

18 March 2019

**TO THE CREDITOR AS ADDRESSED**

Dear Sir/Madam

**BAROKES PTY LTD  
(IN LIQUIDATION)  
ACN 079 714 579 ("THE COMPANY")**

I refer to my appointment as Joint and Several Liquidator of the Company on 19 December 2018.

Please find enclosed the following documents for your information and completion:

Item #	Item	Description	Further Action Required by you
1	Report to Creditors under Insolvency Practice Rule 70-40 of the Corporations Act 2001	The purpose of this report is to detail our recoveries and investigations to date and advise whether a dividend is likely.	No
2	Remuneration Request Approval Report	This document details our retrospective and prospective time costs with respect to the administration of the Liquidation.	No
3	Proposals without a meeting form – Retrospective Remuneration Approval	This document must be returned to us by <b>18 April 2019</b> via email <a href="mailto:jmay@brifvic.com.au">jmay@brifvic.com.au</a> for your vote to count.	Yes
4	Information sheet – Proposals without a meeting	This is an information sheet to assist you in understanding what a 'Proposal without a meeting' is.	No
5	Proof of Debt ("POD") form	You must also provide information about what the company owes you and evidence to support your claim. Please complete and return POD form via email <a href="mailto:jmay@brifvic.com.au">jmay@brifvic.com.au</a> with your supporting documents.	Yes Include supporting documentation

Should you have any further queries in this matter, please contact Joshua May of this office on 03 9622 1800.

Yours faithfully



**JAMES KOUTSOUKOS**  
Joint and Several Liquidator

Koutsoukos | Coyne | Silvia | Krejci | Cummins | Karam | Ferrier (Consultant) | Green (Consultant)

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# Report to Creditors

under Insolvency Practice Rule 70-40

## Barokes Pty Ltd

(IN LIQUIDATION)

ACN 079 714 579

("The Company")

18 March 2019

James Koutsoukos and David Coyne  
Joint and Several Liquidator

BRI Ferrier ABN 97 128 947 848

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**BRI Ferrier**

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## **1 INTRODUCTION**

David Coyne and I were appointed Joint and Several Liquidators on 19 December 2018 pursuant to an Order of the Supreme Court of Victoria.

The Company was wound up on just and equitable grounds following various legal proceedings relating to a dispute between the shareholders.

The purpose of this Report to Creditors is to advise you of the following:

- The estimated amounts of Assets and Liabilities of the Company;
- The progress of the Liquidation, including:
  - i. inquiries that have been undertaken to date;
  - ii. possible further inquiries and/or recovery actions (if any);
- Our opinion as to what happened to the business of the Company;
- The likelihood of a dividend being paid in the liquidation once the affairs have been fully wound up; and
- Our proposed remuneration with respect to administering the Liquidation.

This report should be read in conjunction with our report to creditors dated 11 January 2019. A copy of this report may be provided upon request.

## **2 ESTIMATED AMOUNTS OF ASSETS AND LIABILITIES**

Set out below is a summary from the Report on Company's Activity and Property ("ROCAP") submitted to us by the Company's Australian directors, Mr Steve Barics and Mr Greg Stokes, and the ROCAP submitted by the Company's Japanese directors, Mr Tesuo Yamashita and Mr Yoshitaka Ikeda, showing the estimated realisable values of the assets and liabilities.

	Japanese Directors' Valuation (\$)	Australian Directors' Valuation (\$)	Liquidators' Valuation (\$)	Notes
<b>ASSETS</b>				
Cash at Bank	283,583	442,211	213,918	2.1.1
Stock	299,911	260,000	259,000	2.1.2
Debtors	596,164	439,970	628,957	2.1.3
Plant and Equipment	27,330	10,450	30,100	2.1.4
Intellectual Property	Uncertain	4,352,462	Withheld	2.1.5
<b>Total Assets</b>	<b>1,206,988</b>	<b>5,505,093</b>	<b>1,131,975</b>	
<b>LIABILITIES</b>				
Secured Claims	Uncertain	Uncertain	72,779	2.2.1
Priority Claims	89,280	1,442,258	48,198	2.2.2
Unsecured claims				
Statutory Creditors	Uncertain	-	-	2.2.3
Trade Creditors	Uncertain	696,911	914,867	2.2.4
Related Party Creditors	10,818,854	1,618,087	12,392,089	2.2.5
<b>Total Liabilities</b>	<b>10,908,134</b>	<b>3,757,256</b>	<b>13,427,933</b>	
<b>ESTIMATED SURPLUS/ (DEFICIENCY)</b>	<b>(9,701,146)</b>	<b>1,747,837</b>	<b>(12,295,957)</b>	

## 2.1 ASSETS

### 2.1.1 Cash at Bank

The Company operated three (3) Westpac bank accounts and two (2) Mizuho bank accounts. We have since confirmed that the Mizuho accounts are operated by the Company's Japanese subsidiary company.

Subsequent to our appointment, we wrote to all major banks and requested that they undertake a search of their records to locate any accounts held in the name of the Company. We have identified the following accounts:

Bank	Account Type	Balance as at appointment
Westpac	Business One	\$205,503
Westpac	Cash Reserve	\$177
Westpac	Flexi	\$23

We have received the Company's cash at bank and left the accounts open for credit transactions only.

We note that the Company also held a term deposit account with Westpac with respect to the bond for the Company's premises, totalling \$25,382. The landlord has exercised rights to the bond but has not as yet provided us with an accounting of how these funds were applied.

### 2.1.2 Stock

The Company's ROCAPs revealed the book value of the stock totalled \$260,000 as at the date of our appointment.

We engaged Grays Online to conduct a valuation of the stock to assist with the Company's sale of business and assets, discussed in section 3.2.

Our agents have advised the going concern value of the Company's stock was \$259,000. We note that as we are continuing to trade the Company's business, the stock levels have fluctuated.

### **2.1.3 Debtors**

We note that there is a discrepancy between the ROCAPs submitted by the Company's Australian and Japanese directors. The Company's internal accounting software reveals that the Company's debtors total \$1,021,335.

To date, we have collected \$628,957 of debtors.

The Australian directors have advised the Company's internal accounting software incorrectly includes promotional samples that are deducted from debtor invoices or orders that were cancelled.

We do not expect to recover any further debtors.

### **2.1.4 Plant and Equipment**

The Company's ROCAPs revealed plant and equipment ("P&E") had a value of \$10,450 to \$27,330 as at the date of our appointment.

We engaged Grays Online to conduct a valuation of the P&E to assist with the Company's sale of business and assets, discussed in section 3.2.

Our agents have advised the going concern value of the Company's P&E was \$30,100.

### **2.1.5 Intellectual Property**

The book value of the Company's Intellectual Property ("IP") is \$4,356,367.

We note that this is the capitalised cost of registering and maintaining the Company's IP.

As discussed in section 3.2, we are undertaking a sale of the Company's Business and Assets, and further details regarding the IP is subject to confidentiality.

## **2.2 LIABILITIES**

### **2.2.1 Secured Claims**

Subsequent to our appointment, we contacted all parties with a security interest registered against the Company, as summarised below:

Secured Party	Collateral Class	Created On
Amsat Pty Ltd	Other Goods	21/02/2013
Visy Board Proprietary Limited	Other Goods	30/01/2012
Qualia Wine Services Pty Ltd	Other Goods	25/02/2013
Visy	Other Goods	30/01/2014
	Other Goods	30/01/2014
	Other Goods	22/10/2015
The Trustee for the Finrent Unit Trust	Other Goods	9/04/2014
AWS Rentals Pty Ltd	Other Goods	23/10/2014

Visy submitted a claim of \$77,779 and provided documentation with respect to its rights to register security interests against the Company. We obtained legal advice and notified Visy that its security interest does not appear to apply to the Company's stock and proceeds of same. Visy advised that it is reviewing its position.

Finrent and AWS Rentals have provided their agreements with respect to assets hired to the Company, being a photocopier and pallet wrapper, respectively. Finrent and AWS Rentals have not advised of debts owed by the Company.

We have not yet received responses from Amsat or Qualia Wine Services.

### 2.2.2 Priority Claims

We note that there is a discrepancy between the ROCAPs submitted by the Company's Australian and Japanese directors.

Section 556 of the Corporations Act 2001 ("the Act") states that related parties (including Director and their relatives) are Excluded Employees and are only entitled to claim, as a priority, a maximum amount of \$2,000 in respect of unpaid wages and superannuation, and \$1,500 in respect of leave entitlements. In addition, redundancy entitlements of related parties are not entitled to rank as priority claims. Any amounts owed to related parties in excess of these statutory limits will rank equally with all other ordinary unsecured claims, and have been isolated as non-priority components.

We note that three (3) of the four (4) employees are Excluded Employees.

Based on employee claim forms received and the Company's books and records, the Company's employee entitlements are as follows:

Entitlement	Priority Amount (\$)	Excluded Amount (\$)
Unpaid Wages	6,000.00	185,347.58
Superannuation	6,623.67	-
Annual Leave	16,226.91	96,955.33
Long Service Leave	11,321.11	81,555.06
Pay in Lieu of Notice (if applicable)	8,026.24	25,670.05
	<b>48,197.93</b>	<b>389,528.02</b>

The Company's employee entitlements ranking as priority total \$48,198 (subject to Pay in Lieu of Notice).

### 2.2.3 Statutory Creditors

The Company's ROCAP and records do not reveal any outstanding statutory liabilities. The Australian Taxation Office has provided the Running Balance Account, which agrees with the Company's records.

We note that the Company's BAS return for the December 2018 quarter has not been lodged, but is expected to result in a refund to the Company. We are reviewing and seeking advice with respect to the transactions paid in this quarter, discussed further in section 3.1, prior to lodging the outstanding pre-appointment BAS.

### 2.2.4 Trade Creditors

The Company's ROCAP lists fifty-six (56) trade creditors totalling \$728,922.

To date, we have received twenty-six (26) proofs of debt from trade creditors totalling \$846,873.

Therefore, trade creditors are projected to be \$914,867 based on the ROCAP values of the thirty (30) trade creditors who are yet to lodge proof of debt claims.

We note that as we have not yet formerly called for proofs of debt, this figure is subject to change.

### 2.2.5 Related Party Creditors

The ROCAPs and the formal proof of debt claims received to date have revealed the following related party creditors. We advise that we have not adjudicated on the Company's related party claims and our enquiries with respect to these claims are continuing.

Our preliminary comments are as follows:

#### Greire Pty Ltd ("Greire")

Greire's claim of \$1,073,706 consists of the following components:

- Deferred Wages \$920,842
- Japanese Litigation funding \$152,864

We have been provided with documentation, including an Executive Services Agreement ("ESA"), between Mr Greg Stokes and the Company setting out his engagement as the Company's Chief Executive Officer. We have also been provided with the unpaid invoices from Greire that relate to the period November 2015 to July 2017 and July 2018 to October 2018. We are investigating the relationship between Greg Stokes, Greire and the Company to determine the nature and quantum of this claim as it does not appear that Greire has a contractual relationship with the Company.

Greire has claimed that it was also funding litigation with respect to an infringement of the Company's Japanese patent by Daiwa Can Company. On 7 June 2016, Justice Sifris granted leave for the Australian shareholders to pursue Daiwa Can Company with the costs to be paid by the Australian shareholders (KQ and SMS Management Pty Ltd) by way of undertaking to indemnify the Company and held the Company "harmless against costs".



We are reviewing and seeking legal advice with respect to the ESA and the Orders relating to the litigation funding.

We are also preparing a letter to Mr Stokes requesting further information regarding the above.

#### Knights Quest Pty Ltd ("KQ")

KQ is a minority shareholder and is a company controlled by Mr Stokes.

We have been provided with a proof of debt and supporting documentation with respect to a loan of \$100,000 from KQ to the Company for working capital, pursuant to an agreement of the shareholders.

We are yet to identify the amount being deposited into the Company bank account and will request KQ for further details.

#### Daiwa Can Company ("Daiwa")

Daiwa has lodged a claim totalling \$10,828,854 with respect to monies loaned to the Company, as follows:

- Loan Agreement executed on 27 August 2012 for \$6,428,854;
- Loan Agreement executed on 31 October 2012 for \$1,500,000;
- Loan Agreement executed on 5 December 2012 for \$1,500,000; and
- Loan Agreement executed on 22 May 2014 for \$1,400,000.

The Australian shareholders have disputed the loans and have provided us with documentation asserting the loans are in fact share capital.

We have sought legal advice with respect to Daiwa's claim and our preliminary view is that the monies paid by Daiwa to the Company are loans that rank as an unsecured creditor in the Liquidation.

We note that the Excluded Employee entitlements, discussed in section 2.2.2, total \$389,528 and rank as unsecured claims.

## **3 PROGRESS OF THE LIQUIDATION TO DATE**

### **3.1 INVESTIGATIONS**

In accordance with Section 533 of the Corporations Act 2001 ("the Act"), we are required to lodge a report to ASIC regarding whether a person who has taken part in the formation, promotion, administration, management or winding up of the Company may have misapplied or retained any money or property of the company or may have been guilty of any negligence, default, breach of duty or breach of trust in relation to the Company.

Our investigations pursuant to Section 533 of the Act are continuing.

The directors and the Company's accountants have provided with us with books and records including financial reports, Company bank statements and the Company's internal accounting software.

We note that the Company was wound up on just and equitable grounds and that the failure of the Company appears to be attributed to the shareholder dispute.

We note that the Company appears to have no unpaid statutory liabilities and was profitable from 30 June 2016. We refer to Justice Sifris's findings that the Daiwa loans were due and payable on the day the Company was wound up. Our preliminary view therefore is that the Company does not appear to have traded whilst insolvent.

We refer to Section 468(1) of the Act which states "*Any disposition of property of the company, other than an exempt disposition, made after the commencement of the winding up by the Court is, unless the Court otherwise orders, void*".

The commencement of the winding up is considered to be when the Court Order was first made on 20 September 2018 and subsequently stayed.

We have reviewed all of the Company's transactions, including disposal of property and payments, for the period 20 September 2018 to 19 December 2018. We note the majority of the transactions appear to be in the ordinary course of business and provided a benefit to the Company. We are required to apply to the Court to validate these transactions.

We have also identified payments totalling \$283,953 that do not appear to be in the ordinary course of business. It is our view that these payments ought not to be validated by the Court. We have forwarded our preliminary findings to our solicitors to review.

We note transactions entered into after 19 December 2018 with respect to our trading on of the Company's business are exempt as they were entered into by the Liquidators.

We will be writing to creditors separately with respect to the Section 468(1) application in due course.

Any breaches of director duties will be reported to ASIC in accordance with Section 533 of the Act.

Our investigations are continuing.

### **3.2 SALE OF THE COMPANY'S BUSINESS AND ASSETS**

On 29 January 2019, we commenced the sales campaign of the Company's business and assets by advertising in the Australian Financial Review and the globally circulated Financial Times.

We received strong expressions of interest from packaging and wine industry participants.

With the assistance of Company management, we prepared an Information Memorandum and data room of referenced documents detailing the Company's business position and performance, tangible assets, intellectual property and litigation on foot.

Due to the quantity of material for interested parties to review and interest received, we extended the deadline for indicative offers to be provided.

We anticipate that the sale process will be completed by May 2019.

To date, we have received five (5) indicative offers and we are currently reviewing same.

### 3.3 LEGAL PROCEEDINGS & INTELLECTUAL PROPERTY

We have sought to maintain the status quo with respect to the validity and registration of the Company's patents in multiple jurisdictions.

We advise that proceedings were commenced in Australia regarding patent infringements prior to our appointment. These proceedings have been stayed pursuant to Section 471B of the Act which states *"while a company is being wound up in insolvency ... a person cannot begin or proceed with a) a proceeding in a court against the company or in relation to the property of the company; or b) enforcement process in relation to such property; except with the leave of the Court"*.

Proceedings with respect to patent infringements in Japan, discussed in section 2.2.5, were also on foot prior to our appointment. In Germany, proceedings with respect to a negligence claim against the Company's former solicitors regarding the registration of patents was ongoing.

We note that both of these proceedings are continuing.

We have also spent considerable time liaising with the Company's patent attorneys globally with respect to maintaining patent registrations and patent applications.

We have not provided full details due to the commercially sensitive nature.

### 3.4 SUMMARY OF RECEIPTS AND PAYMENTS

#### FOR THE PERIOD FROM 19 DECEMBER 2018 to 28 FEBRUARY 2019

	Gross Amount (\$)
<b>Receipts</b>	
Sales	13,304.05
Sales (WET)	604.20
Sundry Debtors	637,708.42
Cash at Bank	213,918.43
Bank Interest	1,241.76
<b>Total (inc GST)</b>	<b>866,776.86</b>
<b>Payments</b>	
Purchases	334,387.79
Advertising	18,017.41
Bank Charges	237.00
Electricity	533.29
Hire of Equipment	3,755.99
Insurance	2,674.01
Rates (Council)	1,877.80
Rent Paid (Commercial)	28,427.88
Telephone & Fax	2,237.24
Transport / Courier	8,999.41
Gross Wages & Salaries	82,045.56
PAYG Withheld (due but not payable)	(18,850.00)
Stamp Duty	215.11
Other Government Charges	1,580.58
Subsidiary Expenses	10,000.00

Valuers Fees	1,595.00
Legal Fees	33,099.00
Legal Fees (No GST)	52,963.90
Accountant Fees	2,744.50
Liquidators Remuneration	57,361.15
Sub-Contractors	32,291.32
<b>Total (inc GST)</b>	<b>656,193.94</b>
<b>Balance in Hand</b>	<b>229,432.92</b>

As we have carried on the Company's business to maintain its going concern value, we have also generated sales which are due to be received in March and April 2019.

### 3.5 ACTS AND DEALINGS TO BE CARRIED OUT

The following matters remain to be undertaken before completion of the winding up of the Company:

- Complete and lodge investigations with ASIC pursuant to Section 533 of the Act;
- Continue trading the Company's business, including attending to ongoing litigation of the Company's IP;
- Continue to manage and execute Sale of the Company's Business and Assets;
- Continue investigations with respect to Liquidator recoveries, including avoidance of disposition of property; and
- Declaration and distribution of dividend to creditors (including formal adjudication of claims process).

The above list is not exhaustive.

## 4 THE LIKELIHOOD OF A DIVIDEND BEING PAID IN THE LIQUIDATION

A dividend to all classes of creditors is likely, however the quantum and timing of same will be dependent on the outcome of the sale of the Company's Business and Assets.

If a dividend is going to be paid, creditors will be contacted before the distribution occurs and asked to lodge a formal proof of debt if creditors have not previously done so. This formalises creditors' claims in the Liquidation and is used to determine all claims against the Company.

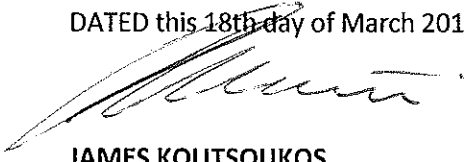
## 5 REMUNERATION APPROVAL NOTICE

A Remuneration Approval Notice is attached for your consideration. We are unable to pay our remuneration without the approval of creditors (either by a proposal without a meeting, or by a meeting) or alternatively, by an application to the Court.

In the interests of keeping costs to a minimum, we are seeking approval of our remuneration by a proposal without a meeting. Information about passing resolutions without a meeting and a voting form is included with this Report.

Should you have any queries in relation to this matter, please contact Joshua May on (03) 9622 1800 or via email to [jmay@brifvic.com.au](mailto:jmay@brifvic.com.au).

DATED this 18<sup>th</sup> day of March 2019.



**JAMES KOUTSOUKOS**  
**JOINT AND SEVERAL LIQUIDATOR**

# Remuneration Request Approval Report

**BAROKES PTY. LTD.**

(IN LIQUIDATION)

ACN 079 714 579

18 March 2019

James Koutsoukos and David Coyne  
Joint and Several Liquidators

BRI Ferrier ABN 97 128 947 848

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**BRI Ferrier**

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## 1 DECLARATION

James Koutsoukos and David Coyne of BRI FERRIER have undertaken a proper assessment of this remuneration claim for our appointment as Joint and Several Liquidators of BAROKES PTY. LTD. in accordance with the law and applicable professional standards. We are satisfied that the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of the Liquidation.

## 2 EXECUTIVE SUMMARY

To date, the following remuneration has been approved and paid in the administration. This remuneration report details approval sought for the following fees:

Period	Report Reference	Amount (\$, ex GST)
<b>Past remuneration approved for the period:</b>		
19 December 2018 to 9 January 2019 (Approval Date: 29 Jan 2019)		\$31,446.50
10 January 2019 to 29 January 2019 (Approval Date: 29 Jan 2019)		\$20,700.00
30 January 2019 to completion (Approval Date: 29 Jan 2019)		\$199,400.00
<b>Total past remuneration approved</b>		<b>\$251,546.50</b>
<b>Total remuneration paid</b>		<b>\$138,198.00</b>
<b>Current remuneration approval sought:</b>		
Resolution #1: 10 January 2019 to 29 January 2019	3.1 & 5	\$32,281.50
<b>Total</b>		<b>\$32,281.50</b>

We previously sought estimated future remuneration of \$20,700 for the period 10 January 2019 to 29 January 2019. We note that we have incurred \$32,281.50 of additional time costs with respect to preserving the value of the Company's intellectual property and adjudicating on creditors' claims for the purposes of voting at the meeting of creditors on 29 January 2019.



### 3 DESCRIPTION OF WORK COMPLETED / TO BE COMPLETED

#### Resolution #1

<b>Company</b>	BAROKES PTY. LTD. (IN LIQUIDATION)	<b>Period From</b>	10/1/19	<b>To</b>	29/1/19
<b>Practitioner</b>	James Koutsoukos David Coyne	<b>Firm</b>	BRI FERRIER		
<b>Administration Type</b>	Court Liquidation				

#### 3.1 REMUNERATION FOR THE PERIOD 10 JANUARY 2019 TO 29 JANUARY 2019

Task Area	General Description	Includes
<b>Assets</b> <b>5.8 hours</b> <b>\$3,335</b>	Sale of Business as a Going Concern	Prepared information memorandum and data room Planned sale process timeline and strategy
<b>Creditors</b> <b>26.5 hours</b> <b>\$10,750.50</b>	Creditor Enquiries	Received and followed up creditor enquiries by telephone Maintained creditor enquiry register Reviewed and prepared correspondence to creditors and their representatives by email and post Reviewed and corresponded with Griere Pty Ltd and Daiwa Can Company regarding their claims and positions
	Creditor reports	Prepared Report to Creditors
	Meeting of Creditors	Prepared meeting notices, proxies and advertisements Sent Notice of Meeting to all known creditors Prepared meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of

Task Area	General Description	Includes
		meeting, Presentation and draft minutes of meeting. Prepared adjudication of proofs of debt for the purposes of voting
Trade On 13.7 hours \$6,444.50	Trade On Management	Liased with suppliers Liased with management and staff Attended site Authorised purchase orders Maintained purchase order registry
Investigation 19.4 hours \$10,242	Conducting investigation	Liased with related party creditors and solicitors with respect to claims Liased with solicitors with respect to agreements on foot Discussions with the external accountant with respect to statutory lodgements
	Litigation / Recoveries	Internal meetings to discuss status of litigation Liased with solicitors regarding proceedings on foot.
Administration 5.1 hours \$1,509.50	Correspondence	
	Bank account administration	Bank account reconciliations
<b>Total 70.5 hrs</b>	<b>Total Cost</b>	<b>\$32,281.50 (plus GST)</b>

#### 4 CALCULATION OF REMUNERATION

The remuneration request is summarised by employee by area of activity on the following page.

**Barokes Pty Ltd (In Liquidation)  
For the period 10 January 2019 to 29 January 2019**

Name	Position	Charge Out Rate		Administration		Assets		Creditors		Investigations		Trade-On		Grand Total	
		Hours	(\$)	Hours	(\$)	Hours	(\$)	Hours	(\$)	Hours	(\$)	Hours	(\$)	Hours	(\$)
James Koutsoukos	Appointee	1.00	575.00	4.60	2,645.00	5.70	3,277.50	6.40	3,680.00	5.40	3,105.00	23.10	13,282.50		
David Coyne	Appointee	-	-	1.20	690.00	4.60	2,645.00	6.70	3,852.50	-	-	12.50	7,187.50		
JK	Senior Manager	-	-	-	-	-	-	5.00	2,300.00	5.00	2,300.00	10.00	4,600.00		
JM	Senior Accountant	0.90	283.50	-	-	13.70	4,315.50	1.30	409.50	3.30	1,039.50	19.20	6,048.00		
ZT	Senior Accountant	0.10	23.00	-	-	-	-	-	-	-	-	0.10	23.00		
MG	Intermediate Accountant	2.60	533.00	-	-	2.50	512.50	-	-	-	-	5.10	1,045.50		
SS	Senior Administration	0.50	95.00	-	-	-	-	-	-	-	-	0.50	95.00		
<b>Grand Total</b>		<b>5.10</b>	<b>1,509.50</b>	<b>5.80</b>	<b>3,335.00</b>	<b>26.50</b>	<b>10,750.50</b>	<b>19.40</b>	<b>10,242.00</b>	<b>13.70</b>	<b>6,444.50</b>	<b>70.50</b>	<b>32,281.50</b>		
<b>Average Hourly Rate:</b>													<b>457.89</b>		

## 5 STATEMENT OF REMUNERATION CLAIM

We are seeking approval for the following resolutions from creditors:

### Liquidators Remuneration Resolution #1

“That the remuneration of the Joint and Several Liquidators from 10 January 2019 to 29 January 2019 of the Liquidation is determined at a sum equal to the cost of time spent by the Joint and Several Liquidators and the Joint and Several Liquidators’ partners and staff, calculated at the hourly rates as detailed in the Remuneration Request Approval Report dated 18 March 2019 such sum to be fixed at the amount of \$32,281.50, exclusive of GST, and that the Joint and Several Liquidators may draw the remuneration on a monthly basis or as required. Any amount in excess of this maximum would require the Joint and Several Liquidators to call a further meeting of creditors/Committee of Inspection to seek approval of same or approach the Court for approval.”

If our fees are less than the amount approved by creditors then we will only draw the lesser amount.

## 6 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 be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis. We also intend to charge the ASIC Industry Funding levy, detailed below, as an internal disbursement.

The ASIC Industry Funding Model levy commenced on 1 July 2017. The levy is calculated per metric events including certain lodgements with ASIC and certain advertisements on the ASIC Public Notice Website (“PNW”). These include the following:

- Notice of meetings advertised on the PNW;
- Notice of intention to declare dividend on the PNW; and
- Notice of the outcome of a proposal to pass resolution without meeting lodged with ASIC.

In this Liquidation, we consider that we will incur the ASIC levy for the following metric events:

- New appointment for financial year ending 30 June 2019 for each appointee;
- Notice of meeting;
- Notice of the outcome of a proposal to pass resolution without meeting lodged with ASIC;

- Notice calling for formal proof of debt or claim; and
- Notice of intention to declare dividend on the PNW.

We will not be provided with an invoice for the exact amount of the fee for the year to 30 June 2019 until 2020.

Our current best estimate based on indications from ASIC is the fee will be calculated on a basis of \$125 per event and we are seeking creditor approval to recover these costs as internal disbursements with a potential profit element in accordance with the recommendations from our professional body, the Australia Restructuring Insolvency and Turnaround Association.

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

The following disbursements have been paid by the Liquidation to our firm for the period from 19 December 2018 to 17 March 2019. Where amounts have been paid to our firm for externally provided services and costs, that is in reimbursement of a cost previously paid by our firm either due to a lack of funds in the Administration at the time the payment was due or the direct invoicing of our firm by the supplier. All of the below transactions appear in the receipts and payments listing attached to this report as Appointee disbursements. Where payments to third parties are paid directly from the Administration bank account, they are only included in the attached listing of receipts and payments.

Disbursements paid	Basis	Total (excl GST) (\$)
19 December 2019 to 17 March 2019		
Externally provided Professional Services		
Externally provided non-professional services		
Searches	At Cost	\$405.80
External printing	At Cost	\$372.00
Data Room subscription	At Cost	\$999.00
Internal Disbursements		
Printing	\$0.25 per page	\$369.00
Travel	At Cost	\$114.06
Postage	At Cost	\$17.91
		\$2,277.77

In respect of Internal disbursements, to the extent that these may be recovered at more than their cost, they may be considered as deriving a profit or advantage and must therefore be approved by creditors, a committee of inspection (if one is appointed), or by the Court prior to them being drawn.

Future disbursements with a potential profit element derived by our firm will be charged to the administration on the following basis, subject to creditor approval:

Disbursements with a profit element	Rate (excl GST) (\$)
ASIC Industry Funding Levy	\$125 per event
Faxes and Photocopying	\$0.25 per page

## 7 SUMMARY OF RECEIPTS AND PAYMENTS

A summary of our receipts and payments have been provided in our Report to Creditors dated 18 March 2019.

## 8 QUERIES

The above information is provided to assist creditors in considering the appropriateness of the remuneration claims that are being made.

Creditors should contact Mr Joshua May of the Liquidators' office on 03 9622 1800 or by email at [jmay@brifvic.com.au](mailto:jmay@brifvic.com.au) to seek further information concerning the remuneration claims if they need so.

## 9 INFORMATION SHEET

The ARITA has produced a document entitled "Creditor Information Sheet: Approving remuneration in external administrations" that can be downloaded from the ARITA website [www.arita.com.au](http://www.arita.com.au) or alternatively a copy can be obtained from this office.

## 10 ADVICE TO CREDITORS

### 10.1 REMUNERATION METHODS

There are four basic methods that can be used to calculate the remuneration charged by an insolvency Practitioner. They are:

#### ▲ Time based / hourly rates

This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.

#### ▲ Fixed Fee

The total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration. Sometimes a Practitioner will finalise an administration for a fixed fee.

#### ▲ Percentage

The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.

#### ▲ Contingency

The practitioner's fee is structured to be contingent on a particular outcome being achieved.

## 10.2 METHOD CHOSEN

BRI Ferrier normally charges to use a Time Cost basis, because:

- ▲ It is often difficult to estimate accurately the likely cost of undertaking an appointment, as appointments differ in unforeseeable ways as to their factual or legal complexity;
- ▲ The Time Cost method reflects the opportunity cost to BRI Ferrier of the use of staff on a particular engagement
- ▲ The Time Cost method reflects the extent of work undertaken, reflecting in turn the nature of the appointment
- ▲ The Time Cost method can be applied equally to all aspects of an appointment, while percentage or contingent remuneration normally only reflect parts of an appointment, such as the recovery of assets. Our duties include activities, such as reporting to creditors and ASIC, that do not directly yield asset recovery, while contributing to the overall return to creditors.

Given the nature of this administration, we propose that our remuneration be calculated on the time based / hourly rates method. In our opinion, this is the fairest method for the following reasons:

- ▲ We will only be paid for work done, subject to sufficient realisations of the Company assets or, if there are insufficient assets realised, to the indemnity provided to us (please refer to our Declaration of Independence, Relevant Relationship and Indemnities dated 19 December 2018).
- ▲ It ensures creditors are only charged for work that is performed. Our time is recorded and charged in six minute increments and staff are allocated to duties according to their relevant experience and qualifications.
- ▲ We are required to perform a number of tasks which do not relate to the realisation of assets, including responding to creditor enquiries, reporting to the ASIC, distributing funds in accordance with the provisions of the Corporations Act 2001.

We are unable to estimate with certainty the total amount of fees necessary to complete all tasks required in this administration. BRI Ferrier reviews its hourly rates every twelve months. The hourly rates quoted above remain current until 30 June 2019. At this time BRI Ferrier may increase the hourly rates charged for work performed past that date. If hourly rates are increased, we will seek their approval.

## 10.3 EXPLANATION OF HOURLY RATES

The rates for our remuneration calculation are set out in the following table together with a general guide showing the qualifications and experience of staff engaged in the administration and the role they take in the administration. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.

<b>HOURLY RATES</b>		
<b>Title</b>	<b>Description</b>	<b>Rate (excl GST)</b>
Principal / Appointee	A Registered Liquidator. A senior accountant with over 10 years' experience. Leads the team carrying out and controls all aspects of an appointment.	\$575
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.	\$525
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.	\$460
Manager	An accountant with at least 6 years' experience. Typically qualified with well-developed technical and commercial skills, and studying or has completed specialised study in Insolvency and Reconstruction. Controls and plans all aspects of medium to larger appointments, reporting to the Team Leader.	\$440
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.	\$355
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.	\$315
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.	\$250
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.	\$230
Intermediate 2	An accountant with less than 1 year's experience. A trainee undertaking degree with an accountancy major. Assists in the appointment under supervision.	\$205
Senior Administration	Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.	\$190
Junior Administration	Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.	\$135

### 10.3.1 Notes

- ▲ The abovementioned hourly rates are exclusive of GST.
- ▲ The above staff descriptions are intended a general guide only to the experience and qualifications of staff engaged in the external administration.
- ▲ Time is recorded and charged to the administration in six-minute increments.



NOTICE OF PROPOSAL TO CREDITORS

Dated: 18 March 2019

Voting Poll Closes: 18 April 2019

BAROKES PTY LTD  
(IN LIQUIDATION)  
ACN 079 714 579 ("THE COMPANY")

Proposal No. 1 for creditor approval

"That the remuneration of the Joint and Several Liquidators from 10 January 2019 to 29 January 2019 of the Liquidation is determined at a sum equal to the cost of time spent by the Joint and Several Liquidators and the Joint and Several Liquidators' partners and staff, calculated at the hourly rates as detailed in the Remuneration Request Approval Report dated 18 March 2019 such sum to be fixed at the amount of \$32,281.50, exclusive of GST, and that the Joint and Several Liquidators may draw the remuneration on a monthly basis or as required. Any amount in excess of this maximum would require the Joint and Several Liquidators to call a further meeting of creditors/Committee of Inspection to seek approval of same or approach the Court for approval."

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 Joint and Several Liquidators. Please select the option that applies to you:

- 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
- 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.

**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.
- We are 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.
- The drawing of remuneration will reduce the funds available in the Liquidation.

**Creditor details**

*Name of creditor*

*Address*

*ABN (if applicable)*

*Contact number*

*Email address*

**Name of creditor /  
authorised person:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

---

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 **18 April 2019**, by email to Joshua May at [jmay@brifvic.com.au](mailto:jmay@brifvic.com.au). Should you have any queries in relation to this matter, please contact Joshua May on (03) 9622 1800.

BRI FERRIER  
PO Box 521  
Collins Street West VIC 8007

## 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").

FORM 535  
CORPORATIONS ACT 2001

Subregulation 5.6.49(2)

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

ACN 079 714 579

To the Joint and Several Liquidators of BAROKES PTY. LTD. (In Liquidation) ACN 079 714 579 ("Company")

1. This is to state that the company was, 19 December 2018 <sup>(1)</sup> and still is, justly and truly indebted to<sup>(2)</sup>  
 .....  
 .....for  
 ..... dollars and..... cents.

Particulars of the debt are:

Date	Consideration <sup>(3)</sup>	Amount \$	GST included \$	Remarks <sup>(4)</sup>

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:<sup>(5)</sup>
- 3.<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.
- 3.<sup>(6)\*</sup> I am the creditor's agent authorised in writing 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.

DATED this                      day of                      2019

Signature of Signatory .....

NAME IN BLOCK LETTERS.....

Occupation.....

Address .....

**See Directions overleaf for the completion of this form**

**OFFICE USE ONLY**

POD No:		ADMIT - Ordinary	\$
Date Received:	/ /	ADMIT - Preferential	\$
Entered into IPS/Computer:		Reject	\$
Amount per RATA	\$	H/Over for Consideration	\$
PREP BY/AUTHORISED		<b>TOTAL PROOF</b>	\$
DATE AUTHORISED	/ /		

### 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) 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	Date Due
	\$	¢		

---

- 
- (6) If proof is made by the creditor personally, strike the two (2) paragraphs numbered 3.
- 

### 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:

*"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.