

29 July 2021

TO THE CREDITOR AS ADDRESSED

Dear Sir or Madam

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

I refer to the above matter.

I now enclose the following:

| Item # | Item | Description | Further Action Required by you |
|--------|---|--|--|
| 1 | Fifth Report to Creditors | A detailed report on the progress of the Liquidation, including a summary of my receipts and payments to date and estimated return to creditors. | No |
| 2 | Form 534 – Notice Inviting Formal Proof of Debt or Claim | A notice inviting creditors to lodge a Formal Proof of Debt before 20 August 2021 . | No |
| 3 | Form 547 – Notice of Intention to Declare an Interim Dividend | A notice to creditors advising of my intention to declare a first dividend on 28 September 2021 . | No |
| 4 | 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 jmay@brifvic.com.au with your supporting documents. | Yes Include supporting documentation |

Should you have any questions in relation to this matter, please contact Joshua May via phone (03) 9622 1800 or via email jmay@brifvic.com.au of this office.

DATED this 29th day of July 2021



DAVID COYNE
LIQUIDATOR

Fifth Report to Creditors

Barokes Pty Ltd

(In Liquidation)
ACN 079 714 579
("The Company")

29 July 2021

David Coyne
Liquidator

BRI Ferrier ABN 18 638 454 029
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



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1 INTRODUCTION

James Koutsoukos 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.

On 23 November 2020, Mr Koutsoukos resigned as Liquidator of the Company and resigned from BRI Ferrier. Therefore I am currently the sole Liquidator of the Company.

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 progress of the Liquidation including acts and dealings to be carried out; and
- ▶ The timing and estimated return of a dividend to creditors.

This report should be read in conjunction with my reports to creditors dated 11 January 2019, 18 March 2019, 17 September 2019 and 18 November 2020. Copies of these reports may be provided upon request.

2 PROGRESS OF THE LIQUIDATION TO DATE

I refer to the sale of the Company's business and assets ("Business and Assets Sale") and the sales campaign which commenced on 29 January 2019 ("Sales Campaign").

Following the completion of the Business and Assets Sale to Intelligent Packaging Pty Ltd on 7 June 2019, I have been corresponding with Daiwa Can Company ("Daiwa") in relation to certain allegations concerning the Liquidators' conduct during the Sales Campaign.

In order to progress the Liquidation, I instructed my solicitors to seek an Order from the Court, amongst others, that:

- ▶ I would be acting reasonably and therefore justified in not finalising the winding up of the Company if I had not obtained a release with respect to Daiwa's allegations; and
- ▶ upon distribution of a final dividend to creditors, payment of my remuneration and expenses and consequent upon the winding up of the Company being finalised, that I be released from all of Daiwa's allegations pursuant to section 480 of the *Corporations Act 2001* (Cth), save that the release shall not prevent the review of my remuneration and expenses.

I advise that the originating process with respect to these proceedings ("the First Proceeding") was filed in the Supreme Court of Victoria ("VSC") on 3 June 2021.

On 9 July 2021, Daiwa's solicitors filed an originating process in the VSC seeking leave to bring proceedings against me and James Koutsoukos in the name of the Company ("the Second Proceeding"). Further, on 21 July 2021, Daiwa's solicitors provided a draft amended originating process in relation to the Second Proceeding to seek (amongst others) an order, in the alternative to the leave application, that the Court inquire into the Liquidators' conduct in relation to the Sales Campaign.

In light of the Second Proceeding, on 23 July 2021, the Court made orders that the First Proceeding is stayed until the determination of the application for leave in the Second Proceeding and any substantive proceeding, if leave is granted.

At this stage I cannot indicate how long a resolution of the First Proceeding or the Second Proceeding may take.

I advise that the quantum and timing of any final return to unsecured creditors, discussed further in section 4.1 of this Report, is dependent on the time and legal costs incurred attending to this matter.

3 ACTS AND DEALINGS TO BE CARRIED OUT

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

- Prepare an interim declaration and distribution of dividend to creditors (including formal adjudication of claims process).
- Attend to the proceedings in relation to the sale of the Company's business.
- Prepare and lodge statutory forms with the Australian Taxation Office and Australian Securities and Investments Commission.
- Prepare a final declaration and distribution of dividend to creditors (including formal adjudication of claims process).

The above list is not exhaustive.

4 DIVIDEND TO CREDITORS

4.1 ESTIMATED RETURN TO CREDITORS

I provide notice inviting creditors lodge a Formal Proof of Debt or Claim and a notice to creditors of my intention to declare an interim dividend to priority and unsecured creditors on Tuesday, 28 September 2021.

Creditors will be excluded from the benefit of the distribution if they fail to submit their proofs of debt by Friday, 20 August 2021.

A summary of the claims received and amounts likely to be admitted (based on particulars received to date) are provided below.

| Estimated Return to Creditors | High (\$) | Low (\$) |
|---|-------------------|-------------------|
| Cash at bank as at 28 July 2021 | 2,389,268 | 2,389,268 |
| Total Realisations | 2,389,268 | 2,389,268 |
| Less: | | |
| - Liquidator's Remuneration incurred but not drawn | 206,000 | 206,000 |
| - Estimated Future Liquidators Remuneration | 50,000 | 250,000 |
| - Estimated Legal Fees and Expenses | 150,000 | 750,000 |
| Estimated Available Balance For Priority Creditors | 1,983,268 | 1,183,268 |
| 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 | 1,976,645 | 1,176,645 |
| Trade Creditors | 1,216,874 | 1,216,874 |
| Related Party Creditors | 10,828,854 | 10,828,854 |
| Total Unsecured Creditors | 12,045,728 | 12,045,728 |
| Estimated return to unsecured creditors (cents per dollar) | 16.41 | 9.77 |

A dividend of 100 cents in the dollar is expected for priority claims, such as superannuation, and an estimated dividend return rate between 9 cents in the dollar and 16 cents in the dollar is anticipated to unsecured creditors.

I note that the estimated unsecured dividend rate will be dependent on future time and legal costs associated with attending to the proceedings detailed in section 2 of this Report.

Please note that the estimated return is subject to the claims being admitted as set out above. The final return may change as a result of receiving additional claims or as existing claims are substantiated in part or in full.

4.2 DIVIDEND PROCESS

The timeline with respect to the formal adjudication of claims and distribution of a first and final dividend to creditors is as follows:

| | Corporations Act Regulation | Timeframe |
|--|--|----------------------------|
| Notice of Intention to Declare a Dividend | 5.6.65 | Thursday, 29 July 2021 |
| Proofs of Debt to be submitted | 5.6.65(2) | Friday, 20 August 2021 |
| Creditors who fail to lodge a Proof of Debt by the specified date will be excluded from dividend | 5.6.65(3) | |
| Liquidator to deal with Proofs of Debt | 5.6.66(1)(a) | Friday, 3 September 2021 |
| Liquidator to issue Rejection letters | 5.6.54(1)(a) | Friday, 10 September 2021 |
| Creditor may appeal to the Court against Rejection | 5.6.54(1)(b)(i) | Monday, 27 September 2021 |
| Dividend Declared and Distributed | 5.6.65(1) | Tuesday, 28 September 2021 |

5 SUMMARY OF RECEIPTS AND PAYMENTS

A summary of our receipts and payments for the period 1 November 2020 to 28 July 2021 is provided below.

| | Gross Amount |
|---|-----------------------|
| Balance Carried Forward from 31 October 2020 | \$2,498,891.33 |
| Receipts | |
| Bank Interest | 3,771.93 |
| GST Clearing Account | 10,046.00 |
| Total (inc GST) | \$13,817.93 |
| Payments | |
| Trade-On Expenses | 2,681.54 |
| Bank Charges | 72.20 |
| Liquidators' Legal Fees and Expenses | 31,982.68 |
| Patent Attorney Fees | 607.98 |
| Stationery & Printing | 223.40 |
| Liquidators Remuneration | 87,497.85 |
| ASIC Industry Fund Levy | 375.00 |
| Total (inc GST) | \$123,440.65 |
| Balance in Hand | \$2,389,268.61 |

An account of the Company's receipts and payments for the period 19 December 2019 to 18 December 2020 was submitted to the Australian Securities & Investments Commission on 22 December 2020.

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.

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 29th day of July 2021.



DAVID COYNE
LIQUIDATOR

NOTICE INVITING FORMAL PROOF OF DEBT OR CLAIM

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

TAKE NOTICE that creditors of the Company, whose debts or claims have not already been admitted, are required on or before **Friday, 20 August 2021** to prove their debts or claims and to establish any title they may have to priority by delivering or sending through the post to me at my address, a Formal Proof of Debt or Claim in accordance with Form 535 containing their respective debts or claims. If they do not they will be excluded from:

- (a) the benefit of any distribution made before their debts or claims are proved or their priority is established;
- (b) and from objecting to the distribution.

Form of proof may be obtained from the offices of BRI Ferrier.

DATED this 29th day of July 2021



DAVID COYNE
LIQUIDATOR

BRI Ferrier
Level 10, 45 William Street
Melbourne VIC 3000

Telephone: (03) 9622 1800

FORM 547
CORPORATIONS ACT 2001

Corporations Regulation 5.6.65(1)

NOTICE TO CREDITOR OR PERSON CLAIMING TO BE A CREDITOR
OF INTENTION TO DECLARE A DIVIDEND

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

A first dividend is to be declared on **Tuesday, 28 September 2021**, for the Company.

You are required formally to prove your debt or claim on or before **Friday, 20 August 2021**.

If you do not, I will exclude your claim from participation, and I will proceed to make a final dividend without having regard to it.

A Formal Proof of Debt form is enclosed.

DATED this 29th day of July 2021



DAVID COYNE
LIQUIDATOR

BRI Ferrier
Level 10, 45 William Street
Melbourne VIC 3000

Telephone: (03) 9622 1800

FORM 535
CORPORATIONS ACT 2001

Subregulation 5.6.49(2)

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

ACN 079 714 579

To the Liquidator 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 20__

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 | / / | | |

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.