

Third Report to Creditors

Barokes Pty Ltd

(In Liquidation)

ACN 079 714 579

("The Company")

17 September 2019

James Koutsoukos and David Coyne
Joint and Several Liquidators

BRI Ferrier ABN 97 128 947 848

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1 INTRODUCTION

David Coyne and I were appointed Joint and Several Liquidators of the Company on 20 September 2018 pursuant to an Order of the Supreme Court of Victoria. This Order was stayed and ultimately came into effect on 19 December 2018.

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

This report should be read in conjunction with our reports to creditors dated 11 January 2019 and 18 March 2019. Copies of these reports may be provided upon request.

The purpose of this Report is to provide creditors with an update on the Liquidators' progress and to provide notice of a meeting of creditors to be held on:

Second Meeting of Creditors	
Venue	Macpherson Kelley Level 7, 600 Bourke Street Melbourne VIC 3000
Date	Thursday, 3 October 2019
Registration Opens	10:45AM
Meeting Commences	11:00AM

2 PROGRESS OF THE LIQUIDATION TO DATE

2.1 LIQUIDATION TRADE ON

At the commencement of the Liquidation, we undertook an assessment of the Company's capacity to trade as well as the benefit to creditors of selling the Company's business as a going concern.

We determined that:

- ▲ The Company had the ability to continue to trade based on our forecasts;
- ▲ The value of the Company's assets would be maximised via a going concern sale; and
- ▲ The collection of the Company's debtor ledger was more likely to be recovered in full if supply to customers was not disrupted or terminated.

We negotiated with suppliers and customers to continue to trade with the Company.

We traded the Company's business up until 7 June 2019 when the business was sold (see section 2.3). We advise that we realised a trading surplus (calculated on a cash basis) of circa \$25,000. This trading surplus does not account for changes in stock values, the closing balance of which was sold to the purchaser.

A summary of our trading performance is provided below:

Liquidation Trade On Summary For the Period 19 Dec 2018 to 7 June 2019	
	\$
Total Income	1,005,327
Cost of Sales	555,721
Gross Profit	449,606
Expenses	423,858
NET PROFIT/ (LOSS)	25,748

Upon the execution of the sale of the Company's business and assets, we finalised our Liquidators' trading accounts with suppliers. We reported the Company's final wages to our WorkCover agents and confirm that we have paid this liability.

We have also remitted all superannuation accrued during the Liquidation trade-on period and remitted PAYG Withholding tax to the Australian Taxation Office ("ATO").

We have reported the wages paid to employees and subcontractors to the State Revenue Office but have not received a payroll tax assessment at this time.

We engaged with the Company's international lawyers to maintain and progress the registration of the Company's patents.

We have facilitated the transfer of work in progress and certain intellectual property assets to the purchaser, and will continue to licence the intellectual property until the transfer of same is finalised.

As previously reported, the Company's debtor ledger totalled \$1,021,335. Our investigations revealed that \$381,657 of these debtors were uncollectible. To date, we have recovered all of the collectible debtors totalling \$639,678.

On 4 April 2019, we lodged an insurance claim of approximately \$19,500 against the Company's pre-appointment insurers with respect to damaged stock. The insurers advised they were not satisfied that the damage of the stock is covered under the Company's policy. We advise that we will not be pursuing this claim due to the lack of evidence to overturn the insurer's decision.

On 24 May 2019, we received an insurance payout of \$7,150.84 with respect to an insurance claim lodged prior to our appointment.

2.2 CREDITORS' CLAIMS AND SECURITY INTERESTS

Secured Creditors

We refer to the below security interests registered against the Company on the Personal Property Securities Register ("PPSR").

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
Portia Valley Wines Pty Ltd	Other Goods	29/05/2018

During the Liquidation trade on period, we liaised with Visy with respect to its Purchase Money Security Interest ("PMSI") claim totalling \$72,779.99 as well as the continuation of the supply of cans. We sought legal advice regarding the validity of Visy's security interest as we had identified issues with respect to Visy's right to register a security interest against the Company.

In the interest of avoiding litigation costs and minimising risk, we agreed to settle Visy's PMSI claim for \$35,000. We also required a discharge of Visy's security interest to facilitate the sale of the Company's business and assets, which was provided to us on 7 June 2019. VISY will prove for the balance of its claim as an unsecured creditor.

Amsat Pty Ltd has confirmed that it does not have a debt against the Company and is in the process of discharging its security interest.

Qualia Wine Services Pty Ltd and Portia Valley Wines Pty Ltd have also discharged their security interests.

The rental agreements with respect to ASW Rentals Pty Ltd and Finrent Unit Trust have been novated to the purchaser.

Related Party Creditors

We refer to our previous report and note that our review of the books and records have identified the monies loaned (\$100,000) by Knights Quest Pty Ltd to the Company.

We have also formed an opinion with respect to Greire Pty Ltd's claim against the Company, discussed in section 2.3 of this report.

2.3 SALE OF 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.

The Company's primary assets subject to the sale included:

- ▲ Intellectual property ("IP") including patents and trademarks;
- ▲ Work in Progress;
- ▲ Shares in subsidiaries;
- ▲ Stock; and
- ▲ Plant and Equipment.

The various legal claims the Company was pursuing (see section 2.4) were specifically excluded from the sales campaign.

We received strong expressions of interest from packaging and wine industry participants, with nine (9) parties executing a Confidentiality Agreement and paying a refundable deposit of \$10,000.

We received multiple requests for an extension of the sales campaign to allow interested parties additional time to complete their due diligence and to consider their offers for the Company's business and assets. On 4 March 2019, we extended the campaign to allow parties further time to submit offers.

We subsequently received non-binding indicative offers from five (5) of the interested parties. We determined that two (2) of the offers were not worthwhile to pursue and their deposits were refunded.

The process also became complicated as offers received were not strictly in line with the assets offered in the Information Memorandum which specifically excluded various legal claims.

On 17 April 2019, we narrowed the offers down to two (2) competing offers capable of being accepted. We contacted both parties advising them that we would make a decision regarding acceptance of an offer for the sale of the Company's business and assets on 18 April 2019.

We also provided both parties with an opportunity to submit an improved/revised offer ahead of our decision on 18 April 2019.

We considered the return to all classes of creditors resulting from each final offer, which included the withdrawal/assignment of claims against the Company and cash consideration.

Our analysis concluded that the offer received from the purchaser, Intelligent Packaging Pty Ltd ("IPPL"), was the superior offer and we accepted same. The sale completed on 7 June 2019.

We notified trade suppliers and stakeholders that IPPL had purchased the Company's business and assets on 7 June 2019 when we ceased to trade.

A summary of the sale consideration appears below:

Cash Consideration	\$
Sale of Business as Going Concern	2,500,000.00
Stock	71,451.89
Total Trading Adjustments (work in progress)	<u>175,083.16</u>
Cash Received by Liquidators	<u>2,746,535.05</u>

The sale to IPPL also included an assumption of all current and any future claims of certain related parties, being Greire Pty Ltd, Gregory Stokes, Irene Stokes and Steve Barics. These claims and employee entitlement priority claims are estimated below:

	\$
Employee Claims ranking as priority	41,547.00
Excluded Employee Claims	389,528.00
Related Party Creditors	<u>1,020,842.00</u>
	<u>1,451,917.00</u>

We reviewed and sought legal advice with respect to the related party claims and employee entitlements for excluded and non-excluded employees.

Based on our review and the advice obtained, we are of the view that the related parties whose claims were assumed under the Sale were entitled to submit claims against the Company. Although there was some uncertainty regarding the appropriate characterisation and quantum of the debt claimed by Greire, given the assumption by IPPL, we did not need to adjudicate on the related party claims and employee entitlements.

We note that superannuation is unable to be transferred and remains a liability of the Company.

2.4 OVERSEAS LITIGATION

We refer to our previous reports in relation to the legal proceedings with respect to patent validity and patent infringement in Japan, and the negligence claim against the Company's former solicitor in Germany. An update appears below:

Japanese Litigation

Upon our appointment, we reviewed the litigation on foot in Japan and note that the matter was subject to appeal by the Company at that time. We continued the appeal as the substantive submissions and costs had already been undertaken by the Company.

On 29 August 2019, the Japanese Intellectual Property High Court ("IP High Court") rendered judgement with respect to the Company's appeal regarding validity of the Japanese patents.

The Company's Japanese solicitors have advised that the IP High Court held that the Company's patent at issue should be invalidated and dismissed the Company's claims regarding the validity of the Japanese patents and the infringement of same.

We have requested a translated Order but are yet to receive same.

We have requested the Company's Japanese lawyers to provide us with advice with respect to:

- ▲ The likely costs and timeframe for an appeal; and
- ▲ The merits of making an appeal.

We will liaise with our Australian lawyers, Macpherson Kelley, regarding the above once received.

German Litigation

The negligence claim against the Company's former solicitors is estimated to be between 5 million euros and 10 million euros (\$16.3 million).

The next significant court date is in November 2019 in relation to an application for security for costs by the defendant. The substantive trial of the issues will not be heard until 2020.

As part of these proceedings, the Company was required to pay Court fees of \$256,444.70 to maintain the proceedings. This payment is reflected in the receipts and payments at Annexure "A".

We may require creditors or other parties to provide the requisite funding so we may progress this matter. We are currently exploring these options.

We have been in discussions with a litigation funder to continue pursuing this matter but invite creditors to confirm their intention in writing prior to the meeting of creditors on Wednesday, 2 October 2019 should they wish to purchase or fund the overseas litigation.

2.5 LIQUIDATORS' INVESTIGATIONS AND RECOVERIES

Section 468 Recovery

We refer to Section 468(1) of the Corporations Act 2001 ("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.

On 3 April 2019, we advised creditors that we were seeking an application to validate certain transactions that were entered into in the ordinary course of business. This application was heard by the Supreme Court of Victoria on 12 April 2019.

We determined that sixteen (16) payments totalling \$283,953.10 were not entered into in the ordinary course of business. The Court agreed with our assessment and these payments were not validated by the Court, detailed below:

Payee	Date	Amount (\$)
Greire Pty Ltd	5/10/2018	\$17,708.50
	31/10/2018	\$17,708.50
	15/11/2018	\$17,708.50
	30/11/2018	\$17,708.50
	14/12/2018	\$17,708.50
	19/12/2018	\$17,708.50
	19/12/2018	\$17,708.50
		<u>\$123,959.50</u>
Hume Turf & Machinery	27/09/2018	\$20,000.00
	4/10/2018	\$20,000.00
	16/11/2018	\$19,993.60
		<u>\$59,993.60</u>
Renegade Management	25/10/2018	\$17,500.00
	24/09/2018	\$15,000.00
	4/10/2018	\$15,000.00
	18/10/2018	\$17,500.00
	1/11/2018	\$17,500.00
	8/11/2018	\$17,500.00
		<u>\$100,000.00</u>

The recipients of the invalidated payments (represented by Hall & Wilcox) disputed that the payments were void and foreshadowed an application to the Court, asserting that the transactions are capable of validation under Section 468 of the Act. We have agreed to a settlement of \$205,000 with the recipients of the invalidated payments, calculated as follows:

- ▲ Payments to Hume Turf & Machinery are to be repaid to the Company in full (\$59,993.60);
- ▲ Payments to Renegade Management are to be repaid to the Company in full (\$100,000); and
- ▲ \$45,006.40 of the remaining amounts paid to Greire Pty Ltd are to be repaid to the Company. We came to a commercial settlement with Greire Pty Ltd in recognition that Mr Gregory Stokes, who was paid through this entity, had performed services for the Company over a period of time and there was a possibility that the Court would validate some or all of the transactions.

The settlement payment is to be made within fourteen (14) days of execution. The Deed of Settlement was executed on 6 September 2019.

Pre-appointment BAS refund

Subsequent to our appointment, we engaged the Company's bookkeeper to bring the accounts up to date as at 19 December 2018 to facilitate the preparation of the pre-appointment BAS lodgement for the quarter ended 31 December 2018.

We reviewed the bookkeeper's working papers against the Company's books and records and lodged the BAS with the ATO on 7 May 2019.

On 10 May 2019, we received the pre-appointment BAS refund, totalling \$107,444.

Our review also discovered an overpayment of PAYG withholding tax on a pre-appointment BAS. We lodged an amended BAS which resulted in a refund to the Company of \$14,563. The ATO also remitted interest to us of \$13.21 with respect to these lodgements.

Report to the Australian Securities & Investments Commission ("ASIC")

On 18 June 2019, we submitted the findings of our preliminary investigations with respect to the Company's position and the conduct of its directors pursuant to Section 533 of the Act to ASIC.

Our preliminary investigations did not reveal that the Company traded whilst insolvent as its major and long term liabilities did not become due and payable until the winding up Order was handed down.

On 19 June 2019, ASIC advised that it did not intend to commence an investigation at this stage.

We invite creditors to provide us with any information and/or documentation to assist us with our investigations or provide details of any areas that require further scrutiny.

3 ACTS AND DEALING TO BE CARRIED OUT

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

- ▲ Continuing to attend to ongoing litigation;
- ▲ Continuing to facilitate the transfer of the Company's business and assets to the purchaser;
- ▲ Continuing investigations into the conduct of the Company's officers; and
- ▲ Prepare a declaration and distribution of dividend to creditors (including formal adjudication of claims process).

The above list is not exhaustive.

We anticipate that the Liquidation will be finalised by 31 December 2020 subject to the litigation issues mentioned above.

4 ESTIMATED RETURN TO CREDITORS

Estimated Return to Creditors	High (\$)	Low (\$)
Cash at bank as at 31 August 2019	2,495,145	2,495,145
Liquidator Recoveries	205,000	205,000
Overseas Litigation	16,300,000	-
Total Realisations	19,000,145	2,700,145
Less:		
- Liquidators' Remuneration to 31 August 2019	129,061	129,061
- Estimated Future Liquidators Remuneration	150,000	100,000
- Estimated Legal Fees / Litigation Funder Premiums	6,970,000	150,000
- Estimated Liquidators' disbursements	4,000	4,000
Estimated Available Balance For Priority Creditors	11,747,084	2,317,084
Superannuation	6,623	6,623
Total Priority Creditors	6,623	6,623
Estimated return to priority creditors (cents per dollar)	100.00	100.00
Estimated Available Balance For Unsecured Creditors	11,740,461	2,310,461
Statutory Creditors	Uncertain	Uncertain
Trade Creditors	884,682	884,682
Related Party Creditors	10,928,854	10,928,854
Total Unsecured Creditors	11,813,536	11,813,536
Estimated return to unsecured creditors (cents per dollar)	99.38	19.56

Please note that the estimated return is subject to the final admitted amounts for creditors' claims. The final return may change as a result of receiving additional claims or existing claims are substantiated in part or in full.

We refer to our above estimate for future legal fees and litigation funding premiums. We have estimated a litigation funding premium of 40% of the claim likely sought in the German proceedings (\$6,520,000) and estimated legal fees in these proceedings to be approximately \$300,000.

Of course, if we do not require litigation funding, a successful outcome could result in a full return to all creditors. We are currently exploring these options.

We also estimate that our future legal fees with respect to advice sought with regards to administering the Liquidation will be approximately \$150,000. We note that this amount may increase depending on the complexity and nature of future matters going forward.

5 LIQUIDATORS' ACCOUNTS

5.1 SUMMARY OF RECEIPTS AND PAYMENTS

A summary of our receipts and payments for the period 19 December 2018 to 31 August 2019 is enclosed as **Annexure "A"**.

Creditors are advised pursuant to IPS 70-10(2) of the Corporations Act 2001 that the Liquidator's account of receipts and payments can be inspected at the offices of BRI Ferrier, Level 10, 45 William Street, Melbourne VIC 3000 during business hours.

6 MEETING OF CREDITORS

The forthcoming meeting details are:

Second Meeting of Creditors	
Venue	Macpherson Kelley Level 7, 600 Bourke Street Melbourne VIC 3000
Date	Thursday, 3 October 2019
Registration Opens	10:45AM
Meeting Commences	11:00AM

Formal notice of the meeting and the agenda is enclosed as **Annexure "B"**.

The purpose of this meeting is to provide creditors with an update with respect to our progress with the Liquidation and the remaining matters to be dealt with.

We are also seeking creditor approval for our remuneration for the period 13 May 2019 to 31 August 2019. We are not seeking prospective remuneration approval for our time costs at this stage.

To participate as a creditor, you should:

- ▲ Provide us with a Proof of Debt detailing your claim as a creditor. A Proof of Debt Form is enclosed as **Annexure "C"**. If you have previously provided a Proof of Debt and wish to supplement it, you may do so. Otherwise, creditors whose claims were accepted for voting at the previous meeting are not required to re-lodge a Proof of Debt for this meeting.
- ▲ Creditors may attend and vote in person, by proxy or by attorney.
- ▲ The appointment of a proxy, a copy of which is attached as **Annexure "D"**, must be in accordance with Form 532. It is necessary for all creditors to submit a new proxy form for this meeting. Persons attending on behalf of a corporate entity are required to have a proxy signed on behalf of that entity.

- ▲ A specific proxy can be lodged showing approval or rejection of each proposal. Creditors, in lodging specific proxies, need to be mindful that their intended voting patterns can become academic or “contradictory” where the outcome of an earlier vote (in the order of proceedings) is determined in a way which could influence or change their intended voting.
- ▲ **Proxy forms thereof must be lodged at our office by 4.00pm on Wednesday, 2 October 2019. Creditors may lodge the proxy forms by way of email at info@brifvic.com.au.**

A Remuneration Request Approval Report is enclosed as **Annexure “E”** 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.

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.

DATED this 17th day of September 2019.



JAMES KOUTSOUKOS
JOINT AND SEVERAL LIQUIDATOR

Annexure "A"

Barokes Pty Ltd (In Liquidation)
Summarised Receipts and Payments
For the period 19 December 2018 to 31 August 2019

	Gross Amount
Receipts	
Trade On Sales	1,010,379.34
Sale of Business and Assets	2,746,535.05
Sundry Debtors	639,678.63
Cash at Bank	218,769.66
Bank Interest	1,285.51
Insurance Refund	7,150.84
Pre-appointment BAS Refund	122,020.21
GST Clearing Account	66,014.00
Total (inc GST)	\$4,811,833.24
Payments	
Purchases	801,963.05
Advertising	18,017.41
Bank Charges	210.00
Electricity	3,418.93
Hire of Equipment	9,734.10
Postage	53.65
Rates (Council)	3,817.41
Rent Paid (Commercial)	55,470.02
Repairs & Maintenance	2,134.00
Stationery & Printing	155.88
Sundry Expenses	616.74
Superannuation	14,533.95
Telephone & Fax	5,505.76
Transport / Courier	19,006.49
Wages & Salaries	110,863.90
Sub-Contractors (trading)	135,882.19
Other Government Charges	4,622.19
Subsidiary Expenses	34,624.15
Shipping	178.30
Insurance	10,663.88
Bank Charges	1,589.04
Other Property Expenses	769.78
Liquidators Remuneration	312,210.80
Liquidators Expenses	7,890.69
Storage Costs	155.00
ASIC Industry Fund Levy	125.00
Accountants' Fees	4,389.24
Court Fees	256,444.70
German Legal Fees	69,626.01

Annexure "A"

Liquidators' Legal Fees	241,620.51
Patent Attorney Legal Fees	113,765.20
Japanese Legal Fees	76,630.08
Total (inc GST)	\$2,316,688.05
 Balance in Hand	 \$2,495,145.19

CORPORATIONS ACT 2001

Insolvency Practice Rules (Corporations) 2016
75-15

NOTICE OF MEETING OF CREDITORS

BAROKES PTY. LTD.
(IN LIQUIDATION)
ACN 079 714 579
("the Company")

NOTICE is hereby given that a second meeting of the creditors of the Company will be held at the offices of Macpherson Kelley, Level 7, 600 Bourke Street, Melbourne VIC 3000 on Thursday, 3 October 2019 at 11.00AM.

The purpose of this meeting is:

1. To consider the Liquidators' Third Report to Creditors dated 17 September 2019.
2. To fix the remuneration of the Joint and Several Liquidators for the period 13 May 2019 to 31 August 2019 as set out in the Remuneration Request Approval Report dated 17 September 2019.
3. To consider any other business that may be lawfully brought forward.

Telephone conference facilities will be available at the meeting. Please contact Joshua May on 03 9622 1800 for details.

Attendance at this meeting is not compulsory. Creditors may attend and vote in person, by proxy or by attorney. The appointment of a proxy must be made in accordance with the Appointment of Proxy Form.

Proxies to be used at the meeting should be given to me as Joint and Several Liquidators or to the person named as convening the meeting. A creditor can only be represented by proxy or by an attorney pursuant to Insolvency Practice Rules (Corporations) ("IPR") section 75-150 & 75-155 and if a body corporate by a representative appointed pursuant to Section 250D.

Creditors will not be entitled to vote at this meeting unless they have previously lodged particulars of their claim against the company in accordance with IPR section 75-85 and that claim has been admitted for voting purposes wholly or in part by the Joint and Several Liquidators.

Pursuant to IPR 75-25 and 75-150 a special proxy can be lodged showing approval or rejection of each resolution. Proxy forms or emails thereof must be lodged with our office by 4.00pm on the day prior to the meeting. Where an email copy of a proxy is sent, the original must be lodged with our office within 72 hours after receipt of the email. An attorney of the creditor must show the instrument by which he or she is appointed to the Chairperson of the meeting, prior to the commencement of the meeting.

Pursuant to Insolvency Practice Rule 75-75, creditors or members wishing to participate in the meeting by telephone must return to the convenor of the meeting not later than the second last working day before the day of the meeting, a written statement setting out the name of the person and of the proxy or attorney, (if any), an address to which notices to the person, proxy or attorney may be sent, a telephone number at which the person, proxy or attorney may be contacted and any facsimile number

to which notices to the person, proxy or attorney may be sent. A person, or the proxy or attorney of a person who participates in the meeting by telephone, must pay any costs incurred in participating and is not entitled to be reimbursed for those costs from the assets of the company.

DATED this 17th day of September 2019.

A handwritten signature in dark ink, appearing to read 'James Koutsoukos', written over a horizontal line.

JAMES KOUTSOUKOS
JOINT AND SEVERAL LIQUIDATOR

BRI FERRIER
Level 10, 45 William Street
Melbourne VIC 3000

Annexure "C"

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 on, 19 December 2018 ⁽¹⁾ and still is, justly and truly indebted to ⁽²⁾
-for
- dollars and..... cents.

Particulars of the debt are:

Date	Consideration ⁽³⁾	Amount \$	GST included \$	Remarks ⁽⁴⁾

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:⁽⁵⁾
- 3.^{(6)*} 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.^{(6)*} 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		TOTAL PROOF	\$
DATE AUTHORISED / /			

Annexure "C"
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.

Annexure "D"

CORPORATIONS ACT 2001
 Insolvency Practice Rules (Corporations)
 75-25 & 75-150

APPOINTMENT OF PROXY
 CREDITORS MEETING

BAROKES PTY. LTD.
 (IN LIQUIDATION)
 ACN 079 714 579 ("the Company")

*I/*We ⁽¹⁾	
Of	
being a creditor of the Company, appoint ⁽²⁾ or in his or her absence	
to vote for me/us on my/our behalf at the meeting of creditors to be held on Thursday, 3 October 2019, or at any adjournment of that meeting.	

Please mark any boxes with an

X

Proxy Type:

☐

General

☐

Special

	For	Against	Abstain
Resolution 1 "That the remuneration of the Joint and Several Liquidators from 13 May 2019 to 31 August 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 17 September 2019 such sum to be fixed at the amount of \$129,060.50, 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."	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED this day of 2019.

Signature

CERTIFICATE OF WITNESS

This certificate is to be completed only if the person giving the proxy is blind or incapable of writing. The signature of the creditor, contributory, debenture holder or member must not be witnessed by the person nominated as proxy.

I, of
 certify that the above instrument appointing a proxy was completed by me in the presence of and at the request of the person appointing the proxy and read to him or her before he or she signed or marked the instrument.

Dated:

Signature of Witness:

Description:

Place of Residence:

* Strike out if inapplicable

(1) If a firm, strike out "I" and set out the full name of the firm.

(2) Insert the name, address and description of the person appointed

Annexure "E"

Remuneration Request Approval Report

BAROKES PTY. LTD.

(IN LIQUIDATION)

ACN 079 714 579

17 September 2019

James Koutsoukos and David Coyne
Joint and Several Liquidators

BRI Ferrier ABN 97 128 947 848
Level 10, 45 William Street, Melbourne VIC 3000
PO Box 521, Collins Street West VIC 8007
Phone (03) 9622 1800
Email: info@brifvic.com.au
Website: www.briferrier.com.au

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, in the conduct of the Liquidation.

2 EXECUTIVE SUMMARY

The below remuneration has been approved and paid in the Liquidation. This remuneration report details approval sought for the following fees:

Period	Report Reference	Amount (\$, ex GST)
Past remuneration approved for the period:		
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
10 January 2019 to 29 January 2019 (Approval Date: 18 Apr 2019)		\$32,281.50
Total past remuneration approved		\$283,828.00
Total remuneration paid		\$283,828.00
Current remuneration approval sought:		
Resolution #1: 13 May 2019 to 31 August 2019	3.1 & 5	\$129,060.50
Total		\$129,060.50

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

This differs to the estimate of costs provided in our report to creditors dated 11 January 2019 for the following reasons:

- Additional time spent dealing with the sale of the Company's business and assets, particularly the extension of the Sales Campaign and other complex issues involving the Company's claims;

- Additional time spent arranging the transfer and/or licence of the Company's patents and trademarks;
- Additional time spent managing overseas litigation; and
- Additional time spent dealing with void transactions pursuant to Section 468 of the Corporations Act 2001 ("the Act").

3 DESCRIPTION OF WORK COMPLETED / TO BE COMPLETED

Resolution #1

Company	BAROKES PTY. LTD. (IN LIQUIDATION)	Period From	13/5/19	To	31/08/19
Practitioner	James Koutsoukos David Coyne	Firm	BRI FERRIER		
Administration Type	Liquidation				

3.1 REMUNERATION FOR THE PERIOD 13 MAY 2019 TO 31 AUGUST 2019

Task Area	General Description	Includes
Assets 88.6 hours \$41,591	Sale of Business as a Going Concern	Reviewing and assessing offers and negotiations with interested parties Prepared sales contract annexures including licence agreements with respect to intellectual property Calculated adjustments to sale price Dealt with assignments of patents and services Recovered sale proceeds
	Assets subject to specific charges	Followed up parties with registered security interests but no claims against the Company
	Debtors	Updated debtor schedule
	Stock	Conducted stocktake

Task Area	General Description	Includes
	Other Assets	Dealt with issues arising from transferring the Company's intellectual property
Creditors 10.2 hours \$4,161	Creditor Enquiries	Received and followed up creditor enquiries Reviewed and prepared correspondence to creditors and their representatives by email and post
	Retention of Title/Purchase Money Security Interest ("PMSI") Claims	Adjudicated PMSI claim Settlement of PMSI claim
	Secured creditor reporting	Responded to secured creditor's queries
	Creditor reports	Prepared Report to Creditors to provide an update on the progress of the Liquidation and sale of the Company's business and assets
	Dealing with proofs of debt	Received and filed Proofs when not related to a dividend
Employees 2.7 hours \$850.50	Employees enquiry	Corresponded with employees with respect to their entitlements accrued during the trade on
	Calculation of entitlements	Calculated employee entitlements
Trade On 61.9 hours \$18,999.50	Trade On Management	Reviewed trading performance Reconciled and finalised Liquidator trade on accounts Attended to matters regarding the assignment of the premises lease Corresponded with suppliers regarding sale of Company's assets and business
	Processing receipts and payments	Entered receipt and payments into accounting system

Task Area	General Description	Includes
Investigation 116.4 hours \$57,266	Conducting investigation	Reviewed and prepared narrative of business nature and history Prepared comparative financial statements Prepared discrepancy analysis of Report on Company Activities and Property submitted Reviewed specific transactions and liaised with directors regarding certain transactions Prepared investigation file
	Litigation / Recoveries	Managed litigation in Germany and Japan Managed patent and trademark registrations applications Liaised with solicitors regarding recovery actions pursuant to Section 468(1) of the Act Attended to negotiations Attended to settlement matters
	ASIC reporting	Prepared a statutory investigation report pursuant to Section 533 of the Act
Dividend 0.5 hours \$287.50	Processing proofs of debt	Adjudicated on Proofs of Debt as requested by creditors
Administration 25 hours \$5,905	Correspondence	Prepared general correspondence with respect to the Liquidation
	Document maintenance/file review/checklist	Filed documents
	Insurance	Corresponded with insurer regarding insurance claim for damaged stock
	Bank account administration	Bank account reconciliations

Task Area	General Description	Includes
	ATO and other statutory reporting	Prepared BASs Completed group certificates
	Planning / Review	Discussed status of administration
Total 305.3 hrs	Total Cost	\$129,060.50

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 13 May 2019 to 31 August 2019

Name	Position	Charge Out Rate	Administration		Assets		Creditors		Dividend		Employees		Investigations		Trade-On		Grand Total	
			Hours	(\$)	Hours	(\$)	Hours	(\$)	Hours	(\$)	Hours	(\$)	Hours	(\$)	Hours	(\$)	Hours	(\$)
James Koutsoukos	Appointee	575.00	-	-	26.00	14,950.00	3.00	1,725.00	0.50	287.50	-	-	16.00	9,200.00	11.10	6,115.50	56.60	32,278.00
James Koutsoukos	Manager	440.00	-	-	12.50	5,500.00	-	-	-	-	-	-	-	-	-	-	12.50	5,500.00
David Coyne	Appointee	575.00	-	-	12.20	7,015.00	-	-	-	-	-	-	49.50	28,462.50	-	-	61.70	35,477.50
David Coyne	Manager	440.00	-	-	17.50	7,700.00	-	-	-	-	-	-	35.00	15,400.00	-	-	52.50	23,100.00
AO	Senior Manager	460.00	0.10	46.00	-	-	-	-	-	-	-	-	-	-	0.20	92.00	0.30	138.00
JM	Supervisor	355.00	4.10	1,455.50	-	-	5.30	1,881.50	-	-	-	-	1.60	568.00	3.00	1,065.00	14.00	4,970.00
JM	Senior Accountant	315.00	2.40	756.00	20.40	6,426.00	1.50	472.50	-	-	2.70	850.50	6.40	2,016.00	17.90	5,638.50	51.30	16,159.50
MG	Intermediate Accountant	205.00	1.80	369.00	-	-	0.40	82.00	-	-	-	-	7.90	1,619.50	29.70	6,088.50	39.80	8,159.00
KE	Intermediate Accountant	205.00	8.10	1,660.50	-	-	-	-	-	-	-	-	-	-	-	-	8.10	1,660.50
PM	Intermediate Accountant	205.00	0.20	41.00	-	-	-	-	-	-	-	-	-	-	-	-	0.20	41.00
VM	Senior Administration	190.00	4.00	760.00	-	-	-	-	-	-	-	-	-	-	-	-	4.00	760.00
SS	Senior Administration	190.00	4.30	817.00	-	-	-	-	-	-	-	-	-	-	-	-	4.30	817.00
Grand Total			25.00	5,905.00	88.60	41,591.00	10.20	4,161.00	0.50	287.50	2.70	850.50	116.40	57,266.00	61.90	18,999.50	305.30	129,060.50
Average Hourly Rate																		422.73

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 13 May 2019 to 31 August 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 17 September 2019 such sum to be fixed at the amount of \$129,060.50, 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 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:

- ✦ Ongoing appointment for financial year ending 30 June 2020 for each appointee;
- ✦ Notice of meeting;
- ✦ 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 \$90 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 Liquidation), 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 31 August 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 2018 to 31 August 2019		
Externally provided Professional Services		Nil
Externally provided non-professional services		
Searches	At Cost	\$515.24
External printing	At Cost	\$372.00
Data Room subscription	At Cost	\$1,998.00
Internal Disbursements		
ASIC Industry Funding Levy	\$125 per metric	\$125.00
Printing	\$0.25 per page	\$1,472.00
Travel	At Cost	\$360.19
Postage	At Cost	\$2,455.92
		<u>\$7,298.35</u>

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	\$90 per event
Faxes and Photocopying	\$0.25 per page

On 29 January 2019, creditors approved that our disbursements with a profit element be capped at a limit of \$3,700. We are not seeking further approval for disbursements with a profit element at this time.

7 SUMMARY OF RECEIPTS AND PAYMENTS

A summary of our receipts and payments have been provided in our Report to Creditors dated 17 September 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 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 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 2020. 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.

HOURLY RATES		
Title	Description	Rate (excl GST)
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 years' 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.