provide creditors with information regarding the following:

- ▲ The estimated amount of assets and liabilities of the Company;
- ▲ Inquiries relating to the winding up of the Company that have been undertaken to date;
- ▲ Further inquiries relating to the winding up of the Company that may need to be undertaken;
- ▲ What happened to the business of the Company;
- ▲ The likelihood of creditors receiving a dividend before the affairs of the Company are fully wound up; and
- ▲ Possible recovery actions.

This report should be read in conjunction with the initial report. If you have any questions relating to the liquidation in general, or specific questions relating to your position, please do not hesitate to contact this office.

### COMPANY DETAILS

<b>Name</b>	ENA Development. Pty. Ltd.
<b>Incorporated</b>	24 June 2003
<b>ACN</b>	105 235 363
<b>As Trustee of</b>	ENA Development Trust
<b>Trust ABN</b>	97 105 235 363
<b>Trading Address</b>	53 Heath Street Prospect NSW 2148

### LIQUIDATOR

<b>Names</b>	Peter Krejci
<b>Date Appointed</b>	27 January 2022

### ADMINISTRATION CONTACT

<b>Name</b>	Max Florian
<b>Email</b>	mflorian@brifnsw.com.au
<b>Phone</b>	02 8263 2300

## GLOSSARY OF COMMON ACRONYMS & ABBREVIATIONS

ABN	Australian Business Number
ABR	Australian Business Register
ACN	Australian Company Number
Act	Corporations Act 2001 (Cth)
AEST	Australian Eastern Standard Time
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CBA	Commonwealth Bank of Australia
CL	Court Liquidation
CommSec	Commonwealth Securities Limited
Company	ENA Development Pty. Ltd.
Chiswick Property	11 Tutt Crescent, Chiswick NSW 2046
DIRRI	Declaration of Independence, Relevant Relationships & Indemnities
EFT	Electronic Funds Transfer
ENA Trust	ENA Development Trust
Enterprise ICT	Enterprise ICT Pty Ltd
Enterprise INT	Enterprise INT Pty Ltd
AEST	Australian Eastern Standard Time
Family Court	Federal Circuit Court and Family Court of Australia
FEG	Fair Entitlements Guarantee
Freezing Order	Orders made by Justice Henderson on 29 September 2021 and variation to that order made on 12 April 2022
FOI	Freedom of Information
Homebush Property	36/146-152 Parramatta Road Homebush NSW 2140
Ingram	Ingram Micro Pty Ltd
IPR	Insolvency Practice Rules (Corporations) 2016
IPS	Insolvency Practice Schedule (Corporations)
One T	One T Development Pty Ltd
PAYG	Pay As You Go withholding tax
Phams	Andy Vuong Duc Pham and Thi Huong Giang Pham

## GLOSSARY OF COMMON ACRONYMS & ABBREVIATIONS

POD	Proof of Debt
PPSA	Personal Properties Securities Act
PPSR	Personal Properties Securities Register
ROCAP	Report on Company Activities and Property
SGC	Superannuation Guarantee Charge

## EXECUTIVE SUMMARY

On 27 January 2022, I was appointed Liquidator of the Company pursuant to an Order of the Supreme Court of NSW on the winding up application of the petitioning creditors, the Phams, filed on 25 November 2021.

I performed a search of the NSW Land Title register in the Company's name which identified a commercial real property located at Unit 36, 146-152 Parramatta Road, Homebush NSW 2140. Further investigations indicated that the Homebush Property may be an asset of the ENA Development Trust, of which the Company was Trustee. Upon my appointment as Liquidator, it was apparent that the Trust Deed governing the ENA Trust automatically terminated the Company as Trustee of the Trust giving rise to what is known as a 'bare trust'.

In light of these circumstances, on 3 February 2022 I made an ex-parte application to the Supreme Court of New South Wales seeking to have myself appointed as Receiver and Manager of assets of the ENA Trust. On this date, His Honour Justice Black of the Supreme Court of NSW made orders appointing me as Receiver and Manager of assets of the ENA Trust.

This report has been prepared in accordance with Rule 70-40 of the Insolvency Practice Rules Corporations Act 2001 to provide creditors with an update on the developments of this Liquidation. I have been unable to conduct a full investigation into the Company's affairs, as the Director and Alternate Directors, Mrs Rose Sebie, Mr Ronald Jemmott, and Mr Mazen Zraika have delivered limited books and records of the Company. I have reported this breach of the Act to the ASIC.

I provide hereunder a summary of my investigations into the affairs of the Company to date, the potential returns for creditors and the conduct of the Liquidation over the past three (3) months.

The Company was incorporated on 24 June 2003 and I have been advised by Mr Jemmott and Mr Zraika that it operated as a building management services business from premises in Prospect, New South Wales. An ABR search identified no other business names for the Company.

The date the Company ceased operating is unclear due to a lack of books and records provided by the Directors. However, bank statements show that the Company's bank accounts were transacted upon up until 30 December 2021.

From the limited information provided by the Directors, I have been advised that the former Director, Mr Ramzy Sebie was responsible for the Company's day to day administration until his passing in 2019. However, it has been alleged in Court that the Company is the 'alter ego' of Mr Robert Sebie, who is the son of the current director, Mrs Rose Sebie. This is supported by banking and share trading records where Mr Robert Sebie is an authorised signatory and indicative that Mr Robert Sebie is likely to be the shadow director of the Company.

The Company has an history of involvement in various on-going legal proceedings. One such proceeding, the Company's cross claim to funds held in the Court from the sale of a property located at 11 Tutt Crescent, Chiswick NSW 2046, formerly owned by MR Robert Sebie. Other parties who

have made a claims to these funds are Mr Robert's Sebie's former spouse and the Phams (in respect of a number of cost orders) who bought the Chiswick Property from Mr Robert Sebie.

At the time of my appointment, the Company had cash at bank totalling \$9,604.14. Due to an asset freezing order from the Family Court these funds have not been transferred to the Liquidator's bank account. I have sought and been granted an amendment to these Orders which will allow the bank to release these funds to a bank account under my control. My investigations also reveal the Company is a shareholder in various listed public companies totalling circa \$118K held with Commsec and various share registries. The Company's available books and records also indicate that there is a related party loan to Mr Robert Sebie totalling \$1.8M. My investigations are ongoing in respect to the recovery of these assets.

The Director/Alternative Directors have not provided me a record of the Company's liabilities. Based on PODs received to date, the known liabilities of the Company appear to be in the order of \$4.6M, made up of related-party priority creditors of \$67K, unsecured creditors of \$15K and related party creditor loans of \$4.5M. Approximately \$3.5M of the related party creditor loans claim has purported to be secured. However, upon further investigation I have determined that there are no PPSR registrations over the Company, with all registrations being discharged as of 21 July 2021.

I have been unable to conduct comprehensive investigations again due to the provision of limited Company books and records. Further investigations are required to determine the recovery prospects of potential voidable transactions. No asset realisations have been made to date due to the Family Court Orders and any return to Priority or Unsecured Creditors is contingent on the outcome of legal proceedings and voidable transaction recoveries. Should any creditor have any relevant information which may assist my investigations or potential asset recoveries, or wish to fund my further investigations, they should contact my office by no later than 11 May 2022.

I have completed my investigations based on the limited books and records available and I shortly intend to report my findings to ASIC pursuant to Section 533(1) of the Act. The Section 533(1) report is confidential and is not available to creditors.

**In summary, there has not been any asset realisations or recoveries to date, such that the Petitioning Creditor's costs and my fees for the winding up have not been paid. Any return to Priority or Unsecured Creditors is therefore contingent on the outcome of various legal proceedings and voidable transaction recoveries. Absent any substantive matters becoming known, I estimate the Liquidation could be finalised within twenty-four (24) to thirty six (36) months, depending on any recoveries discussed previously.**

## LIKELY RETURN TO CREDITORS

At this stage, the quantum and likelihood of a dividend return to any class of creditors is subject to asset realisations, recovery actions, outcome of the ongoing legal proceedings and final claims received from creditors. Please refer to section 19 below for further discussion.

If you have not already done so, please complete and return the enclosed Proof of Debt form at “**Annexure A**” so that your claim may be assessed in the event of a dividend, and to assist with future investigations that may be required over the course of the liquidation.

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- B** ARITA Information Sheet – Creditors Rights in Liquidations
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- G** ASIC Information Sheet – Insolvency Information for Directors, Employees, Creditors and Shareholders
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## 1 BASIS OF REPORT

This report has been prepared primarily from information received from the Directors, the limited books and records of the Company.

In order to complete this report and in conducting my investigations, I have also utilised information from:

- ▲ ASIC;
- ▲ Discussions with the Alternate Directors;
- ▲ The ROCAP's submitted by the Alternate Directors;
- ▲ The Questionnaire provided by the Alternate Directors;
- ▲ Extracts from public information databases;
- ▲ Correspondence with creditors; and
- ▲ Documents obtained from the ATO in relation to the Company, provided under the Freedom of Information Act 1992.

## 2 DISCLAIMER

An investigation of the Company's affairs has been conducted and this report and the statements made herein have been prepared based upon available books and records, information provided by the Company's Directors and from my own enquiries.

Whilst I have no reason to doubt the accuracy of the information provided or contained herein, I reserve the right to alter my opinions or conclusions should the underlying data prove to be inaccurate or materially change after the date of this report.

Neither the Liquidator, nor any member or employee of BRI Ferrier accepts responsibility in any way whatsoever to any person in respect of any errors in this report arising from incorrect information provided to me, or necessary estimates and assessments made for the purposes of the report.

This report is not for general circulation, publication, reproduction or any use other than to assist creditors in evaluating their position as creditors of the Company and must not be disclosed without the prior approval of the Liquidators.

Creditors should consider seeking their own independent legal advice as to their rights and options available to them.

Should any creditor have material information in relation to the Company's affairs which they consider may impact on my investigations or report, please forward details in writing as soon as possible.

## 3 DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES

I confirm that my DIRRI as previously circularised has not been amended.

## 4 CORPORATE INFORMATION

The following information has been extracted from ASIC records as at the date of my appointment:

<b>Date of Incorporation</b>	24 June 2003
<b>Type of Company</b>	Australian Proprietary Company
<b>Class</b>	Limited by Shares
<b>Registered Office</b>	53 Heath Street Prospect NSW 2148

OFFICER	START DATE	CEASE DATE	POSITION(S)
Mrs Rose Sebie	25/06/2003	Current	Director/Secretary
Mr Mazen Zraika	29/10/2021	Current*	Alternate Director
Mr Ronald St Clair Jemmott <sup>#</sup>	28/09/2018	Current	Alternate Director
Mr Ronald St Clair Jemmott <sup>#</sup>	06/08/2021	10/09/2021	Director
Mr Ronald St Clair Jemmett <sup>#</sup>	10/05/2021	14/06/2021	Director
Mr Ramzy Sebie	26/01/2018	20/01/2021	Director
Mr Robert Sebie	24/06/2003	25/06/2003	Director
Mr Robert Sebie	26/1/2018	26/1/2018	Secretary

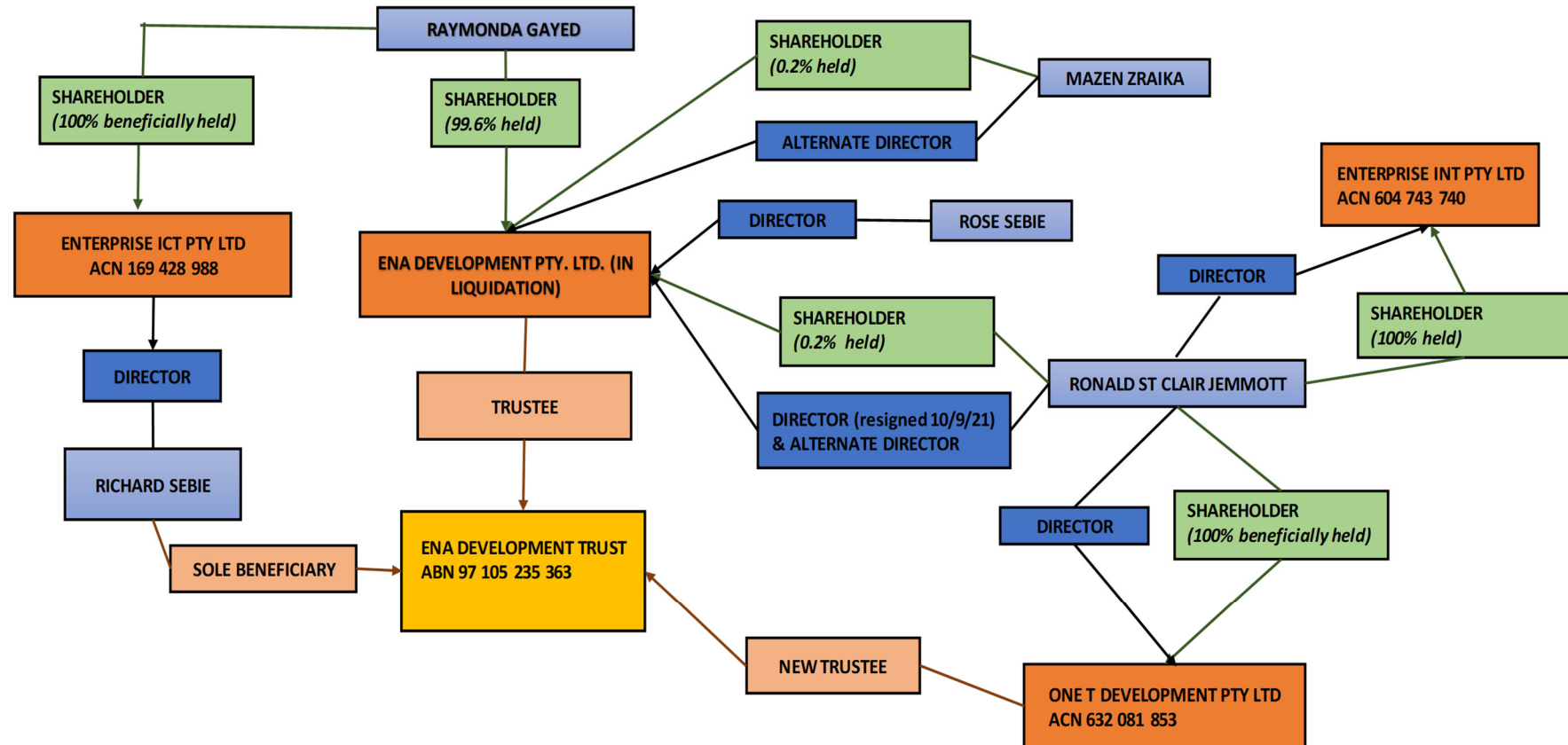
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SHAREHOLDERS	SHARE TYPE	NO. OF SHARES	SHAREHOLDING (%)	BENEFICIALLY OWNED
Ms Raymonda Gayed	Class B Shares	996	99.6	No
Mr Ronald St Clair Jemmott	Class B Shares	2	0.2	No
Mr Mazen Zraika	Class B Shares	2	0.2*	No

\*Mr Zraika has not indicated whether he has forfeited/sold his shareholdings in the Company despite advising that he resigned as an Alternate Director on 2 March 2022.

## 5 COMPANY STRUCTURE AND RELATED PARTIES

A summary of the entities/persons related to the Company is shown below:



The following table summarises the shareholder ownership with respect to each related entity illustrated above:

SHAREHOLDERS	THE COMPANY	ENTERPRISE ICT	ONE T	ENTERPRISE INT
Ms Raymonda Gayed	96%	100%	-	-
Ms Ronald St Clair Jemmott	0.2%	-	100%	100%
Ms Mazen Zraika	0.2%	-	-	-

Key points to note in relation to the related entities are below:

ENTITY NAME	COMMENTS
1 Enterprise ICT	<ul style="list-style-type: none"> <li>▲ Enterprise ICT was incorporated on 7 May 2014.</li> <li>▲ Enterprise ICT has submitted a POD totalling \$774,888.24 in relation to multiple loans purportedly advanced since 2015.</li> <li>▲ Richard Sebie is the director of Enterprise ICT also sole beneficiary of the ENA Trust. He is the brother of Robert Sebie.</li> <li>▲ It has been alleged in Court that this Company is also an 'alter ego' of Robert Sebie.</li> <li>▲ Richard Sebie has submitted a POD totalling \$733,058.70 in relation to loans purportedly advanced to the Company.</li> <li>▲ Raymonda Gayed is the sole shareholder of Enterprise ICT and, also beneficially holds 99.6% shares in the Company.</li> <li>▲ Ms Gayed has submitted a POD totalling \$93,799.00 in relation to multiple loans purportedly advanced to the Company since 2005.</li> </ul>
2 One T	<ul style="list-style-type: none"> <li>▲ One T was incorporated on 6 March 2019.</li> <li>▲ Ronald St Clair Jemmott is the sole director and shareholder of One T. He is also a shareholder and Alternative Director of the Company.</li> <li>▲ One T has filed an Interlocutory Application seeking that I be removed as the receiver of the ENA Trust.</li> </ul>

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ENA Trust

- ▲ On 11 February 2022, I was provided with the Trust Deed for the ENA Trust dated 1 September 2009 and minutes of a meeting of the unit holder (Richard Sebie) dated 30 March 2021 purportedly appointing One T as Trustee of the ENA Trust.
- ▲ One T has lodged a transfer of title for the Homebush Property with the Land Titles office on 30 September 2021. I have obtained a Freezing Order against the processing of that change in title for the Homebush Property to preserve my rights as Receiver and Manager of the ENA Trust.

- 
- ▲ I was appointed Receiver and Manager of the assets of the ENA Trust on 3 February 2022 by orders made by His Honour Justice Black upon an ex-parte application filed by me in the Supreme Court of NSW. This application was made to protect the assets of the ENA Trust from being dissipated.
  - ▲ The Company was the Trustee of the ENA Trust and upon my appointment as Liquidator, the Trust became a 'bare trust' pursuant to its Trust deed.
  - ▲ On 11 February 2022 I was advised by a solicitor representing One T, that same claims to have been appointed Trustee of the ENA Trust on 30 March 2021.
  - ▲ Ronald St Clair Jemmott is the Director of One T and a shareholder and Alternate Director of the Company.
  - ▲ Mr Richard Sebie is the sole beneficiary of the ENA Trust

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Enterprise INT

- ▲ Enterprise INT is a related party by virtue of Ronald St Clair Jemmott being an officer and shareholder of the Company and Enterprise INT.
  - ▲ Enterprise INT has lodged a claim in the liquidation of \$3,000, representing funds purportedly advanced to the Company.
-

## 6 PPSR SECURITY INTERESTS

The PPSR is an online register of all personal property that has security interests registered against it. Should you not have your security interest registered on the PPSR, there is a risk that you do not have valid security and/or your security interest may not have priority over registered security interests.

For further details please refer to the previous report and to [www.ppsr.gov.au](http://www.ppsr.gov.au).

A search of the PPSR as at the date of my appointment disclosed the following security interests registered against the Company's property:

SECURED CREDITOR	DATE REGISTERED	COLLATERAL	REGISTRATION NUMBER
Ingram	4 May 2017	All present and after-acquired property	201705040006020

I wrote to Ingram at the time of my appointment requesting for details in relation to the security held with the Company. On 4 February 2022, Ingram advised that they had discharged their security interest.

No other security interests have been identified. Should you have a security interest registered on the PPSR in respect to the Company, please contact this office immediately, if you have not already done so.

## 7 LEGAL PROCEEDINGS

Pursuant to Section 500(2) of the Act, my appointment as Liquidator automatically stays any current legal proceedings against the Company.

Creditors cannot commence or continue proceedings against the Company without my written consent or without leave of the Court.

As stated above, the Company has brought a cross-claim in relation to the funds held in Court, which I am advised are estimated at \$1.8M. The other parties to that matter are Mr Robert Sebie, the Phams and Ms Nadine Musabwasoni (Mr Robert Sebie's ex-wife).

I have engaged ERA Legal to assist me with all legal matters with regard to the Company. This engagement with ERA Legal is likely to extent for more than 3 months due to the current proceedings on foot.

Section 477(2B) of the Act requires that a liquidator obtain approval of creditors, COI or the Court to enter agreements which have a duration of more than three months. Accordingly, I sought the Family Court's approval to engage ERA Legal for a duration of greater than 3 months. This approval was granted by way of orders made by Her Honour, Justice Henderson on 12 April 2022.



The proceedings currently on foot involving the Company are as follows:

1. Supreme Court of NSW proceeding 2015/325044

This is the proceeding in which the Company has filed a cross-claim seeking payment of the funds in court from the sale of the Chiswick Property. The final hearing of the cross-claim is part heard before His Honour, Justice Sackar. These proceedings have, in essence, resolved as against the Phams and partially in respect to Ms Musabwasoni. The only remaining cross-defendant is Mr Robert Sebie. The matter is listed for further directions.

2. NSW Court of Appeal proceeding 2021/133082

This is the appeal proceeding in which Mr Robert Sebie sought to appeal a decision of the Supreme Court of NSW making orders that the Phams be entitled to their costs from the proceeds held in court from the sale of the Chiswick Property. The Phams have filed an application seeking a lump sum costs order and for compensation in respect to undertakings as to damages given by Mr Robert Sebie and the Company in that court. Mr Robert Sebie has filed an application seeking to vacate the orders for payment of the Phams' costs and other judgments of the court below. That proceeding is stayed against the Company by reason of the liquidator's appointment.

3. Federal Circuit Court and Family Court of Australia proceeding SYC 59 of 2010

The Family Court proceeding between Ms Musabwasoni and Mr Robert Sebie. Application was made varying freezing orders made by Justice Henderson on 29 September 2021 so as to allow the liquidator to deal with certain assets of the Company and/or the ENA Trust, with orders made on 12 April 2022.

## 8 NATURE AND HISTORY OF THE COMPANY'S BUSINESS

- ▲ The Company was incorporated on 24 June 2003 and its registered office is located at 53 Heath Street Prospect NSW 2148.
- ▲ I have been advised by a Mr Mohamad El-Masri, who claims to represent Mr Mazen Zraika and Mr Ronald St Clair Jemmott, both alternate directors, that the Company was a passive investment vehicle.
- ▲ This is at odds with Mr Zraika's and Mr Jemmott's information in their ROCAP, which details the Company's activities as:
  - Facility Services;
  - Handy Man Services;
  - Building Management Services; and
  - Management/Trustee of a trust.
- ▲ Mr El-Masri has provided balance sheets for the Trust for the period 30 June 2016, 2017, 2018, 2019, 2020, and 2021. To date, Mr El-Masri has acted as an intermediary between myself and the director, Rose Sebie, the alternate Directors, namely Mr Jemmott and Mr Zraika, and Cheryl Ansah who claims to be an employee of the Company.

- ▶ As previously advised, the books and records received to date including the ROCAP from Mr Zraika and Mr Jemmott are not complete and are insufficient to conduct a full investigation into the affairs of the Company.
- ▶ Notwithstanding the above, my investigations indicate that at the time of my appointment the Company was not trading. The date the Company ceased operating is unclear. However, bank statements indicate that the Company's bank accounts were transacted upon until 30 December 2021.
- ▶ The Company is party to legal proceedings where it has filed a cross claim to sale proceeds currently held in Court. It is asserted that the Company advanced funds to Mr Robert Sebie for the purchase of the Chiswick Property. The current proceedings on foot involving the Company are listed on Section 7 of this report.
- ▶ It is my understanding that the Chiswick Property was subsequently bought by the Phams who, are the petitioning creditors. The Phams filed a winding up application on 25 November 2021 in the Supreme Court of New South Wales due to the Company's failure to pay their judgement debt in relation to the Chiswick Property.
- ▶ Mr Zraika and Mr Jemmott in their director's questionnaire advised the judgment debt was disputed by the Company but the failure to pay the debt was the cause of the Company's failure.

## **8.1 EVENTS SUBSEQUENT TO MY APPOINTMENT AS LIQUIDATOR AND APPOINTMENT AS RECEIVER OF THE ASSETS OF THE ENA TRUST**

Upon my appointment, I conducted a search of the NSW Land Title register which identified the Company to be a registered title holder of a commercial real property being the Homebush Property.

Further investigations into the Homebush Property indicated that the Company may have been a trustee of the ENA Trust and the Trust deed in my possession has identified the Homebush Property to be an asset of the Trust.

On 3 February 2022, I made an ex-parte application to the Supreme Court of New South Wales and on the same day, I was appointed Receiver of the Trust. This application was made to protect the assets of the Trust from being dissipated.

The application was further justified by the fact that under the ENA Trust Deed, my appointment as Liquidator automatically terminated the Company as Trustee of the Trust.

Subsequently, it came to my attention that there appeared to be an unregistered dealing in relation to Homebush Property where an application had been made to Land Titles Office on 30 September 2021 seeking to transfer title to the property to a company that I believe to be One T.

Through correspondence received from Mr El-Masri, One T purported to be the new Trustee of the Trust and presumably this was the basis for One T seeking to transfer the title of Homebush Property to itself. Furthermore, the attempted transfer of the Homebush Property title was in breach of the Family Court Order dated 29 September 2021 issued in proceedings between Mr Robert Sebie and Ms

Musabwasoni. The Court Order effectively froze the assets of the Company and Trust, with the Court finding these assets were available for division in the Family Court proceedings.

Against this background I sought further legal advice and on 11 February 2022, I made another ex-parte application to the Supreme Court of New South Wales seeking to injunct the NSW Titles office from transferring title of the Homebush Property. I note the Court granted the injunction until 21 February 2022 upon my undertaking as to damages.

My legal representatives were subsequently contacted by One T's lawyers advising that One T would be seeking to enforce its rights as the new trustee of the Trust and terminate my appointment as Receiver of the Trust. By consent, the injunction will continue, pending a determination by the Court in relation to the change of Trustee question.

Other assets identified in the liquidation which are detailed further in the report are:

- ▲ Commonwealth bank account with a balance of \$9,604.14 which I have requested to be transferred to an account under my control. CBA has advised that they have frozen the account and unable to transfer the funds due to a family court order;
- ▲ A share portfolio that is managed mainly through a broker CommSec and various share registries. The value of the share as of 20 April 2022 is \$118,121.

## 9 REASONS FOR FINANCIAL DIFFICULTY

Mr Zraika and Mr Jemmott advised in their ROCAP that the Company's failure was due to the unpaid Pham judgement debt, which was challenged by the Company.

Based on my investigations into the Company's affairs, whilst I concur with Mr Zraika's and Mr Jemmott's opinion, I further note the following additional reasons for the failure of the Company:

- ▲ Poor financial control including lack of records
- ▲ Poor strategic management of business
- ▲ Inadequate cash flow

## 10 ASSETS AND LIABILITIES

Mr Zraika and Mr Jemmott have lodged a ROCAP with my office which is not properly executed. The ROCAP does not include the necessary annexures which are required to convey the information requested. I wrote to Mr Zraika, requesting him to complete his ROCAP and provide all necessary annexures to the ROCAP. To date, I have not received a complete ROCAP from Mr Zraika.

I have recently received a ROCAP from Mr Jemmott. The ROCAP is incomplete, and I will be writing to Mr Jemmott requesting him to provide the necessary annexures to the ROCAP.

Based on the ROCAPs' received, the limited information contained in the Company's limited books and records and enquiries with the Alternate Directors and creditors to date, the following analysis of the Company's financial position as at the date of my appointment has been prepared:

**ENA Development Pty. Ltd. (In Liquidation)**  
**ACN 105 235 636**

	Notes	Book Value as at 27/01/2022 (\$)	Director's ERV (per ROCAP) (\$)	Liquidator's ERV as at 27/01/2022 (\$)	
<b>Assets</b>					
Interest in Land	11.1	860,000	-	550,000	#
Cash at Bank/Cash on Hand	11.2	9,604	-	9,604	
Shares	11.3	108,658	^	118,121	*
Other Assets	11.4	1,884,074	-	-	
<b>Total Assets</b>		<b>2,862,336</b>	<b>-</b>	<b>677,725</b>	
<b>Liabilities</b>					
Secured Creditors	12.1	-	-	-	
Priority Creditors	12.2	67,689		-	
<b>(Less) Excluded Employees</b>		<b>(60,949)</b>			
Unsecured Creditors	12.3	6,740			
Australian Taxation Office		4,550	-	4,550	
Related Parties		4,639,328	-	-	
Excluded Employees		60,949	-	-	
Waratah Strata		33,620	-	33,620	#
Other Creditors		12,379	-	12,379	
<b>Total Liabilities</b>		<b>4,757,567</b>	<b>-</b>	<b>50,549</b>	
<b>Estimated Net Asset / (Deficiency)</b>		<b>(1,895,230)</b>	<b>-</b>	<b>627,176</b>	

\* ERV as at 20 April 2022

# Advised value relates to ENA Development Trust

^ As per balance sheet ending 31 December 2021

## 11 DETAILS OF ASSETS

### 11.1 INTEREST IN LAND

As previously advised, I have identified that the Company is a registered title holder of the Homebush Property.

The Homebush Property was purchased by the Company around February 2013 for \$610,000. A Trust Deed (attached on title by way of a caveat) on 18 June 2015 indicated it to be an asset of the ENA Trust. The Trust deed was executed on 1 September 2009.

A desktop valuation conducted by Stone Commercial, a commercial real estate agency on 13 April 2022 valued the Homebush Property to be between \$500,000 to \$550,000. I have also completed a RP Data valuation which detailed the property to be valued between \$488,000 and \$674,000.

It has come to my attention there have been modifications made to the Homebush Property and that it is currently being used for residential purposes. Strathfield Council has issued 3 notices in respect of these modifications on the basis that they contravene the Environmental Planning and Assessment Act 1979 and the Strata Fire Safety Order.

The notices issued by the Strathfield Council require urgent remediation works to be conducted by way of demolishing the unauthorised modifications and fixing the fire safety doors to comply with the Environmental Planning and Assessment Act 1979 and the Fire Safety Order.

The Homebush Property cannot be realised without the remediation works and, the costs involved in the remediation are likely to be of a significant value to the estimated value uplift of the Homebush Property.

On 14 April 2022, I issued a Notice to the tenants of the Homebush Property to vacate the premises by 28 April 2022 due to contraventions of the above. I was advised by Mr Ronald Jemmott that the Homebush Property was leased to a company operated by him. Mr Jemmott advised that Mr El-Masri would provide a copy of the lease agreement. To date, I have not yet received a copy of this lease agreement.

## 11.2 CASH AT BANK / CASH ON HAND

I made enquiries with all major banks in Australia seeking details of any accounts maintained by the Company. These enquiries revealed that the Company maintained 2 bank accounts with CBA and Bankwest respectively with a total balance of \$9,604.14 held as at the date of appointment. For completeness, details of CBA and Bankwest accounts and balances as at the date of my appointment are as follows:

ACCOUNT	BALANCE (\$)
CBA Direct Investment account 062 000 11344673	9,604.14
Bankwest Business Zero Transaction Account 162 0765640	0.00
<b>Total</b>	<b>9,604.14</b>

Upon appointment, I took control of the Company's bank accounts and froze the accounts for any debits (payments/withdrawals), however, I have allowed the accounts to remain open for any receipts. Due to the Freezing Order, I have not been able to transfer the funds into the Liquidator's bank account.

I have now obtained the amended Freezing Order made by Justice Henderson on 12 April 2022 which are detailed in Section 7 of this report. These orders will enable me to sweep the funds held with CBA

into the liquidation account. I will hold these funds on trust pending the outcome of the legal proceedings that have been commenced by One T which is asserting that all assets identified in the liquidation are assets of the ENA Trust. Please refer to section 5 for further commentary.

Based on my enquiries to date, I am not aware of any other bank accounts held by the Company.

### 11.3 SHARES

Upon obtaining the Company's bank statements from the CBA, I identified transactions relating to dividends from shareholdings. Subsequently, I made enquiries with all major share registries in Australia seeking details of any shareholdings in the name the Company. These enquiries revealed that the Company held shares totalling circa \$118k as of 20 April 2022. The balance sheet of the Company for the period ending 31 December 2021 indicates shares holdings with a book value of \$108,658.

To date, I have identified that the majority of shares are held in a brokerage account with CommSec. The share holdings are in the name of the Company and I have not identified any documents disputing same. On 11 March 2022, I was advised by CommSec that a written request had been submitted by Mr Robert Sebie and Mr Ronald Jemmott to transfer the Commsec share portfolio to another entity. I subsequently informed Commsec that pursuant to the Act, the Liquidator only held authority to deal with assets of the Company. I note that any attempt to transfer Company assets by parties other than the Liquidator is an offence pursuant to the Act and may lead to a criminal prosecution.

Due to the Freezing Order previously mentioned, I was not able to realise the Company's shareholdings for the benefit of creditors. The amended Freezing Orders will allow me to realise these assets once the legal matter as to what are trust and non-trust assets is decided.

### 11.4 OTHER ASSETS

The balance sheet for the Company for the period ending 31 December 2021 obtained from the evidence filed by the Company to defend the winding up application, indicates that there is a related party loan account owed by Robert Sebie of \$1,884,074. It is understood that the loan was for the purpose of purchasing the Chiswick property.

This loan to Robert Sebie is alleged to arise from a secured loan agreement between the Company and Robert Sebie in August or September 2005. Further, this secured loan agreement gave the Company a charge over money allegedly loaned by the Company to Robert Sebie. Consequently, the Company made a cross-claim in the Court in regard to the charge over funds held in the Court, being the balance of funds paid by the Phams to Robert Sebie for the Chiswick Property in May 2018. I note that Ms Musabwasoni and the Phams have alleged that the secured loan agreement to be fiction in their affidavits to the Court.

I have not identified, nor I have been provided documents identifying loan payments from the Company to Robert Sebie subsequent to 2005 nor have I been provided documents that contradict that fund were provided to Robert Sebie. I have also not identified nor have been provided documents identifying how the Company was able to procure funds to loan to Robert Sebie.

I am not aware of any other assets in the name of the Company/Trust.

## 12 DETAILS OF LIABILITIES

### 12.1 SECURED CREDITORS

My examination of the PPSR confirmed one (1) security interest registered by Ingram. The security interest was registered on 4 May 2017 with the registration number 201705040006020. On 4 February 2022, Ingram advised they had discharged their security interest.

No other secured creditors have been identified in respect to the Company/Trust.

### 12.2 PRIORITY CREDITORS

Employee entitlements are paid pursuant to section 556(1) of the Act in priority to ordinary unsecured creditors in the following priority:

- ▲ Wages, superannuation and SGC;
- ▲ Annual Leave and Leave Loading (where applicable); and
- ▲ Termination payments including Pay In Lieu of Notice and Redundancy.

I have received PODs from four (4) employees which include the Director and Alternate Directors of the Company, totalling \$67,688.50 in relation to unpaid wages. I have provided these employees a notice of termination of employment. I have also requested they provide further proof to verify their claims. To date, I have not received any substantive proof of their claims.

Due to the limited books and records in my possession, I do not have access to any employee files and accordingly I am unable to determine if these claims are valid. Further, I am not aware if there may be other employees of the Company.

I have advised the purported employees of their rights as creditors, the necessary procedures to lodge a claim in the liquidation and have formally terminated their employment in writing.

The PODs received to date indicate that outstanding employee entitlements are as follows:

CREDITOR	NOTE	WAGES (\$)
ATO – SGC	A	-
FEG	B	-
Employees	C	67,689
Less Excluded Employee (unsecured claim)		(60,949)
<b>Total</b>		<b>6,740</b>

#### A. STATUTORY PRIORITIES

Any unpaid superannuation will attract SGC as a result of non-payment by the relevant date pursuant to section 52 of the *Superannuation Guarantee (Administration) Act 1992*. The ATO is responsible for

proving this debt and any distribution from the Company must first be paid to the ATO. Upon receipt of a dividend, the ATO will then remit the funds proportionately to the employees' respective superannuation funds.

I have received PODs pertaining to outstanding wages by the Director and two (2) Alternate Directors of the Company of \$66,948.50 and a person claiming to be an employee for \$740.00 totalling \$67,689.50.

Should the outstanding wages claim be admitted in the liquidation, this outstanding claim will attract outstanding superannuation.

Due to insufficient books and records in my possession, I do not have access to employment records of the Company to adjudicate the claims. Accordingly, I am unable to provide the ATO with details of any outstanding superannuation owed by the Company in order for the ATO to make a claim in respect of SGC.

## **B. THE FAIR ENTITLEMENTS GUARANTEE SCHEME ("FEG")**

The Government's FEG Scheme is available to meet employees' entitlements (if any) (excluding Directors and related parties) for unpaid wages, annual leave and termination payments if the Company is unable to meet the liability through the liquidation process. FEG however, does not provide for the payment of outstanding superannuation.

For any entitlement paid by FEG, the FEG is entitled to subrogate employees pursuant to Section 560 of the Corporations Act.

Employees who have any queries in regard to their rights may obtain information by visiting the website at [www.ag.gov.au/industrial-relations/fair-entitlements-guarantee/pages/default.aspx](http://www.ag.gov.au/industrial-relations/fair-entitlements-guarantee/pages/default.aspx) or by telephone on 1300 135 040.

## **C. EMPLOYEES AND EXCLUDED EMPLOYEES**

The Act provides that company directors, their spouses and relatives (known as excluded employees), are each restricted to a total maximum priority claim of \$2,000 for unpaid wages and superannuation pursuant to s556(1A), \$1,500 for leave entitlements pursuant to s556(1B) and receive no priority for retrenchment payments such as pay in lieu of notice or redundancy.

I have received PODs pertaining to outstanding wages by the Director and two (2) Alternate Directors of the Company totalling \$66,948.50. The three excluded employees can claim priority totalling \$6,000 and the balance of their claim being \$60,948 will be classed as an ordinary unsecured claim.

I have also received a POD from a person claiming to be an employee of the Company totalling \$740 as outstanding wages. I have not been provided with any supporting documents for the claim and do not have sufficient records to ascertain its validity.

The termination letters issued to all employees who have lodged a POD with my office have been advised about the FEG scheme. At the time of issuing this report, I have not been contacted by FEG advising of any employee making a claim with them for outstanding employee entitlements.



### 12.3 UNSECURED CREDITORS

I have liaised with the Company's Director/Alternate Directors and creditors directly to prepare the following summary table of outstanding unsecured creditor claims at the date of our appointment:

UNSECURED CREDITOR	NOTE	POD (\$)
Statutory Creditors	A	4,550
Related Party Loans	B	4,639,328
Excluded Employees	C	60,949
Waratah Strata	D	33,620
Other Unsecured Creditor	E	12,379
	<b>Total</b>	<b>4,750,826</b>

#### A. STATUTORY CREDITORS

Statutory creditors include amounts owing to the ATO for fines for the late lodgement of the Company's annual tax returns. I have received a POD from the ATO totalling \$4,550.00.

To date, the Company's running balance account with the ATO has a credit balance of \$490,556. The ATO has classified these credits as 'Non-refundable non-carry forward tax offsets'.

#### B. RELATED PARTY LOANS

The following have been identified as potential claims by related parties against the Company:

NAME	RELATIONSHIP	AMOUNT (\$)
Rose Sebie	Director	3,034,582.54
Richard Sebie	Son of Director	733,058.70
Raymonda Gayed	Sister of Director	93,799.00
Enterprise ICT Pty Ltd	Richard Sebie as Director of Enterprise ICT Pty Ltd	774,888.24
Enterprise INT Pty Ltd	Ronald Jemmott as Director of Enterprise INT Pty Ltd	3,000.00
<b>Total</b>		<b>\$4,639,328.48</b>

Upon receiving the PODs, I wrote to these related-party creditors requesting that further substantive evidence be provided to my office to verify their claims. I have received some bank statements, of which most of its contents are redacted. These statements appear to be of the Company and not the

individuals claiming funds were advanced to the Company. The bank statements provided by the director date back to 29 October 2003.

Due to the limited books and records in my possession, I am unable to comment on the validity of these claims.

### C. EXCLUDED EMPLOYEES

As discussed above at section 12.2-C, \$60,948.50 will be treated as unsecured claims for excluded employees.

### D. WARATAH STRATA

I have received a POD from Waratah Strata Management totalling \$33,620. This debt is in relation to the Homebush Property and as such the Company has a right of indemnity against the ENA Development Trust.

### E. OTHER UNSECURED CREDITORS

I have received two claims totalling \$12,379 pertaining to wages of excluded employees and outstanding legal fees.

OTHER UNSECURED CREDITORS	CLAIM/POD (\$)
Mitchell Mathas	11,879
Christopher Dobbs	500
<b>Total</b>	<b>12,379</b>

## 13 INVESTIGATIONS AND RECOVERY ACTIONS

As Liquidator, I am required to review certain transactions to determine whether or not claims for statutory recoveries may be made for the benefit of creditors.

Whilst a potential claim may be identified having regard to the Company's records, any net recovery ultimately depends upon:

- ▲ The costs involved in pursuing a claim; and
- ▲ The capacity of the defendant to meet such a claim.

### 13.1 INVESTIGATIONS UNDERTAKEN

During the course of these investigations, I have:

- ▲ Taken possession of limited books and records of the Company and reviewed the same;
- ▲ Written to the relevant authorities requesting verification of the details provided by the Directors;
- ▲ Carried out ASIC and other searches available to me in relation to the Company;

- ▲ Ascertained by inquiring with officers and creditors the history of the Company and nature of its business and circumstances leading to its failure;
- ▲ Performed a comparative analysis of the Company's and Trust balance sheets;
- ▲ Performed a review of the available bank statements to identify potential preferences, uncommercial transactions, and unfair loans (sections 588FA, 588FB, 588FD and 588FE of the Act);
- ▲ Assessed the date the Company became insolvent and quantified a claim for insolvent trading against the Directors;
- ▲ Reviewed the Company's dealings with related parties to identify any unreasonable director-related transactions;
- ▲ Verified the valuation of Company's assets, reviewed historic sales of assets and compared book values & current realisation values;
- ▲ Reviewed specific transactions and liaised with the Director regarding certain transactions;
- ▲ Reviewed creditors' statements and correspondence from available records;
- ▲ Considered documents obtained from the ATO in relation to the Company under Requests for documents;
- ▲ Prepared an investigation file note summarising my findings with regards to the Company;
- ▲ Prepared and lodged various affidavits in relation to legal proceedings detailed in Section 7 of this report;
- ▲ Instructed my lawyers to appear in court on behalf of the Company for the ongoing proceedings detailed in Section 7 of this report and
- ▲ Obtained legal advice with regards to the commerciality of potential recovery actions.

## 13.2 BOOKS AND RECORDS

Section 286 of the Act requires a company to keep written financial records that:

- ▲ correctly record and explain its transactions, financial position and performance; and
- ▲ would enable true and fair financial statements to be prepared and audited.

The books and records of the Company were, in my opinion, not maintained to a satisfactory level in accordance with Section 286 of the Act.

The Failure to maintain books and records in accordance with Section 286 of the Act may allow a Liquidator to presume the Company was insolvent throughout the period the books and records were not maintained (Section 588E of the Act).

Despite demands issued to the Directors, Alternate Directors and the Accountant, Mr El-Masri of the Company. I have been provided with limited and incomplete books and records. My investigations have been hampered by the limited books and records.

## 14 FINDINGS AND RECOVERY ACTIONS

### 14.1 DATE OF INSOLVENCY

The basis for most antecedent recoveries is proof of insolvency.

The Director/Alternative Directors have not complied with the Liquidator's request to provide the Company's books and records. As such, to determine the date as to when the insolvency arose is more difficult. Pursuant to Section 286 of the Act, a company is required to keep written financial records that correctly record and explain its transactions and financial position and would enable true and fair financial statements to be prepared and audited. Section 286 of the Act also requires financial records to be retained for 7 years after the transactions covered by the records are completed.

Section 588E(4) of the Act provides that the company may be deemed to be insolvent during the period if it is proved that the company:-

- a) has failed to keep financial records in relation to a period as required by [subsection 286\(1\)](#); or
- b) has failed to retain financial records in relation to a period for the 7 years required by [subsection 286\(2\)](#);

Based on the above analysis and the books and records received to date, I am of the opinion that the Company was insolvent from at least **January 2015**, being 7 years from the date of the Liquidator's appointment pursuant to Section 588E(4).

### 14.2 INSOLVENT TRADING

Pursuant to Section 588G of the Act, a director may be personally liable for insolvent trading by a company where:

- ▲ A person is a director at the time a company incurs a debt;
- ▲ The company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- ▲ At the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- ▲ The director was aware such grounds for suspicion existed; and
- ▲ A reasonable person in a like position would have been so aware.

The Act provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holdings companies for debts incurred by their subsidiaries.

A defence is available under the Act where a director can establish:

- ▲ There were reasonable grounds to expect that the company was solvent and they actually did so expect;
- ▲ They did not take part in management for illness or some other good reason; or
- ▲ They took all reasonable steps to prevent the company incurring the debt.

To date, I am not aware of any facts and/or information that may indicate that these defences will be available to the Director/s.

I estimate that the insolvent trading claim against the Director and Alternate Directors would be in excess of \$2.4M. This amount has been obtained from creditor PODs where debts have been incurred by the Company since January 2015 and remain outstanding.

### **14.3 DIRECTOR'S PERSONAL ASSET AND LIABILITY POSITION**

Before committing to pursuing any insolvent trading activity it is necessary to consider the ability of the Directors to be able to satisfy any claim. In making this consideration, the Directors' asset positions including whether there are any competing claims from other personal liabilities emanating out of Company operations needs to be measured.

I have investigated the Directors' personal assets and liabilities to some extent but my investigations are limited under the Act. Further investigations into the Directors' personal affairs are only available to a Registered Trustee in Bankruptcy.

The Director of the Company is a joint owner of a real property located at 3 Vesuvius Street, Seven Hills NSW 2147. This property is unencumbered.

I have also conducted an NSW land title search for Mr Robert Sebie, who I believe is the shadow director of the Company. I note that Mr Sebie was former title holder of the Chiswick Property. As mentioned earlier, the Company is a cross claimant for the funds estimated to be \$1.8 Million. He is currently not a registered title holder.

Any legal action against the directors needs to be considered on a commercial basis and the liquidator would need to be indemnified for their costs and any adverse costs should they be awarded.

Before commencing any further steps in the recovery, at this stage it is my intention to await the outcome of the ongoing legal proceedings listed in Section 7 of this report.

## **15 DIRECTORS DUTIES**

As part of my investigations, I have considered whether there have been any breaches by the Director in the exercise of their duties and in the use of their position pursuant to the Act.

“Annexure G” provides a summary of possible offences that may have been committed.

My findings have been reported to ASIC and any resulting prosecution action is conducted solely at the discretion of ASIC.

## **16 VOIDABLE TRANSACTIONS**

“Annexure H” provides a summary of the transactions that may be voidable by a liquidator under the Act.

## 16.1 UNFAIR PREFERENCES

I have undertaken a review of the Company's limited records for the six months preceding the relation back date, by way of a review of the available bank statements of the Company to determine whether any creditors may have received an unfair preference.

Based on the limited records available to me, at this stage I have identified payments totalling \$32,235 made to related parties as well as cash withdrawals and unidentified payees which will require further investigation.

## 16.2 OTHER RECOVERY ACTIONS

In addition, a liquidator may also initiate actions in respect of, or to recover:

- ▲ The loss suffered by a company or benefit gained by someone else from any transactions at less than market value (pursuant to section 588FB of the Act).
- ▲ Extortionate interest payments and the benefit of "unreasonable" transactions that benefit directors (pursuant to section 588FD of the Act); and
- ▲ Unreasonable director-related transactions (pursuant to section 588FDA of the Act).

My review of the available Company's bank statements and my investigations to date have identified transactions which might constitute to be unfair loans advanced, uncommercial or unreasonable director-related transactions with regards to the Company.

Given that I have limited books and records in my possession, I have been unable to conduct any comprehensive investigations into potential voidable transactions and initiate a recovery action.

## 16.3 FURTHER INVESTIGATIONS TO BE UNDERTAKEN

I plan to undertake the following further investigations:

- ▲ Complete my review in relation to possible breaches by the Directors and related parties;
- ▲ Further investigation of and recovery of voidable transaction;

Continue to pursue the officers of the Company along with the assistance of ASIC to obtain books and records of the Company.

### A. ONE T'S CLAIM AS TRUSTEE OF THE ENA TRUST

As previously advised, One T purports to be the new trustee of the ENA Trust, following a resolution said to have been passed in 2021 prior to my appointment. One T asserts that *all* assets identified by me as potential company assets for the benefit of creditors are assets of the ENA Trust.

The limited financial records in my possession suggest that this is not the case, and that One T's assertions are without foundation and in an attempt to keep those assets identified by me from creditors of the Company or should there be a surplus, from Ms [M] in connection the relief she seeks in the Family Court Proceedings. That view seems to be in line with a comment by the Court on 26

April 2022 dismissing an application by One T for a stay orders made by His Honour Justice Sackar to the effect that during the two (2) year period that the proceedings have been on foot prior to my appointment as Liquidator, the Company had never advanced as argument that a Trust claim existed in relation to the Company's assets.

One T has filed an Interlocutory Application seeking that I be removed as the receiver of the ENA Trust. I propose to oppose that application and, given the position which has now been asserted by One T (that all of the asserts identified are assets of the trust), I propose to make my own application to the Court seeking declarations as to the ownership of those assets and will seek my costs of doing so accordingly. At this stage, it is anticipated that my application will be filed in the next week or so and subject to the court's availability, I anticipate seeing both of those applications be heard within the next 4 to 6 weeks.

## **17 INDEMNITY FUNDING / ASSIGNMENT OF RIGHTS**

As the liquidation is bereft of funds with which to investigate/pursue the recovery of matters identified above, I seek expressions of interest from creditors who may be interested in providing funding or alternatively, interested in purchasing the rights to sue under the Act.

The initial funding would be used to carry out bank traces, investigate transactions, formulate claims (if any), instruct solicitors to review the claims and advise on the commencement of recovery proceedings (if applicable).

It follows that additional funding would be required for any subsequent proceedings.

Pursuant to section 564 of the Act, in the event of a successful recovery action, the court has the power to make orders as it deems just with respect to the distribution of the funds recovered, with a view to giving those creditors who fund the legal action an advantage over others, in consideration of the risk assumed by them.

Further, pursuant to IPS 100-5, external administrators may assign rights to sue that are conferred on them under the Act.

If you wish to obtain further and better particulars regarding the claims in contemplation of providing funding to the Liquidator or to purchase the rights to pursue the claims, please contact this office so that specific details can be made available to you following execution of a confidentiality agreement.

## **18 RECEIPTS AND PAYMENTS TO DATE**

There have been no receipts or payments made in the liquidation to date.

## **19 ESTIMATED RETURN TO CREDITORS**

The likelihood of a dividend being paid to creditors will be affected by a number of factors including:

- ▲ the size and complexity of the administration.
- ▲ the amount of voidable transactions recovered and the costs of these recoveries;
- ▲ the statutory priority of certain claims and costs;

- ▲ the value of various classes of claims including secured, priority and unsecured creditor claims; and
- ▲ the volume of enquiries by creditors and other stakeholders.

At the current time, there have been no recoveries in the Liquidation to date and I have been unable to discharge my costs of the winding up. Any return to priority or unsecured creditors is contingent on the progress and outcome of legal proceedings listed on Section 7 of this report and the recovery of voidable transactions.

## 20 REMUNERATION OF LIQUIDATOR

In my previous report to creditors dated 24 February 2022, I had sought approval of my retrospective remuneration from 27 January 2022 to 22 February 2022 and prospective remuneration from 23 February to completion of the liquidation by issuing a proposal without a meeting form. I note that the proposals without a meeting were not passed and accordingly, my fees and costs were not approved.

I attach **Annexure “E”** as my Remuneration Approval Report which details the major tasks that have been conducted in this administration during the period 27 January 2022 to 22 April 2022 and tasks to be completed from 23 April 2022 to completion of the liquidation.

My remuneration is calculated on the time spent by staff at hourly rates used by BRI Ferrier, as detailed in my explanation of hourly rates which is attached as **Annexure “D”**.

## 21 MATTERS OUTSTANDING

The outstanding matters in the administration are:

- ▲ Lodgement of statutory report pursuant to Section 533(1) of the Act;
- ▲ Lodgement of annual administration return pursuant to IPS 70-5 (if applicable);
- ▲ Finalisation of investigations into the Company’s affairs and the conduct of its officers;
- ▲ ASIC assistance in obtaining further books and records of the Company/Trust;
- ▲ Correspondence with solicitors in respect to ongoing legal proceedings for the Company;
- ▲ Realisation of Company assets;
- ▲ Consider recovery of voidable transactions;
- ▲ Conduct meeting of creditors (if required);
- ▲ Dividend distribution to priority creditors (if applicable);
- ▲ Dividend distribution to unsecured creditors (if applicable);
- ▲ Prepare further reports to creditors (if required);
- ▲ File request with the Regional Commissioner of the ASIC to deregister the company pursuant to Section 601AB(2)(c) of the Act; and
- ▲ Lodgement of final accounts pursuant to IPS 70-6 of the Act.

Subject to the timing of the finalisation of the above matters and any unforeseen circumstances, I currently estimate that the administration will be finalised within 24 - 36 months.



## 22 CONCLUSION

It would be appreciated if you would consider the matters detailed in this report and please write to this office setting out full particulars if you are:

- ▲ Aware of any errors in the information contained within this report including the non-disclosure of any divisible assets; and
- ▲ Have any information that you consider is relevant for creditors' decision making or relevant information that may help assist the liquidator's investigations into the affairs of the Company.

Creditors and members should however, maintain their records in relation to the affairs of the Company and advise this office of any change of address.

Additional general information regarding liquidations which may be of assistance, is available from the following websites:

- ▲ ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors); and
- ▲ ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for "insolvency information sheets").

Should you require assistance in completing the relevant forms or have any queries, please contact the Administration Contact shown at page 1 of this report.

Any further reports will be issued as considered appropriate.

Yours faithfully,

**ENA DEVELOPMENT PTY. LTD. (IN LIQUIDATION)**



**PETER KREJCI**

LIQUIDATOR

RECEIVER AND MANAGER

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The logo for BRI Ferrier features the company name in white, bold, sans-serif font on a dark grey rectangular background. A green triangle is positioned at the bottom right corner of the grey rectangle.

**BRI Ferrier**

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**ENA Development  
Pty.Ltd.  
(In Liquidation)  
ACN 105 235 363**

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**Annexure "A"  
Proof of Debt with Creditors  
Electronic Communication Method  
Approval Form**

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FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Liquidator of ENA Development Pty. Ltd. (In Liquidation) ACN 105 235 363

1. This is to state that the company was, on 27 January 2022, <sup>(1)</sup> and still is, justly and truly indebted to<sup>(2)</sup> (full name):

.....  
(‘Creditor’)

.....  
of (full address)

for \$.....dollars and.....cents.

Particulars of the debt are (please attach documents to support your claim e.g. purchase orders, invoices, interest schedules):

Date	Consideration <sup>(3)</sup> state how the debt arose	Amount \$ (Incl. GST)	Remarks <sup>(4)</sup> include details of voucher substantiating payment

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

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 in a schedule in the following form:

Date	Drawer	Acceptor	Amount \$ c	Due Date

- I am **not** a related creditor of the Company <sup>(5)</sup>
- I am a related creditor of the Company <sup>(5)</sup>  
relationship: .....

3A. <sup>(6)\*</sup> 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, still remains unpaid and unsatisfied.

3B. <sup>(6)\*</sup> I am the creditor's agent authorised to make this statement in writing. I know that the debt was incurred and for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

The External Administrators' (whether as Voluntary Administrators/Deed Administrators/Liquidators) will send and give electronic notification of documents in accordance with Section 600G and 105A of Corporations Act 2001. Please provide your email address below:

Contact Name: .....

Email Address: .....

DATED this.....day of.....2022

NAME IN BLOCK LETTERS.....

Occupation.....

Address.....

Signature of Signatory .....

OFFICE USE ONLY

POD No:		ADMIT (Voting / Dividend) - Ordinary	\$
Date Received:		ADMIT (Voting / Dividend) – Preferential	\$
Entered into CORE IPS:		Reject (Voting / Dividend)	\$
Amount per CRA/RATA	\$	Object or H/Over for Consideration	\$
<b>Reason for Admitting / Rejection</b>			
PREP BY/AUTHORISED		<b>TOTAL PROOF</b>	\$
DATE AUTHORISED / /			

### Proof of Debt Form Directions

- \* Strike out whichever is inapplicable.
- (1) Insert date of Court Order in winding up by the Court, or date of resolution to wind up, if a voluntary winding up.
- (2) Insert full name and address (including ABN) 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.
- (3) Under "Consideration" state how the debt arose, for example "goods sold and delivered to the company between the dates of .....", "moneys advanced in respect of the Bill of Exchange".
- (4) Under "Remarks" include details of vouchers substantiating payment.
- (5) Related Party / Entity: Director, relative of Director, related company, beneficiary of a related trust.
- (6) If the Creditor is a natural person and this proof is made by the Creditor personally. In other cases, if, for example, you are the director of a corporate Creditor or the solicitor or accountant of the Creditor, you sign this form as the Creditor's authorised agent (delete item 3A). If you are an authorised employee of the Creditor (credit manager etc), delete item 3B.

### Annexures

- A. If space provided for a particular purpose in a form is insufficient to contain all the required information in relation to a particular item, the information must be set out in an annexure.
- B. An annexure to a form must:
  - (a) have an identifying mark;
  - (b) and be endorsed with the words:
    - i) "This is the annexure of *(insert number of pages)* pages marked *(insert an identifying mark)* referred to in the *(insert description of form)* signed by me/us and dated *(insert date of signing)*; and
  - (c) be signed by each person signing the form to which the document is annexed.
- C. The pages in an annexure must be numbered consecutively.
- D. If a form has a document annexed the following particulars of the annexure must be written on the form:
  - (a) the identifying mark; and
  - (b) the number of pages.
- E. A reference to an annexure includes a document that is with a form.

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The logo for BRI Ferrier, featuring the text "BRI Ferrier" in white on a dark grey background, with a green triangle pointing upwards and to the right.

**BRI Ferrier**

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**ENA Development  
Pty.Ltd.  
(In Liquidation)  
ACN 105 235 363**

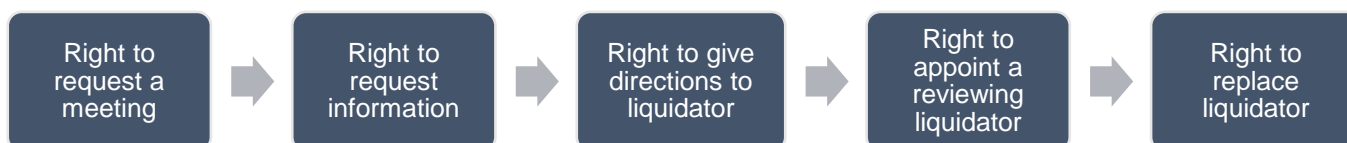
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**Annexure "B"  
ARITA Information Sheet – Creditors  
Rights in Liquidation**

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# Creditor Rights in Liquidations

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



## Right to request a meeting

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

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

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

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

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

## Right to request information

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

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

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

## Requests must be reasonable.

### They are not reasonable if:

Both meetings and information:

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

Meeting requests only:

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

Information requests only:

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

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

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

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

## Right to give directions to liquidator

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

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

An individual creditor cannot provide a direction to a liquidator.

## Right to appoint a reviewing liquidator

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

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

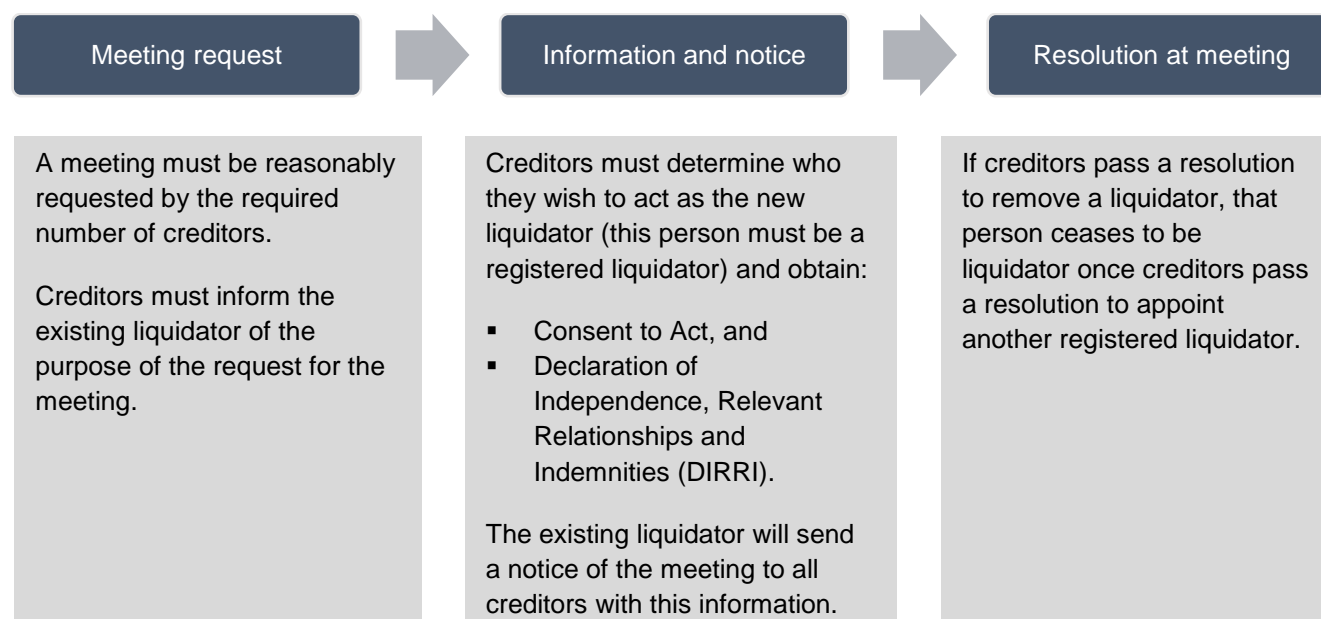
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

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

## Right to replace liquidator

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

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



**For more information, go to [www.arita.com.au/creditors](http://www.arita.com.au/creditors).  
Specific queries about the liquidation should be directed to the liquidator's office.**

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**ENA Development  
Pty.Ltd.  
(In Liquidation)  
ACN 105 235 363**

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**Annexure "C"  
ARITA Information Sheet – Proposal  
without a meeting**

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## Information sheet: Proposals without meetings

You may be a creditor in a liquidation, voluntary administration or deed of company arrangement (collectively referred to as an external administration).

You have been asked by the liquidator, voluntary administrator or deed administrator (collectively referred to as an external administrator) to consider passing a proposal without a meeting.

This information sheet is to assist you with understanding what a proposal without a meeting is and what your rights as a creditor are.

### What is a proposal without a meeting?

Meetings of creditors were previously the only way that external administrators could obtain the views of the body of creditors. However, meetings can be very expensive to hold.

A proposal without a meeting is a cost effective way for the external administrator to obtain the consent of creditors to a particular course of action.

### What types of proposals can be put to creditors?

The external administrator is able to put a range of proposals to creditors by giving notice in writing to the creditors. There is a restriction under the law that each notice can only contain a single proposal. However, the external administrator can send more than one notice at any single time.

### What information must the notice contain?

The notice must:

- include a statement of the reasons for the proposal and the likely impact it will have on creditors if it is passed
- invite the creditor to either:
  - vote yes or no to the proposal, or
  - object to the proposal being resolved without a meeting, and
- specify a period of at least 15 business days for replies to be received by the external administrator.

If you wish to vote or object, you will also need to lodge a Proof of Debt (POD) to substantiate your claim in the external administration. The external administrator will provide you with a POD to complete. You should ensure that you also provide documentation to support your claim.

If you have already lodged a POD in this external administration, you do not need to lodge another one.

The external administrator must also provide you with enough information for you to be able to make an informed decision on how to cast your vote on the proposal. With some types of proposals, the law or ARITA's Code of Professional Practice sets requirements for the information that you must be provided.

For example, if the external administrator is asking you to approve remuneration, you will be provided with a Remuneration Approval Report, which will provide you with detailed information about how the external administrator's remuneration for undertaking the external administration has been calculated.

### What are your options if you are asked to vote on a proposal without a meeting?

You can choose to vote yes, no or object to the proposal being resolved without a meeting.

### How is a resolution passed?

A resolution will be passed if more than 50% in number and 50% in value (of those creditors who did vote) voted in favour of the proposal, but only so long as not more than 25% in value objected to the proposal being resolved without a meeting.

### What happens if the proposal doesn't pass?

If the proposal doesn't pass and an objection is not received, the external administrator can choose to amend the proposal and ask creditors to consider it again or the external administrator can choose to hold a meeting of creditors to consider the proposal.

The external administrator may also be able to go to Court to seek approval.

### What happens if I object to the proposal being resolved without a meeting?

If more than 25% in value of creditors responding to the proposal object to the proposal being resolved without a meeting, the proposal will not pass even if the required majority vote yes. The external administrator will also be unable to put the proposal to creditors again without a meeting.

You should be aware that if you choose to object, there will be additional costs associated with convening a meeting of creditors or the external administrator seeking the approval of the Court. This cost will normally be paid from the available assets in the external administration.

This is an important power and you should ensure that it is used appropriately.

### Where can I get more information?

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides information to assist creditors with understanding external administrations and insolvency.

This information is available from ARITA's website at [artia.com.au/creditors](http://artia.com.au/creditors).

ASIC also provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at [asic.gov.au](http://asic.gov.au) (search for "insolvency information sheets").

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The logo for BRI Ferrier features the company name in white, bold, sans-serif font on a dark grey rectangular background. A green triangle is positioned at the bottom right corner of the grey rectangle, pointing towards the top right.

**BRI Ferrier**

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**ENA Development  
Pty.Ltd.  
(In Liquidation)  
ACN 105 235 363**

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**Annexure "D"  
Explanation of Hourly Rates**

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## EXPLANATION OF HOURLY RATES

The rates applicable are set out in the table on the following page together with a general guide to the qualifications and experience of staff engaged in administration and the role they undertake in the administration. The hourly rates charged encompass the total cost of providing professional services and are not comparable to an hourly wage rate.

At 30 June 2021, we undertook a review of our hourly rates and determined that it was appropriate to make a minor amendment to our schedule of hourly rates. We have sought to simplify the schedule and have merged the rates charged by the Appointee and Principal rates into one milestone. We have determined that this is appropriate, as there is no difference between the relevant experience and expertise between the appointed administrator and other Principals of the Firm who may be consulted on an appointment.

Title	Description	Hourly Rates (ex GST)
Principal/Appointee	A Liquidator and/or Registered Trustee. A senior accountant with over 10 years' experience who brings specialist skills and experience to the appointment. Leads the team carrying out the appointment.	\$680
Director	An accountant with more than 10 years' experience. May be a Registered Liquidator. Fully qualified and able to control all aspects of an appointment. May have specialist industry knowledge or skills. Assists with all facets of appointment.	\$570
Senior Manager	An accountant with more than 7 years' experience. Qualified and answerable to the Team Leader. Self-sufficient in completing and planning all aspects of large appointments.	\$525
Manager	An accountant with at least 6 years' experience. Typically qualified with well-developed technical and commercial skills. Controls and plans all aspects of medium to larger appointments, reporting to the Team Leader.	\$505
Supervisor	An accountant with more than 4 years' experience. Typically qualified with sound knowledge of insolvency principles and developing commercial skill. Assists to plan and control specific tasks on medium to larger appointments. Often undertaking post qualification study specialising in Insolvency and Reconstruction.	\$420
Senior 1	An accountant with more than 2 years' experience. Typically, a graduate undertaking study leading to professional qualification as a Chartered Accountant or CPA. Able to complete work on appointments with limited supervision.	\$360
Senior 2	An accountant with less than 2 years' experience. Typically, a graduate who has commenced study leading to professional qualifications. Able to complete many tasks on medium to large appointments under supervision.	\$290
Intermediate 1	An accountant with less than 2 years' experience. Typically, a graduate and commencing study for qualifications. Able to complete multiple tasks on smaller to medium appointments under supervision.	\$260
Intermediate 2	An accountant with less than 1 years' experience. A trainee undertaking degree with an accountancy major. Assists in the appointment under supervision.	\$235
Senior Administration	Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.	\$220
Junior Administration	Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.	\$150

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**ENA Development  
Pty.Ltd.  
(In Liquidation)  
ACN 105 235 363**

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**Annexure "E"  
Remuneration Approval Report**

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# Remuneration Approval Report

**ENA Development Pty. Ltd.**  
(In Liquidation)  
("the Company")

ACN 105 235 363

27 April 2022

Peter Krejci

Novabrif Pty Ltd ABN 61 643 013 610  
Level 30, Australia Square, 264 George Street, Sydney NSW 2000  
GPO Box 7079, Sydney NSW 2001  
Phone (02) 8263 2300  
Facsimile (02) 8263 2399  
Email: [info@brifnsw.com.au](mailto:info@brifnsw.com.au)  
Website: [www.briferrier.com.au](http://www.briferrier.com.au)

**BRI Ferrier**

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## 1 EXECUTIVE SUMMARY

I am asking creditors to approve remuneration of \$181,610.00 (excl. GST) and disbursements of \$5,000.00 (excl. GST).

Details of remuneration and disbursements can be found in section 3 and 4 of this report.

I am asking creditors to approve my remuneration via a proposal without a meeting.

In my Initial Remuneration Notice dated 24 February 2022 I estimated that the total cost of this Liquidation was to be \$150,000 to \$200,000 (excl. GST). This original estimate will be exceeded due to the liquidation being more complicated than initially anticipated for the following reasons:

- Extensive work has been required in recovering available books and records of the Company from third parties due to current and former officers of the Company being uncooperative with the Liquidator's requests and enquiries;
- More work than anticipated in obtaining ROCAPs from the Alternative Directors and following up due to the incomplete nature of the ROCAPs
- Obtaining assistance from ASIC due to non-compliance from Director and Alternative Directors in assisting the Liquidator with his enquiries;
- Reviewing and responding to on-going legal proceedings together with attendance at Court; and
- Reviewing substantial related-party creditor claims and requesting additional supporting documentation.

I now estimate that the total cost of this Liquidation to be \$280,000 to \$350,000 (excl. GST).

## 2 DECLARATION

I have undertaken an assessment of this remuneration and disbursement claim in accordance with the law and applicable professional standards. I am satisfied that the remuneration and disbursements claimed are necessary and proper.

I have reviewed the work in progress report for the Liquidation to ensure that remuneration is only being claimed for necessary and proper work performed and no adjustment was necessary.



### 3 REMUNERATION SOUGHT

The remuneration we are asking creditors to approve is as follows:

For	Period	Amount \$ (excl. GST)	Rates	When it will be drawn
Work I have already done	27 January 2022 to 22 April 2022	\$181,610.00	Provided in my Explanation of Hourly Rates dated 27 April 2022	When funds are available
Future Work	23 April 2022 to conclusion	\$100,000.00	Provided in my Explanation of Hourly Rates dated 27 April 2022	It will be drawn when incurred, when funds are available
TOTAL		\$281,610.00 (excl. GST)		

Details of the work already completed for the period 27 January 2022 to 22 April 2022 and future work that I intend to do are included at Schedule A.

Actual resolutions to be put to the meeting are included at Schedule C and D for your information. These resolutions also appear in the proposal without a meeting form provided to you.

### 4 DISBURSEMENT SOUGHT

I am not required to seek creditor approval for costs paid to third parties or where I am recovering a cost incurred on behalf of the administration, but I must provide details to creditors. I have not paid any such costs to date.

I am required to obtain creditor's consent for the payment of a disbursement where I, or a related entity of myself, may directly or indirectly obtain a profit.

For more information about disbursements, please refer to the Initial Remuneration Notice dated 27 April 2022.

The disbursements I would like creditors to approve is as follows:

For	Period	Amount \$ (excl. GST)
Disbursements I have already incurred	27 January 2022 to 22 April 2022	\$902.00
Future disbursements to a capped amount	23 April 2022 to conclusion	\$4,098.00
TOTAL		\$5,000.00

Details of the disbursements incurred, and future disbursements are included at Schedule D. Actual resolutions to be put to the meeting are also included at Schedule D. These resolutions also appear in the proxy form for the meeting provided to you.

## 5 LIKELY IMPACT ON DIVIDENDS

The Corporations Act sets the order of payment of claims against the Company, and it provides for remuneration of the Liquidator to be paid in priority to other claims. This ensures that when there are sufficient funds, the Liquidator receives payment for the work done to recover assets, investigate the Company's affairs, report to creditors and ASIC and distribute any available funds. Even if creditors approve my remuneration, this does not guarantee that I will be paid, as I am only paid if sufficient assets are recovered.

Any dividend to creditors will also be impacted by the amount of assets that I am able to recover, and the amount of creditor claims that are admitted to participate in any dividend, including any claims by priority creditors such as employees.

I am unable to provide a dividend estimate of any certainty at this stage of the Liquidation. If I do declare a dividend, any creditor whose claim has not yet been admitted will be contacted and asked to submit a proof of debt.

## 6 QUERIES & INFORMATION SHEET

If you have any queries in relation to the information in this report, please contact my office.

You can also 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 <http://www.asic.gov.au> (search for INFO 85).

Further supporting documentation for my remuneration claim can be provided to creditors on request.

## 7 ATTACHMENTS

Schedule A – Details of work

Schedule B – Time spent by staff on each major task

Schedule C – Resolutions

Schedule D – Disbursements

## SCHEDULE A – DETAILS OF WORK

<b>Company</b>	ENA Development Pty. Ltd. (In Liquidation)	<b>Period From</b>	27 January 2022	<b>To</b>	Conclusion
<b>Practitioner</b>	Peter Krejci	<b>Firm</b>	BRI Ferrier		
<b>Administration Type</b>	Court Appointed Liquidation				

		Tasks	
		Work already completed (excl. GST)	Future work (excl. GST)
<b>Period</b>		<b>27 January 2022 to 22 April 2022</b>	<b>23 April 2022 to Conclusion</b>
<b>Amount (excl. GST)</b>		<b>\$181,610.00</b>	<b>\$100,000.00</b>
Task Area	General Description		
<b>Assets</b>		<b>25.0 hours \$10,309.50</b>	<b>\$15,000.00</b>
	Bank Accounts	Circular to banks Requesting sweep of cash at bank	Correspondence with banks
	Shares	Tasks associated with identifying shareholding held by the Company Conducting valuations in respect to the number of shareholdings Maintaining schedule in respect to movement in shareholding values Correspondence with share registries in respect to balances Correspondence with CommSec in regard to share portfolio Requesting additional documents from CommSec and share registries Internal discussions in regard to Company shareholdings	Further tasks associated with identifying shareholdings held by the Company Tasks associated with realising Company shareholdings
	Leasing	Conducting statutory searches Internal discussions in regard to leased premises	Liaising with lessors Tasks associated with disclaiming leases, if required

Task Area	General Description		
	Other Assets	Tasks associated with identifying real property Tasks associated with identifying other assets	Tasks associated with realising other assets
Creditors		<b>91.0 hours</b> <b>\$34,554.00</b>	<b>\$20,000.00</b>
	Creditor Reports	Preparing Initial Report to Creditors Preparation of necessary annexures for Initial Report to Creditors Preparing this Statutory Report to Creditors Preparation of necessary annexures for Statutory Report to Creditors Internal discussions regarding this Statutory Report to Creditors	Finalisation and issuance of Statutory Report to Creditors Prepare further report to creditors, if required Preparation of necessary annexures
	Dealing with proofs of debt	Receipting and filing POD when not related to a dividend Requesting further supporting documentation in respect to PODs received	Receipting and filing POD when not related to a dividend
	Proposal to Creditors	Preparing proposal notices and voting forms Reviewing votes and determining outcome of proposal Preparation and lodgement of proposal outcome with ASIC	Reviewing votes and determining outcome of proposal Preparation and lodgement of proposal outcome with ASIC
	Creditor Enquiries	Receive and respond to creditor enquiries Review and prepare initial correspondence to creditors and their representatives Documenting Compiling information requested by creditors	Receive and respond to creditor enquiries Receive and follow up creditor enquiries by telephone Documenting Review and prepare correspondence to creditors and their representatives by facsimile, email and post Compiling information requested by creditors
Investigation		<b>207.9 hours</b> <b>\$86,660.50</b>	<b>\$55,000.00</b>
	Conducting Investigation	Liaising with the Petitioning Creditor and their solicitor	Collection and review of company books and records

Task Area	General Description		
		<p>to obtain background of the Company</p> <p>Review Company's books and records</p> <p>Conducting and summarising statutory searches</p> <p>Correspondence with legal firms to obtain information for the Company</p> <p>Correspondence with the Company's accountant to obtain information</p> <p>Follow up with solicitors and accountants to obtain books and records of the Company</p> <p>Review of searches and court documentation</p> <p>Liaising with Strata Body</p> <p>Review of pre-appointment bank statements</p> <p>Conducting investigations in respect to related-party Companies</p> <p>Review of ENA Trust</p> <p>Preparation of Investigation program</p> <p>Review and preparation of narrative of business nature and history</p> <p>Conducting and summarising statutory searches</p> <p>Preparation of comparative financial statements</p> <p>Preparation of deficiency statement</p> <p>Discussion with Alternative Director in relation to gaining access to the Company's books and records</p> <p>Drafting notices to parties pursuant to s530B of the Act</p> <p>Correspondence with the Company's employees to obtain information</p> <p>Correspondence with ASIC to receive assistance in obtaining Company's books and records and Report on</p>	<p>Follow up with solicitors and accountants to obtain books and records of the Company</p> <p>Review of voidable transaction claims</p> <p>Review of insolvent trading claims</p> <p>Preparation of further comparative of financial statements</p> <p>Updating of deficiency statement</p> <p>Liaising with Directors regarding certain transactions</p> <p>Lodgement of investigation with the ASIC</p> <p>Further correspondence with ASIC to receive assistance in obtaining Company's books and records</p> <p>Preparation and lodgement of supplementary report, if required</p>

Task Area	General Description		
		Company Affairs and Property Review of ROCAPs submitted	
	ASIC reporting	Preparing statutory investigation reports Liaising with ASIC regarding assistance Provide updates and correspond with ASIC in relation to prosecution statements submitted	Preparing statutory investigation reports Liaising with ASIC regarding prosecution statements and books and records received
	Litigation/ Recoveries	Liaising with solicitors Correspondence with solicitor regarding legal matters to progress the Liquidation Preparation and review of affidavits for legal proceedings Liaising with solicitor regarding Company's cross-claim Review Court documentation Review previous judgement and proceedings Attendance at Court for proceedings	Correspondence with Law Firm Review Court documentation Attendance at Court regarding for proceedings Review previous judgement and proceedings
<b>Employees</b>		<b>5.5 hours</b> <b>\$2,207.50</b>	<b>\$1,000.00</b>
	Employees enquiry and issues	Preparing correspondence to employees regarding termination of employment Receipting and filing PODs received from employees	Correspondence with employees Any other tasks associated with employees
<b>Administration</b>		<b>139.4 hours</b> <b>\$47,878.50</b>	<b>\$9,000.00</b>
	ASIC Forms and lodgements	Preparing and lodging ASIC forms including 505 Preparing and lodging ASIC advert regarding notice of appointment	Preparing and lodging ASIC forms including 5602 and 5603 Correspondence with ASIC regarding statutory forms

Task Area	General Description		
	Books and records/ storage		Dealing with books and records
	Correspondence	Preparing and issuing day one correspondences Preparing and issuing letter to Directors regarding their obligations Preparing responses to day one correspondences	Correspondences regarding the Company
	Document maintenance/file review/checklist	Filing of documents File review Updating checklists	Filing of documents File review Updating checklists
	Insurance	Initial correspondence with insurer regarding insurance requirements Reviewing insurance policies	Correspondence with insurer regarding initial and ongoing insurance requirements
	ATO and other statutory reporting	Notification of appointment	Preparing BAS
	Planning / Review	Discussion regarding status of administration	Discussion regarding status of administration
	Finalisation		Notifying ATO of finalisation Cancelling ABN/GST/PAYG registration Completing checklists Finalising WIP

## SCHEDULE B – TIME SPENT BY STAFF ON MAJOR TASKS (WORK ALREADY COMPLETED)

**ENA Development Pty. Ltd. (In Liquidation)**  
**ACN 105 235 363**  
**For the period 27 January 2022 to 22 April 2022**

Staff Classification	Name	Hourly Rate (\$, ex GST)	Administration		Assets		Creditors		Investigation		Employees		Total	
			Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Appointee	Peter Krejci	680	3.0	2,040.00	-	-	-	-	6.8	4,624.00	-	-	9.8	6,664.00
Principal	John Keenan	680	0.6	408.00	-	-	-	-	0.2	136.00	-	-	0.8	544.00
Director	David Cocker	570	11.3	6,441.00	2.8	1,596.00	11.5	6,555.00	52.1	29,697.00	0.2	114.00	77.9	44,403.00
Supervisor	Jack Li	420	38.7	16,254.00	16.8	7,056.00	34.9	14,658.00	69.7	29,274.00	2.7	1,134.00	162.8	68,376.00
Supervisor	Savio Monis	420	14.8	6,216.00	2.1	882.00	15.5	6,510.00	23.5	9,870.00	1.9	798.00	57.8	24,276.00
Intermediate 1	Jenny Kwok	260	3.0	780.00	-	-	-	-	0.1	26.00	-	-	3.1	806.00
Intermediate 1	Mamata Giri	260	0.3	78.00	-	-	-	-	-	-	-	-	0.3	78.00
Intermediate 2	Max Florian	235	55.8	13,113.00	3.3	775.50	28.6	6,721.00	54.9	12,901.50	0.5	117.50	143.1	33,628.50
Intermediate 2	Patrick Mao	235	0.5	117.50	-	-	-	-	-	-	-	-	0.5	117.50
Senior Administration	Sonia Stelmach	220	0.4	88.00	-	-	-	-	-	-	-	-	0.4	88.00
Senior Administration	Jessica Mula	220	9.9	2,178.00	-	-	0.5	110.00	0.6	132.00	0.2	44.00	11.2	2,464.00
Junior Administration	Sarita Gurung	150	1.1	165.00	-	-	-	-	-	-	-	-	1.1	165.00
<b>Total</b>			<b>139.4</b>	<b>47,878.50</b>	<b>25.0</b>	<b>10,309.50</b>	<b>91.0</b>	<b>34,554.00</b>	<b>207.9</b>	<b>86,660.50</b>	<b>5.5</b>	<b>2,207.50</b>	<b>468.8</b>	<b>181,610.00</b>
												GST		18,161.00
												<b>Total (incl GST)</b>		<b>199,771.00</b>
<b>Average Hourly Rate</b>			<b>343.46</b>	<b>412.38</b>	<b>379.71</b>	<b>416.84</b>	<b>401.36</b>	<b>387.39</b>						



## SCHEDULE C – RESOLUTIONS

I will be seeking approval of the following resolutions to approve my remuneration and disbursements. Details to support these resolutions are included in section 3 and 4 and in the attached Schedules.

### **Resolution 1: Liquidators' Remuneration for the period 27 January 2022 to 22 April 2022**

*“That the remuneration of the Liquidator, his partner and staff for the period 27 January 22 to 22 April 2022, be calculated on a time basis in accordance with the rates of charge annexed to the Liquidator’s Report to the Creditors dated 27 April 2022, be fixed and approved at \$181,610.00 (excl. GST), and that the Liquidator be authorised to draw that amount as required.”*

### **Resolution 2: Liquidator’s Remuneration for the period 23 April 2022 to Conclusion**

*“That the remuneration of the Liquidator, his partners and staff for the period 23 April 2022 to the conclusion of the Liquidation, be calculated on a time basis in accordance with the rates of charge annexed to the Liquidator’s Initial Report to Creditors dated 27 April 2022 and approved to an interim cap of \$100,000.00 (plus GST) and that the Liquidator be authorised to draw that amount as and when incurred.”*

### **Resolution 3: Early Destruction of Books and Records**

*“That subject to the consent of the Australian Securities & Investment Commission, the Liquidator be approved to destroy the books and records of the Company at any time after the dissolution of the Company.”*

## SCHEDULE D – DISBURSEMENTS

Disbursements are divided into three types:

- Externally provided professional services - these are recovered at cost. An example of an externally provided 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 charge 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.

I advise that to date; I have not paid any disbursements incurred during this Liquidation by my Firm.

I am not obliged to seek creditor approval for disbursements paid to third parties, but must account to creditors, this includes providing details of the basis of charging for these types of disbursements to creditors as part of the Remuneration Approval Report. I have incurred the following disbursements paid to third parties:

Disbursement Type	Rate	Amount (\$, excl GST)
Externally provided non-professional costs		
Postage	At cost	127.12
Statutory Searches	At cost	774.88
	<b>TOTAL</b>	<b>902.00</b>

I am required to seek creditor approval for internal disbursements where there could be a profit or advantage. Accordingly, I will be seeking approval from creditors for the following resolution:

**Resolution 4: Liquidator's Internal Disbursements for the period 27 January 2022 to Conclusion**

*"That the Liquidator be allowed internal disbursements for the period 27 January 2022 to the conclusion of the Liquidation at the rates of charge annexed to the Liquidator's Remuneration Approval Report dated 27 April 2022, up to an amount of \$5,000.00 (plus GST) and that the Liquidator be authorised to draw that amount as accrued."*

Future disbursements provided by my Firm will be charged to the administration on the following basis:

Disbursement Type	Rate (excl. GST)
Externally provided professional services	At cost
Externally provided non-professional costs	At cost
Internal disbursements	
ASIC Charges for appointments and notifiable events	At cost
Faxes and Photocopying	\$0.25 per page
Postage	At cost
Staff vehicle use	In accordance with ATO mileage allowance

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The logo for BRI Ferrier, featuring the text "BRI Ferrier" in white on a dark grey background, with a green triangle pointing upwards and to the right.

**BRI Ferrier**

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**ENA Development  
Pty.Ltd.  
(In Liquidation)  
ACN 105 235 363**

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**Annexure "F"  
Proposal without Meeting Forms**

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NOTICE OF PROPOSAL TO CREDITORS

Dated: 27 April 2022

Voting Poll Closes: 19 May 2022

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ENA DEVELOPMENT PTY. LTD. (IN LIQUIDATION)  
ACN 105 235 363 ("the Company")

**Proposal No. 1 for creditor approval**

*"That the remuneration of the Liquidator, his partners and staff for the period 27 January 2022 to 22 April 2022, be calculated on a time basis in accordance with the rates of charge annexed to the Liquidator's Statutory Report to Creditors dated 27 April 2022, be fixed and approved at \$181,610.00 (plus GST) and that the Liquidator be authorised to draw that amount."*

**Reasons for the proposal and the likely impact it will have on creditors if it is passed**

- A Liquidator is entitled to be fairly remunerated for undertaking statutory and other duties, including reporting obligations in acting as a liquidator.
- I am unable to pay my remuneration without the approval of the Committee of Inspection (if one has been appointed), Creditors, or the Court.
- Approval by Creditors is efficient and timely and is less costly than an application to the Court.
- Approval of my remuneration will allow me to progress further investigations in a timely manner to ensure the prospect of any dividends can be maximised.

**Vote on the Proposal No. 1**

Please select the appropriate Yes, No or Object box referred to below with a  to indicate your preferred position.

- Yes            I approve the proposal
- No              I do not approve the proposal
- Object          I object to the proposal being resolved without a meeting of creditors

For your vote to count, your claim against the Company must have been admitted for the purposes of voting by the Liquidator. Please select the option that applies:

- I have previously submitted a proof of debt form and supporting documents
- I have **enclosed** a proof of debt form and supporting documents with this proposal form

**Creditor details**

Name of creditor

Address

ABN (if applicable)

Contact number

Email address

I am **not** a related creditor of the Company

I am a related creditor of the Company\*

relationship: \_\_\_\_\_

\*eg Director, relative of Director, related company, beneficiary of a related trust.

**Name of creditor /  
authorised person:**

\_\_\_\_\_

**Signature:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

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For your vote to count, you **must complete** this document and return it together with any **supporting documents** by no later than close of business on **19 May 2022**, by email to Max Florian at [mflorian@brifnsw.com.au](mailto:mflorian@brifnsw.com.au). Should you have any queries in relation to this matter, please contact Max Florian on (02) 8263 2300.

BRI FERRIER  
Level 30  
Australia Square  
264 George Street  
Sydney NSW 2000

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NOTICE OF PROPOSAL TO CREDITORS

Dated: 27 April 2022

Voting Poll Closes: 19 May 2022

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ENA DEVELOPMENT PTY. LTD. (IN LIQUIDATION)  
ACN 105 235 363 ("the Company")

**Proposal No. 2 for creditor approval**

*"That the remuneration of the Liquidator, his partners and staff for the period 23 April 2022 to the conclusion of the Liquidation, be calculated on a time basis in accordance with the rates of charge annexed to the Liquidator's Statutory Report to Creditors dated 27 April 2022 and approved to an interim cap of \$100,000.00 (plus GST) and that the Liquidator be authorised to draw that amount as and when incurred."*

**Reasons for the proposal and the likely impact it will have on creditors if it is passed**

- A Liquidator is entitled to be fairly remunerated for undertaking statutory and other duties, including reporting obligations in acting as a liquidator.
- I am unable to pay my remuneration without the approval of the Committee of Inspection (if one has been appointed), Creditors, or the Court.
- Approval by Creditors is efficient and timely and is less costly than an application to the Court.
- Approval of my remuneration will allow me to progress further investigations in a timely manner to ensure the prospect of any dividends can be maximised.

**Vote on the Proposal No. 2**

Please select the appropriate Yes, No or Object box referred to below with a  to indicate your preferred position.

- Yes            I approve the proposal
- No              I do not approve the proposal
- Object          I object to the proposal being resolved without a meeting of creditors

For your vote to count, your claim against the Company must have been admitted for the purposes of voting by the Liquidator. Please select the option that applies:

- I have previously submitted a proof of debt form and supporting documents
- I have **enclosed** a proof of debt form and supporting documents with this proposal form

**Creditor details**

Name of creditor

Address

ABN (if applicable)

Contact number

Email address

I am **not** a related creditor of the Company

I am a related creditor of the Company\*

relationship: \_\_\_\_\_

\*e.g., Director, relative of Director, related company, beneficiary of a related trust.

**Name of creditor /  
authorised person:**

**Signature:**

**Date:**

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For your vote to count, you **must complete** this document and return it together with any **supporting documents** by no later than close of business on **19 May 2022**, by email to Max Florian at [mflorian@brifnsw.com.au](mailto:mflorian@brifnsw.com.au). Should you have any queries in relation to this matter, please contact Max Florian on (02) 8263 2300.

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NOTICE OF PROPOSAL TO CREDITORS

Dated: 27 April 2022

Voting Poll Closes: 19 May 2022

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ENA DEVELOPMENT PTY. LTD. (IN LIQUIDATION)  
ACN 105 235 363 ("the Company")

**Proposal No. 3 for creditor approval**

*"That subject to the consent of the Australian Securities & Investment Commission, the Liquidator be approved to destroy the books and records of the Company at any time after the dissolution of the Company."*

**Reasons for the proposal and the likely impact it will have on creditors if it is passed**

- A Liquidator must retain the books and records of the Company for a period of five (5) years from the end of the Liquidation.
- To minimise the costs of storage, I am able to destroy the books and records at any time after the end of the Liquidation, with the consent of Creditors and the Australian Securities and Investments Commission.

**Vote on the Proposal No. 3**

Please select the appropriate Yes, No or Object box referred to below with a  to indicate your preferred position.

- Yes  I approve the proposal
- No  I do not approve the proposal
- Object  I object to the proposal being resolved without a meeting of creditors

For your vote to count, your claim against the Company must have been admitted for the purposes of voting by the Liquidator. Please select the option that applies:

- I have previously submitted a proof of debt form and supporting documents
- I have **enclosed** a proof of debt form and supporting documents with this proposal form

**Creditor details**

Name of creditor

Address

ABN (if applicable)

Contact number

Email address

I am **not** a related creditor of the Company

I am a related creditor of the Company\*

relationship: \_\_\_\_\_

\*e.g., Director, relative of Director, related company, beneficiary of a related trust.

**Name of creditor /  
authorised person:**

**Signature:**

**Date:**

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For your vote to count, you **must complete** this document and return it together with any **supporting documents** by no later than close of business on **19 May 2022**, by email to Max Florian at [mflorian@brifnsw.com.au](mailto:mflorian@brifnsw.com.au). Should you have any queries in relation to this matter, please contact Max Florian on (02) 8263 2300.

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NOTICE OF PROPOSAL TO CREDITORS

Dated: 27 April 2022

Voting Poll Closes: 19 May 2022

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ENA DEVELOPMENT PTY. LTD. (IN LIQUIDATION)  
ACN 105 235 363 ("the Company")

**Proposal No. 4 for creditor approval**

*"That the Liquidator be allowed internal disbursements for the period 27 January 2022 to the conclusion of the Liquidation at the rates of charge annexed to the Liquidator's Remuneration Approval Report dated 27 April 2022, up to an amount of \$5,000.00 (plus GST) and that the Liquidator be authorised to draw that amount as accrued."*

**Reasons for the proposal and the likely impact it will have on creditors if it is passed**

- A Liquidator is entitled to be fairly remunerated for undertaking statutory and other duties, including reporting obligations in acting as a liquidator.
- I am unable to pay my internal disbursements without the approval of the Committee of Inspection (if one has been appointed), Creditors, or the Court.
- Approval by Creditors is efficient and timely and is less costly than an application to the Court.
- Approval of my internal disbursements will allow me to progress further investigations in a timely manner to ensure the prospect of any dividends can be maximised.

**Vote on the Proposal No. 4**

Please select the appropriate Yes, No or Object box referred to below with a  to indicate your preferred position.

- Yes  I approve the proposal
- No  I do not approve the proposal
- Object  I object to the proposal being resolved without a meeting of creditors

For your vote to count, your claim against the Company must have been admitted for the purposes of voting by the Liquidator. Please select the option that applies:

- I have previously submitted a proof of debt form and supporting documents
- I have **enclosed** a proof of debt form and supporting documents with this proposal form

**Creditor details**

Name of creditor

Address

ABN (if applicable)

Contact number

Email address

I am **not** a related creditor of the Company

I am a related creditor of the Company\*

relationship: \_\_\_\_\_

\*e.g., Director, relative of Director, related company, beneficiary of a related trust.

**Name of creditor /  
authorised person:**

**Signature:**

**Date:**

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For your vote to count, you **must complete** this document and return it together with any **supporting documents** by no later than close of business on **19 May 2022**, by email to Max Florian at [mflorian@brifnsw.com.au](mailto:mflorian@brifnsw.com.au). Should you have any queries in relation to this matter, please contact Max Florian on (02) 8263 2300.

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The logo for BRI Ferrier, featuring the text "BRI Ferrier" in white on a dark grey background, with a green triangle pointing upwards and to the right.

**BRI Ferrier**

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**ENA Development  
Pty.Ltd.  
(In Liquidation)  
ACN 105 235 363**

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**Annexure "G"  
ASIC Information Sheet – Insolvency  
Information for Directors,  
Employees, Creditors and  
Shareholders**

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**ASIC**

Australian Securities & Investments Commission

## Insolvency information for directors, employees, creditors and shareholders

This information sheet (INFO 39) lists ASIC's information sheets for directors, employees, creditors and shareholders affected by a company's insolvency.

We have produced these with endorsement from the Australian Restructuring Insolvency & Turnaround Association (ARITA).

The information sheets give a basic understanding of the three most common company insolvency procedures – liquidation, voluntary administration and receivership – as well as the independence requirements for external administrators and approving external administrator remuneration. There is also a glossary of commonly used insolvency terms.

### List of information sheets

- [INFO 41](#) Insolvency: A glossary of terms
- [INFO 42](#) Insolvency: A guide for directors
- [INFO 43](#) Insolvency: A guide for shareholders
- [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 74](#) Voluntary administration: A guide for creditors
- [INFO 75](#) Voluntary administration: A guide for employees
- [INFO 84](#) Independence of external administrators: A guide for creditors
- [INFO 85](#) Approving fees: A guide for creditors

### Where can I get more information?

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

This is **Information Sheet 39 (INFO 39)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

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The logo for BRI Ferrier features the company name in white, bold, sans-serif font on a dark grey rectangular background. A green triangle is positioned at the bottom right corner of the grey rectangle.

**BRI Ferrier**

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**ENA Development  
Pty.Ltd.  
(In Liquidation)  
ACN 105 235 363**

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**Annexure "H"  
ARITA Information Sheet –  
Offences, Recoverable Transactions,  
and Insolvent Trading**

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# Creditor Information Sheet

## Offences, Recoverable Transactions and Insolvent Trading



### Offences

A summary of offences under the Corporations Act that may be identified by the administrator:

180	Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.
181	Failure to act in good faith.
182	Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of the officer's position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.
198G	Performing or exercising a function or power as an officer while a company is under administration.
206A	Contravening a court order against taking part in the management of a corporation.
206A, B	Taking part in the management of corporation while being an insolvent, for example, while bankrupt.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of an auditor.
314-7	Failure to comply with requirements for the preparation of financial statements.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to the administrator.
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.

### Recoverable Transactions

#### *Preferences*

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under the Corporations Act.

#### *Uncommercial Transaction*

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to:

- the benefit or detriment to the company;
- the respective benefits to other parties; and,
- any other relevant matter.



To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years.

The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

### **Unfair Loan**

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only must be entered into before the winding up began.

### **Arrangements to avoid employee entitlements**

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person. It will only be necessary to satisfy the court that there was a breach on the balance of probabilities. There is no time limit on when the transaction occurred.

### **Unreasonable payments to directors**

Liquidators have the power to reclaim '*unreasonable payments*' made to directors by companies prior to liquidation. The provision relates to payments made to or on behalf of a director or close associate of a director. The transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

### **Voidable charges**

Certain charges over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six months of its creation.

## **Insolvent trading**

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they did so expect;
- they did not take part in management for illness or some other good reason; or
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

**Important note:** This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.