



STATUTORY REPORT TO CREDITORS

MKM BRICKWORKS AND CONSTRUCTION PTY LTD (IN LIQUIDATION)

ACN: 648 754 269

ABN: 66 648 754 269

20 December 2024

**PETER KREJCI
LIQUIDATOR**

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Sydney NSW 2000

INTRODUCTION

I refer to my initial report to creditors dated 12 November 2024 in which my appointment as Liquidator of the Company was advised along with your rights as a creditor in the liquidation.

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

- ▲ The estimated amount of asset and liabilities of the Company;
- ▲ An update on the progress of the Liquidation and further actions that may need to be undertaken;
- ▲ What happened to the business;
- ▲ The likelihood of creditors receiving a dividend before the affairs of the Company are fully wound up; and
- ▲ Possible recovery actions.

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

Creditors can find copies of all previous reports on this matter on our website.

- ▲ BRI Ferrier <https://briferrier.com.au/>

COMPANY DETAILS

| | |
|--------------------------|--|
| Name | MKM Brickworks and Construction Pty Ltd (In Liquidation) |
| Incorporated | 17 March 2021 |
| ACN | 648 754 269 |
| Registered Office | 542 Londonderry Road, Londonderry NSW 2753 |
| Trading Address | 542 Londonderry Road, Londonderry NSW 2753 |

LIQUIDATOR

| | |
|-----------------------|-----------------|
| Name | Peter Krejci |
| Date Appointed | 15 October 2024 |

ADMINISTRATION CONTACT

| | |
|--------------|------------------------|
| Name | Joshua Coorey |
| Email | jcoorey@brifnsw.com.au |
| Phone | 02 8263 2322 |

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GLOSSARY OF COMMON ACRONYMS & ABBREVIATIONS

| | |
|----------------------|---|
| ABN | Australian Business Number |
| ACN | Australian Company Number |
| Act | Corporations Act 2001 (Cth) |
| ANZ | Australia & New Zealand Banking Group Limited |
| ARITA | Australian Restructuring Insolvency and Turnaround Association |
| ASIC | Australian Securities and Investments Commission |
| CBA | Commonwealth Bank of Australia |
| CL | Court Liquidation |
| Company | MKM Brickworks and Construction Pty Ltd (In Liquidation) |
| DEWR | Department of Employment and Workplace Relations |
| DCoT | Deputy Commission of Taxation |
| Director | Matthew Mitchell |
| DIRRI | Declaration of Independence, Relevant Relationships & Indemnities |
| FEG | Fair Entitlements Guarantee |
| Firm | BRI Ferrier New South Wales |
| Former Accountant | Alliance Taxation Australia |
| iCare | Workers Compensation Nominal Insurer |
| Initial Report | Initial Report to Creditors dated 12 November 2024 |
| IPR | Insolvency Practice Rules (Corporations) 2016 |
| IPS | Insolvency Practice Schedule (Corporations) 2016 |
| Londonderry Property | 542 Londonderry Road, Londonderry NSW 2753 |
| NSW | New South Wales |
| Petitioning Creditor | iCare |
| POD | Proof of Debt |
| PPSR | Personal Properties Securities Register |
| RBA | Running Balance Account |
| RBP | Relation Back Period |
| ROCAP | Report on Company Activities and Property |
| Shareholder | Matthew Mitchell |
| SGC | Superannuation Guarantee Charge |

EXECUTIVE SUMMARY

As you are aware, I was appointed Liquidator of the Company pursuant to an Order of the Supreme Court of NSW. The Petitioning Creditor in this matter is iCare for a debt of \$34,369.21 relating to unpaid workers compensation premiums

This report has been prepared in accordance with Rule 70-40 of the Insolvency Practice Rules to provide creditors with an update on the developments of this Liquidation. I provide hereunder a summary of my preliminary investigations into the affairs of the Company to date, the potential return for creditors and the conduct of the Liquidation over the past two (2) months.

As advised in my Initial Report to Creditors, the Company was incorporated on 17 March 2021 and provided bricklaying and wall retaining services in NSW.

My investigations to date have been hindered due to non-compliance by the Company's Director, Mr Matthew Mitchell. To date, the Director has not;

- answered multiple phone calls from my office to discuss the matter; or
- attended my office for a scheduled meeting; or
- submitted a ROCAP; or
- provided the books and records to my office pursuant to section 475(4) of the Act.

A failure to submit a ROCAP and books and records within the required time frame is a breach of the Act and I have sought the assistance of ASIC to obtain compliance from the Director.

The Director has advised the Company is still trading. Despite my requests to cease, the Director to the best of my knowledge is continuing to trade the business and is no longer responding to my attempts at communication.

I confirm that I am not trading on the business of the Company. Any debts incurred post my appointment will not be accepted by me as a claim against the Company. As the Director is continuing to trade the business whilst the Company is insolvent, any debts incurred post my appointment may form an insolvent trading claim to be pursued against the Director personally.

A comprehensive search amongst Australian banks has failed to identify a bank account registered in the Company's name. The absence of bank statements has significantly impeded investigations into the activities of the Company prior to my appointment.

As at the date of this report, I have failed to identify any assets owned by the Company due to the lack of financial records. In terms of liabilities, my investigations have identified one (1) unsecured creditor of the Company being iCare. I am unaware of the Company's lodgement history with the DCoT due to delays at the ATO in processing my requests for taxation records and providing access to the Company's ATO portal.

As I have been unable to conduct a full investigation into the Company's affairs due to the limited books and records available to me, I have relied on Section 588E of the Act that allows a Liquidator to presume the Company was insolvent for the period in which the books and records were not maintained. Please refer to 14 of this report where I have detailed my findings in this regard.

I have prepared and lodged with ASIC a report pursuant to Section 533(1) of the Act. This report to ASIC is a legislative requirement in liquidations where potential offences and breaches of the Act by Directors and Officers of the Company have been identified and/or the estimated return to unsecured creditors is less than fifty (50) cents in the dollar. Subject to ASIC's response, I do not intend to prepare any further report to ASIC and Creditors.

At this stage, there have been no recoveries in the Liquidation to discharge any Liquidator costs. Whilst I have identified potential recoveries, subject to further information being obtained to strengthen these claims I do not anticipate pursuing same. Please see Findings and Recovery Actions for further details on the Directors asset position. Accordingly, I do not anticipate there to be any dividends available for any class of creditors in this Liquidation.

Should a creditor have any relevant information which may assist my investigations or potential asset recoveries or wish to fund my further investigations, they should contact my office by no later than 20 December 2024. Otherwise, absent any substantive new information, the Liquidation may continue for the next two (2) to three (3) months.

1. BASIS OF REPORT

This report has been prepared primarily from information received from the financial statements provided by Alliance Taxation.

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

- ▲ ASIC; and
- ▲ Extracts from public information databases.

2. DISCLAIMER

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

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

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

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

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

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

3. DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS, AND INDEMNITIES

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

4. CORPORATE INFORMATION

The following is a summary of the Company's statutory and business details obtained from the ASIC database and the Personal Property Securities Register ("PPSR") database:

4.1 COMPANY DETAILS

| | |
|------------------------------------|--|
| Company Name | MKM Brickworks and Construction Pty Ltd (In Liquidation) |
| Registered Address | 542 Londonderry Road, Londonderry NSW 2753 |
| Principal Place of Business | 542 Londonderry Road, Londonderry NSW 2753 |
| Incorporation Date | 17 March 2021 |
| ABN | 66 648 754 269 |
| ACN | 648 754 269 |

4.2 COMPANY OFFICE HOLDERS

| Name | Position | App Date | Cease Date |
|------------------|------------------------|------------|------------|
| Matthew Mitchell | Director and Secretary | 17/03/2021 | Current |

4.3 SHAREHOLDINGS

| Name | Share Class | No. of Shares | Fully Paid Up | Status |
|------------------|-------------|---------------|---------------|---------|
| Matthew Mitchell | ORD | 10 | Yes | Current |

4.4 RELATED PARTIES AND ASSOCIATES

A directorship search was undertaken in respect to the Company's Director and my investigations indicate that the Director only held one role and that was Director of the Company.

5. LEGAL PROCEEDINGS

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

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

I am not aware that the Company is involved in any other legal proceedings.

6. COMPANY BACKGROUND AND EVENTS LEADING TO MY APPOINTMENT

The following information was obtained from enquiries with third parties and information obtained from same by me.

- ▲ The Company was registered on 17 March 2021 and appears to have provided bricklaying and wall retaining services in NSW.
- ▲ Mr Matthew Mitchell was the sole director of the Company having been appointed director since the Company's incorporation.

- During a telephone conversation with the Director, he claimed that misreported wage declarations had led to the outstanding iCare debt. The Director claims to have made attempts to rectify these declarations however I am not aware of any progress being made in regard to same. As such, on 10 September 2024 an application for the winding up of the Company was filed by iCare.
- Subsequently, I was appointed Liquidator of the Company by Order of the Supreme Court of NSW on 15 October 2024.
- During the aforementioned phone call, the Director confirmed the Company was still trading. Despite my requests to cease trading, to the best of my knowledge the Director is continuing to trade the business and is no longer responding to my attempts at communication. I have reported his non-compliance to ASIC for assistance.

7. REASONS FOR FAILURE

As at the date of writing, the Director is yet to attend to my correspondence or requests, as such I am yet to receive his reason for the Company's failure.

Based on my investigations to date, I have identified the following reasons for the Company's failure:

- Poor financial control, including lack of records. As at the date of this report I have been provided with limited financial records of the Company by its Former Accountant and the Company has no bank account. The accountant has advised these records were incomplete due to a falling out with the Director and the Director changing accountants on a frequent basis.
- Insufficient working capital. I have identified that the Company has historically had insufficient working capital to meet its statutory debts. Records available to me indicate these statutory debts have remained outstanding since incorporation date, whilst the Company continued to trade without addressing same.

8. HISTORICAL FINANCIAL INFORMATION

I have reviewed the Company's financial statements for the years ending 30 June 2021 and 30 June 2022. I note these financial statements were provided by the Former Accountant engaged by the Company during these periods. I have not been able to locate any management accounts held in the name of the Company nor the location of further books and records of the Company nor a bank account.

8.1 BALANCE SHEETS

Attached as Annexure "B" is a comparative analysis of the Balance Sheets for the abovementioned periods. I make the following comments on the Company's Financial Position for FY21 and FY22:

- The balance sheets for this period identify minimal assets owned by the Company. The assets are predominantly comprised of a director loan account which may be recoverable. I note however from FY21 to FY22 this loan account has halved, which may reflect repayments being

made by the Director or the Director meeting Company liabilities from his own funds. Without more current financial information of the Company, I am unable to determine if there remains a loan account to pursue recovery of.

- The Company's current liabilities predominantly comprise of statutory taxation debts. The Company's Former Accountant recalled there to be a significant taxation debt outstanding. As at the date of this report, the ATO are yet to provide me with the Company's taxation records so I am unable to comment further in regard to same.
- The balance sheet for FY22 reflects a position of poor liquidity, with a current asset ratio of 0.18. Noting these balance sheets do not include the outstanding iCare debt and should the Former Accountant's advice regarding the taxation position be correct, I am uncertain how the Company could have possibly rectified its liquidity position.

8.2 PROFIT AND LOSS STATEMENTS

Attached as Annexure "C" is a comparative analysis of the Profit and Loss Statements for the abovementioned periods. I make the following comments on the Company's Profit and Loss for FY21 and FY22:

- The Profit and Loss Statements indicate excessive expenditure across FY21 and FY22 with the Company posting a net loss in both periods. Whilst revenue rose significantly from FY21 to FY22, expenses grew at a larger rate with the largest being salaries, motor vehicle related expenses and director fees. I note as at the date of this report I am unaware of any motor vehicles being registered to the Company, it is likely the vehicle is registered to the Director personally. Please refer to Section 9.1.2 of this report for further commentary on motor vehicles.
- I have identified the director fees drawn in FY22 of \$28,500 as a potentially unreasonable director-related transaction. I provide further commentary regarding this at Section 12 of this report.

9. CURRENT FINANCIAL POSITION

Below is my analysis of the current financial position of the Company, with regard to available financial records and my enquiries to date.

| MKM Brickworks and Construction Pty Ltd (In Liquidation) | | | | |
|---|------------------|---|--|---------------------------------|
| ACN 648 754 269 | | | | |
| Summary of Director's Report on Company Activities and Property | | | | |
| | Report Reference | Book Value as at 20/12/2024 (\$) | Director's ERV (per ROCAP) (\$) | Administrators ' ERV (\$) |
| Assets | | | | |
| Cash and Cash Equivalents | 9.1.1 | - | - | Nil |
| Motor Vehicles | 9.1.2 | - | - | Nil |
| Total Assets | | <u>-</u> | <u>-</u> | <u>-</u> |
| Liabilities | | | | |
| Petitioning Creditor's Costs | 9.2.1 | - | - | 8,954 |
| Secured Creditors | 9.2.2 | - | - | Nil |
| Priority Creditors | 9.2.3 | - | - | Unknown |
| Unsecured Creditors: | | | | |
| iCare | 9.2.4 | - | - | 34,369 |
| ATO | 9.2.4 | - | - | Unknown |
| Total Liabilities | | <u>-</u> | <u>-</u> | <u>43,324</u> |
| Estimated Net Asset / (Deficiency) | | <u>-</u> | <u>-</u> | <u>(43,324)</u> |

9.1 ASSETS

9.1.1 CASH AND CASH EQUIVALENTS

Upon my appointment I made enquiries with all major banks in Australia seeking details of any accounts maintained by the Company. As a result of these enquiries, I have not identified any bank accounts held in the Company's name.

The Director has mentioned that he previously traded as a sole trader, accordingly it may be that the Company has traded from bank accounts held in the Director's personal name.

9.1.2 MOTOR VEHICLES

A search of the Roads and Maritime Services database has not identified any vehicles registered in the Company's name in NSW. I have no information available that would suggest the Company has vehicles registered in any other state.

As previously mentioned, the Profit and Loss Statements reference related expenses for motor vehicles being paid for by the Company. I am of the belief this motor vehicle will be held in the

Director's name personally. Should further information relating to a motor vehicle be forthcoming, I shall assess whether the Company holds an equity position in same.

9.2 LIABILITIES

9.2.1 PETITIONING CREDITOR COSTS

The Petitioning Creditor's costs in respect to this matter were determined by the Court at a fixed amount of \$8,954.35. Pursuant to Section 556(1)(b) of the Act, these costs are afforded a statutory priority over all other unsecured claims and costs incurred in the Liquidation, once expenses incurred in "preserving, realising or getting in" property of the Company are discharged.

9.2.2 SECURED CREDITORS

A search of the PPSR did not identify any security interests registered against the Company.

In any event, if you have leased property to the Company, have a retention of title claim or hold a Personal Property Security in relation to the Company, please contact this office as soon as possible.

9.2.3 PRIORITY CREDITORS

The Director has mentioned that the Company currently employed apprentices, however, would not confirm details of same. Subsequently, I made enquiries with the DEWR advising of my appointment, the lack of the Director's assistance and requesting confirmation of any apprentices currently or previously employed by the Company.

As a result of these enquiries, the DEWR has confirmed that the Company is currently employees one (1) apprentice, with two (2) having ceased their apprenticeships prior to my appointment.

As I am without relevant financial information to determine any potential outstanding employee entitlements, I have prepared correspondence to these apprentices advising of my appointment and seeking confirmation of same. I am unaware if the Company currently has any other employees.

To the extent that there are amounts owed to former employees, they are eligible to apply to the Federal Government, which has established a safety net scheme known as the FEG, for payment of their outstanding entitlements. FEG is administered by the Attorney General's Department ("the Department") for eligible employees who have been terminated as a result of their employer's insolvency and are owed entitlements.

In order for an employee to be eligible to claim outstanding entitlements under FEG:

- The employee must be an Australian citizen or permanent resident (contact FEG for further details); and
- The end of their employment must be due to the insolvency of the employer; or have occurred less than six (6) months before the appointment of an insolvency practitioner; or occurred on or after the appointment of an insolvency practitioner.

Employees may submit claims in respect of the following entitlements, provided they are entitled to claim under their respective industrial instrument, contract of employment or by any other means:

- Up to thirteen (13) weeks unpaid wages for the period ending at the earlier of the date on which employment ended or the appointment of an insolvency practitioner;
- Unpaid annual leave and long service leave;
- Up to a maximum of five (5) weeks unpaid payment in lieu of notice;
- Up to a maximum of four (4) weeks redundancy entitlement for each completed year of service.

In calculating employee entitlements payable under the scheme, the maximum annual wage applies.

FEG will not cover:

- Outstanding superannuation entitlements;
- Entitlements such as rostered days off unless the relevant legislation, award, statutory agreement, or written contract of employment provides they are payable upon termination of employment; and
- Employee entitlements of the Directors and relatives of the Director as defined by the *Corporations Act 2001*.

To obtain further information, the Department may be contacted on 1300 135 040 or alternatively, please visit their website at: <https://www.ag.gov.au/industrial-relations/fair-entitlements-guarantee>.

9.2.4 UNSECURED CREDITORS

As previously noted, my investigations to date have identified one (1) unsecured creditor. I provide details into their claim as follows:

- iCare lodged a POD in the amount of \$34,369 relating to unpaid insurance premiums since March 2021. I note iCare's POD also included litigation costs of \$10,054. As previously mentioned, the Director asserts that incorrect wage declarations have given rise to this debt, however without relevant financial information, I am unable to comment on same.

I have requested the DCoT to provide me with access to the Company's ATO portal as well as the Company's taxation records. As at the date of this report, the ATO are yet to attend to my requests. However, based on the available financial records and advice from the Former Accountant, I anticipate the ATO to be a creditor of the Company and the Company to potentially have outstanding lodgements given the Directors issue with external accountants mentioned previously.

I encourage any creditors who have not already done so, to lodge their creditor claims with this office. In this regard, please complete the Formal Proof of Debt form, attached as "**Annexure A**", and return the same together with documentary evidence to support your claim.

10. INVESTIGATIONS

As Liquidator, I am required to review certain transactions to determine whether or not claims for statutory recoveries may be made for the benefit of creditors. Attached as “**Annexure C**” is the ARITA creditor information sheet on Offences, Recoverable Transactions, and Insolvent Trading.

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

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

10.1 INVESTIGATIONS UNDERTAKEN

During the course of these investigations, I have:

- Taken possession of limited books and records of the Company and reviewed same;
- Written to relevant authorities requesting information required for investigations;
- Carried out ASIC and other searches available to me in relation to the Company;
- As no bank accounts have been identified, I have been unable to determine potential preferences, uncommercial transactions, and unfair loans (sections 588FA, 588FB, 588FD and 588FE of the Act).

10.2 BOOKS AND RECORDS

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

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

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

Books and records required to sufficiently prepare financial statements that would correctly record and explain its transactions and financial position and performance and that would enable true and fair financial statements to be prepared and audited, at minimum, include the following:

- Financial statements including P & L’s, balance sheets, depreciation schedule, tax returns;
- General Ledger;
- General Journal;
- Asset register;
- Computer Back up Discs;

- Cash records including bank statements cash receipts journal, bank deposit books, cash payments journal, cheque butts and petty cash books.

Upon my appointment, I requested the Company's Director to deliver all books and records currently in his possession to enable me to investigate the affairs of the Company. To date I have not received any books and records of the Company from the Director. Through my own enquiries, I obtained limited historical financial information of the Company however without source documents, these financials are incomplete and unreliable. As a result, I am of the view that the Company has not satisfied the requirements set out in Section 286 of the Act and rely on the presumption of insolvency pursuant to Section 588E of the Act.

10.3 RISK OF LITIGATION ACTIONS GENERALLY

Part 5.7B of the Act gives Liquidators the right to commence certain legal proceedings to recover money, property, or other benefits for the benefit of the Unsecured Creditors of a company.

Creditors should note that recovery actions:

- have the potential to increase the pool of funds available to Creditors;
- are usually expensive, lengthy and have unpredictable outcomes;
- should not be commenced unless defendants have the financial resources to satisfy any judgement; and
- must be funded out of the Company's existing assets or, where such assets do not exist, by Creditors or by external litigation funders (who are likely to require a significant share of the proceeds of any judgement as a condition of funding the litigation).

10.4 PROVING INSOLVENCY

Recovery actions under Part 5.7B of the Act, including unfair preferences, uncommercial transactions, and insolvent trading, require the Liquidators to demonstrate that the Company was insolvent at the time of the transaction. Proving insolvency may be a complex, lengthy and a costly exercise.

11. FINDINGS AND RECOVERY ACTIONS

11.1 INSOLVENT TRADING

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

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

- ▲ A reasonable person in a like position would have been so aware.

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

As at the date of this report I have not been provided with sufficient financial information of the Company to accurately determine any potential insolvent trading claim. As previously mentioned, the Director is continuing to trade on the business despite my requests to cease. In this regard, any debts incurred post my appointment will not be accepted by me as a claim in the Liquidation. These debts may comprise a potential insolvent trading claim to be pursued against the Director personally.

In respect of considering whether an insolvent trading claim could be pursued, a Liquidator would need to have regard to the financial position of the defendant, being the Director, Mr Matthew Mitchell. A NSW Land Title search indicates that the Director appears to be the joint registered proprietor of the Londonderry Property. I note the property was purchased 1 September 2019 with a registered mortgage to ANZ which indicates there may be some equity present. Should further information be forthcoming that would enable me to strengthen potential claims against the Director, I shall consider pursuit of same.

12. VOIDABLE TRANSACTIONS

Voidable transactions include transactions such as unfair preferences, uncommercial transactions, unfair loans, unreasonable director related transactions and circulating security interests created within six months before the relation-back day, which is the date the winding up application was filed against the Company, i.e., 15 October 2024.

These transactions usually relate to the period six (6) months prior to the date of my appointment; however, in certain circumstances, this period can be extended to four (4) years in relation to transactions with related entities and up to ten (10) years if the transactions were entered into with related parties with the intention to defraud.

12.1 UNFAIR PREFERENCES (588FA)

An unfair preference results when the Company and a Creditor are parties to a transaction(s) and the Creditor receives more than it would receive if the transaction(s) are set aside, and the Creditor proved for the debt in the winding up. If it is ultimately determined that certain payments are potentially recoverable as unfair preferences, it would be necessary to establish:

- ▲ that the Company was insolvent at the time the payments were made; and
- ▲ that the recipient had reasonable grounds to suspect that the Company was insolvent at that time or would become insolvent as a result of the payment.

The clawback provisions available to the Liquidator relate only to payments to unrelated parties made within six (6) months from the date of my appointment if the Company is insolvent at that time.

I note that pursuant to S588FE(2D) (4) of the Act clawback provisions available to the Liquidator extend to four (4) years from the RBP for transactions to related-party creditors.

I have been unable to investigate any potential related-party or preferential transactions due to the absence of the Company's bank statements.

12.2 UNCOMMERCIAL TRANSACTIONS (S588FB)

A transaction is considered uncommercial if it is made at a time when the Company is insolvent, and it may be expected that a reasonable person in the Company's circumstances would not have entered into the transaction having regard to:

- ▲ The benefits or detriment to the Company of entering into the transaction; and
- ▲ The prospective benefits to other parties to the transaction.

Based on the limited financial information currently available to me, I have not identified any transactions that could be considered uncommercial.

12.3 UNREASONABLE DIRECTOR RELATED TRANSACTIONS (S588FDA)

A transaction is an unreasonable Director-related transaction of the Company if:

- ▲ The transaction is a payment, a conveyance, transfer or disposition of property, the issue of securities, or incurring of an obligation to make a payment, disposition, or issue by the Company.
- ▲ The transaction is to a director or close associate of the Director or for their benefit.
- ▲ A reasonable person in the Company's circumstances would not have entered into the transaction having regard to the benefit or detriment to the Company or other parties involved in the transaction.

I have identified the Director Fees drawn in FY22 as a potentially unreasonable director-related transaction. My basis for this being at the time of the transaction, outstanding premiums were owed to iCare which the Director elected not to pay, rather draw Company funds for his own benefit.

12.4 UNFAIR LOANS (S588FD)

A loan is unfair if it is made to a Company at extortionate interest rates or the charges in relation to the loan are extortionate. In considering whether interest and charges are extortionate, regard must be had to the following:

- ▲ Risk the lender is exposed to;
- ▲ Value of the security;
- ▲ Term;
- ▲ Repayment schedule; and
- ▲ Amount of loan.

Based on the limited financial information currently available to me, I have not identified unfair loans.

12.5 CREDITOR-DEFEATING DISPOSITIONS (S588FDB)

A disposition of company's property is a creditor-defeating disposition if the consideration payable to the company for the disposition was less than the market value of the property and if the disposition has the effect of preventing the property from becoming available for the benefit of the company's creditors in the winding-up of the company.

Based on the limited financial information currently available to me, I have not identified any unfair loans.

13. SUMMARY OF POTENTIAL OFFENCES

In summary, I consider there are various potential contraventions of the Act as follows:

| Breach | Commentary |
|--|--|
| s180—Failure to exercise due care and diligence (civil) | Failure to pay iCare premiums since its incorporation. Banking of Company funds into a third party bank account. |
| s181(1)—Absence of good faith or proper purpose (civil) | Electing to draw director fees whilst outstanding debts were owed to creditors of the Company. Banking of Company funds into a third party bank account. |
| s182 - Use of Position | Banking Company funds into a third party bank account. |
| S183 – Use of information | Banking Company funds into a third party bank account. |
| s286 (civil)/ —Failure to maintain adequate financial records | As I have not been provided with the Company's books and records, my preliminary view is that the Company has failed to maintain sufficient books and records to meet the requirements of Section 286 of the Act. |
| S588G(2) - Trading whilst insolvent (civil) | As the Director has failed to provide the Company's books and records, as per section 588E(4) of the Act, failure to maintain books and records allows for a presumption that the Company was insolvent from the date of its incorporation. The insolvency of the Company is further supported by the iCare debt having been outstanding since incorporation. |
| S530A/B – Officers to help Liquidator/Director obligation to provide books and records | To date, the Director has not attended my office for a scheduled meeting or submitted a ROCAP or books and records to my office pursuant to section 475(4) of the Act. |

14. RECEIPTS AND PAYMENTS

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

15. ESTIMATED RETURN TO CREDITORS

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

- ▲ the size and complexity of the administration.
- ▲ the amount of voidable transactions recovered and the costs of these recoveries;
- ▲ the statutory priority of certain claims and costs;
- ▲ the value of various classes of claims including secured, priority and unsecured creditor claims; and
- ▲ the volume of enquiries by creditors and other stakeholders.

At this stage, there have been no recoveries in the Liquidation, thus, I have been unable to discharge my costs in full. Subject to any potential recoveries from claims being brought against the Director, there is unlikely to be a dividend paid to any class of creditor in this Liquidation.

16. REMUNERATION OF LIQUIDATOR

On 12 November 2024, I asked creditors to approve my retrospective and prospective remuneration of \$30,000 (excl. GST) which comprised of work completed for the period 15 October 2024 to 10 November 2024 for \$9,298 (excl. GST) and future work for the period 11 November 2024 to conclusion of the Liquidation for \$20,702 (excl. GST). I advise creditors have approved both my retrospective and prospective remuneration.

At this stage, I do not intend to seek further remuneration approval from creditors. Should this position change, creditors will be notified accordingly.

17. MATTERS OUTSTANDING

The outstanding matters in the administration are:

- ▲ Await ASIC response regarding Director compliance;
- ▲ Correspondence with creditors;
- ▲ Obtaining access to the Company's ATO portal;
- ▲ Confirming the total \$ owed to the Creditors;
- ▲ Liaising with lawyers regarding recovery action, pending the total \$ owed to the Creditor;
- ▲ Statutory lodgements and general administrative matter; and
- ▲ Finalise.

Subject to the timing of the finalisation of the above matters and any unforeseen circumstances, I currently estimate that the administration will be finalised within 6-12 months.

18. CONCLUSION

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

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

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

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

- ▲ ARITA at www.arita.com.au/creditors ; and
- ▲ ASIC at www.asic.gov.au (search for "insolvency information sheets"), also attached as **Annexure D** to this report.

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

Any further reports will be issued as considered appropriate.

Yours faithfully,

MKM BRICKWORKS AND CONSTRUCTION PTY LTD (IN LIQUIDATION)



PETER KREJCI
LIQUIDATOR



MKM Brickworks and Construction Pty Ltd
(In Liquidation)
ACN 648 754 269
ABN 66 648 754 269

Annexure "A"
Formal Proof of Debt ("POD") with
Request to Receive Electronic
Communication

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Liquidator of:

MKM Brickworks and Construction Pty Ltd (In Liquidation) ACN 648 754 269 / ABN 66 648 754 269

1. This is to state that the company was, on 15 October 2024, ⁽¹⁾ and still is, justly and truly indebted to ⁽²⁾ (full name):

.....
(‘Creditor’)

.....
of (full address)

for \$ dollars and cents.

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

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

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

Insert particulars of all securities held. Where the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, specify them in a schedule in the following form:

| Date | Drawer | Acceptor | Amount \$ c | Due Date |
|------|--------|----------|-------------|----------|
| | | | | |

☐ I am **not** a related creditor of the Company ⁽⁵⁾

☐ I am a related creditor of the Company ⁽⁵⁾
relationship:

- 3A. ^{(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.

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

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

Contact Name:

Email Address:

DATED this day of 2024

NAME IN BLOCK LETTERS

Occupation

Address

Signature of Signatory

OFFICE USE ONLY

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

Proof of Debt Form Directions

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

Annexures

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



MKM Brickworks and Construction Pty Ltd
(In Liquidation)
ACN 648 754 269
ABN 66 648 754 269

Annexure "B"
Comparative Balance Sheet

MKM Brickworks and Construction Pty Ltd (In Liquidation)
ABN 66 648 754 269
Comparative Balance Sheets
For the Financial Years Ended 30 Jun 2021 & 30 Jun 2022

| | Year Ended 30-Jun-21 (\$) | Year Ended 30-Jun-22 (\$) |
|----------------------------------|---------------------------------|---------------------------------|
| ASSETS | | |
| Current Assets | | |
| Cash and cash equivalents | 3,200 | 40 |
| Loans and advances | 14,986 | 7,037 |
| Total Current Assets | 18,186 | 7,076 |
| TOTAL ASSETS | 18,186 | 7,076 |
| LIABILITIES | | |
| Current Liabilities | | |
| Trade and other payables | 2,217 | - |
| Accruals | 10,200 | 10,200 |
| GST payable control account | | (1,410) |
| GST | 2,868 | 14,942 |
| Salary & wages withheld | 2,908 | 16,527 |
| Total Current Liabilities | 18,193 | 40,259 |
| TOTAL LIABILITIES | 18,193 | 40,259 |
| NET ASSETS | (7) | (33,183) |
| EQUITY | | |
| Issued capital | 2 | 2 |
| Retained Earnings | (9) | (33,185) |
| TOTAL EQUITY | (7) | (33,183) |

Net Asset Analysis

| MKM Brickworks and Construction Pty Ltd (In Liquidation) | Year Ended 30-Jun-21 (\$) | Year Ended 30-Jun-22 (\$) |
|--|---------------------------------|---------------------------------|
| Net Asset Analysis | | |
| Total Assets | 18,186 | 7,076 |
| Total Liabilities | (18,193) | (40,259) |
| Net Asset Position | (7) | (33,183) |

Working Capital Analysis

| MKM Brickworks and Construction Pty Ltd (In Liquidation) | Year Ended 30-Jun-21 (\$) | Year Ended 30-Jun-22 (\$) |
|--|---------------------------------|---------------------------------|
| Working Capital Analysis | | |
| Current Assets | 18,186 | 7,076 |
| Current Liabilities | 18,193 | 40,259 |
| Net Working Capital | (7) | (33,183) |
| Current Asset Ratio | 1.00 | 0.18 |



MKM Brickworks and Construction Pty Ltd
(In Liquidation)
ACN 648 754 269
ABN 66 648 754 269

Annexure "C"
Comparative Profit and Loss

MKM Brickworks and Construction Pty Ltd (In Liquidation)
ABN 66 648 754 269
Comparative Profit and Loss Statements
For the Financial Years Ending 30 June 2021 & 30 June 2022

| | Year Ended 30-Jun-21 (\$) | Year Ended 30-Jun-22 (\$) |
|--|---------------------------------|---------------------------------|
| Income | | |
| Revenue | 57,219 | 174,129 |
| Total Income | 57,219 | 174,129 |
| Total Operating Income | 57,219 | 174,129 |
| Cost of Sales | - | - |
| Gross Profit | 57,219 | 174,129 |
| Expenses | | |
| Accountancy | 10,200 | 1,818 |
| Bank fees & charges | 83 | 208 |
| Cleaning & rubbish removal | 1,606 | |
| Contract payments | 718 | 7,500 |
| Delivery | | 168 |
| Directors fees | | 28,500 |
| Hire/Rent of plant & equipment | | 16,773 |
| Legal fees | 410 | 759 |
| Materials & supplies | 2,796 | 8,954 |
| M/V commercial - Fuel & oil | 2,414 | 3,423 |
| M/V commercial - Registration/Insurance | | 3,778 |
| M/V commercial - Repairs | 1,983 | 13,588 |
| M/V commercial - Other | | 80 |
| Preliminary costs | 1,349 | |
| Printing & stationery | 777 | 903 |
| Protective clothing | 1,491 | 987 |
| Repairs & maintenance | 1,110 | 3,308 |
| Replacements | 3,145 | |
| Salaries - Ordinary | 25,681 | 103,470 |
| Staff training | | 2,518 |
| Superannuation | 2,217 | 9,387 |
| Telephone | 1,248 | 1,181 |
| Total Expenses | 57,228 | 207,304 |
| Profit / (Loss) Before Income Tax | (9) | (33,175) |
| Income Tax Expense | - | - |
| Profit / (Loss) After Income Tax | (9) | (33,175) |
| Dividend Paid | - | - |
| Net Profit / (Loss) After Dividends Paid | (9) | (33,175) |
| Retained Profits (Accum Losses) - Opening Balance | - | (9) |
| Retained Profits (Accum Losses) - Closing Balance | (9) | (33,185) |



MKM Brickworks and Construction Pty Ltd
(In Liquidation)
ACN 648 754 269
ABN 66 648 754 269

Annexure "D"
ASIC Information Sheet
Insolvency Information for Directors,
Employees, Creditors and
Shareholders

Insolvency information for directors, employees, creditors and shareholders

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

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

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

List of information sheets

- [INFO 41](#) *Insolvency: A glossary of terms*
- [INFO 42](#) *Insolvency: A guide for directors*
- [INFO 43](#) *Insolvency: A guide for shareholders*
- [INFO 45](#) *Liquidation: A guide for creditors*
- [INFO 46](#) *Liquidation: A guide for employees*
- [INFO 54](#) *Receivership: A guide for creditors*
- [INFO 55](#) *Receivership: A guide for employees*
- [INFO 74](#) *Voluntary administration: A guide for creditors*
- [INFO 75](#) *Voluntary administration: A guide for employees*
- [INFO 84](#) *Independence of external administrators: A guide for creditors*
- [INFO 85](#) *Approving fees: A guide for creditors*

Where can I get more information?

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

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

This information sheet was updated on 1 September 2017.



MKM Brickworks and Construction Pty Ltd
(In Liquidation)
ACN 648 754 269
ABN 66 648 754 269

Annexure "E"
ARITA Information Sheet
Offences, Recoverable Transactions
and Insolvent Trading

Voluntary Administration

Creditor Information Sheet

Offences, Recoverable Transactions and Insolvent Trading



Offences

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

| | |
|---------|--|
| 180 | Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties. |
| 181 | Failure to act in good faith. |
| 182 | Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage. |
| 183 | Making improper use of information acquired by virtue of the officer's position. |
| 184 | Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence. |
| 198G | Performing or exercising a function or power as an officer while a company is under administration. |
| 206A | Contravening a court order against taking part in the management of a corporation. |
| 206A, B | Taking part in the management of corporation while being an insolvent, for example, while bankrupt. |
| 206A, B | Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences. |
| 209(3) | Dishonest failure to observe requirements on making loans to directors or related companies. |
| 254T | Paying dividends except out of profits. |
| 286 | Failure to keep proper accounting records. |
| 312 | Obstruction of an auditor. |
| 314-7 | Failure to comply with requirements for the preparation of financial statements. |
| 437D(5) | Unauthorised dealing with company's property during administration. |
| 438B(4) | Failure by directors to assist administrator, deliver records and provide information. |
| 438C(5) | Failure to deliver up books and records to the administrator. |
| 588G | Incurring liabilities while insolvent |
| 588GAB | Officer's duty to prevent creditor-defeating disposition |
| 588GAC | A person must not procure a company to make a creditor-defeating disposition |
| 590 | Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors. |
| 596AB | Entering into an agreement or transaction to avoid employee entitlements. |

Recoverable Transactions

Preferences

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

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

Creditor-defeating disposition

Creditor-defeating dispositions are the transfer of company assets for less than market value (or the best price reasonably obtainable) that prevents, hinders or significantly delay creditors' access to the company's assets in liquidation. Creditor-defeating dispositions are voidable by a liquidator.

Uncommercial Transaction

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to the benefit or detriment to the company; the respective benefits to other parties; and any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Unfair Loan

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

Arrangements to avoid employee entitlements

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person or from members of a corporate group (Contribution Order).

Unreasonable payments to directors

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

Voidable charges

Certain charges over company property are voidable by a liquidator:

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

Insolvent trading

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

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

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

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

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

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

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

Queries about the voluntary administration should be directed to the administrator's office.