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Grandmas Kiwi Kitchen Pty Ltd (In
Liquidation)
ACN 604 983 664 (the Company)

Liquidator's Statutory Report to Creditors

6 December 2018

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Introduction

I refer to my initial correspondence to creditors dated 28 September 2018 in which I advised you of my appointment as Liquidator on 7 September 2018 and your rights as a creditor in the Liquidation.

The purpose of this report is to:

- Provide you with an update on the progress of the Liquidation;
- Provide you with an estimate of the assets and liabilities of the Company;
- Brief you on further inquiries that need to be undertaken;
- Explain the causes of failure of the Company;
- Advise you of likely recovery actions; and
- Advise you of the likelihood of a dividend being paid in the Liquidation.

I have relied on information provided from numerous sources to prepare the report, including:

- Discussions with the Directors of the Company;
- Correspondence with the Company's advisor;
- Information available from public sources such as the Australian Securities and Investments Commission (ASIC) and the Personal Property Securities Register (PPSR); and
- A review of the Company's books and records provided to date.

Whilst I have no reason to doubt the accuracy of any information, I have not performed an audit and reserve the right to alter my conclusions, should the underlying data prove to be inaccurate or change materially from the date of appointment.

Company Background

The Company was incorporated on 26 March 2015 with its registered office located at Shop 10, 2-14 Murrabung Road, Springwood QLD and its principal place of business located at Unit 6, 1 Murrabung Road, Springwood QLD. The Company operated solely as the trustee of the GKK Trust (the Trust) which operated a café from leased premises in Springwood since its commencement and expanded into a second café in 2017. Based on my investigations, it appears that the second café ceased trading in late 2017 and the original café ceased trading in mid-2018, both prior to my appointment. The Company employed four staff plus the three Directors of the Company. It does not appear that the Directors were paid a periodic wage, however, at financial year end their loan accounts were reduced by a notional wages payment for the year.

The Directors are:

- Colleen Walker;
- Andre Walker; and
- Jayde Walker.

Based on a search of the ASIC register, it does not appear as though any of the Directors are directors of other entities.



Causes of the Company's Failure

On my appointment the Directors were issued with a questionnaire to complete. In this questionnaire, the Directors stated the following reasons for the Company's financial difficulties and the ultimate need to have the Company wound up:

- The business expanded into a second café which was unprofitable and subsequently ceased trading in late 2017 to enable the Company to focus on the original café in Springwood; and
- Despite this, the Company could not recover from legacy debts.

From my initial investigations it appears that the Company's failure was as a result of trading losses since commencement of the business. The business incurred trading losses during FY17 (c. \$68k) and FY18 (c. \$48k). Whilst this was partially attributable to a decline in revenue of 11% over FY18, it was exacerbated by increasing wage and salary costs (\$103k to \$315k) between 30 June 2016 and 30 June 2018 which appear to be attributable to increases in the Directors' salaries.

An application for the winding up of the Company was commenced on 16 July 2018 by the Australian Taxation Office ("ATO"), leading to my appointment as Liquidator on 7 September 2018.

Update on the progress of the liquidation

Assets and liabilities

The Directors of the Company are required to complete and provide to the Liquidator a statement about the Company's business, property, affairs and financial circumstances, also known as the Report as to Affairs (RATA). The RATA is a snapshot in time as at the date of my appointment of the assets and liabilities of the Company, disclosing book values and the Directors' opinion on the estimated realisable value (ERV) for assets.

On 7 September 2018 a written request was issued to the Directors to complete the RATA, Director's/Officer's Questionnaire and provide to me the Company's books and records. The RATA was returned to my office on 11 October 2018.

An analysis of the assets and liabilities of the company, and comparison to the RATA as provided by the directors is set out below:



Assets and Liabilities

| | Directors' RATA | | Management | Liquidators |
|------------------------------------|-----------------|------------------|----------------|----------------|
| | Book Value | ERV | Accounts | ERV |
| | (\$) | (\$) | (\$) | (\$) |
| Assets | | | | |
| Interest in Land | - | - | - | - |
| Debtors (Directors' loan accounts) | 195,682 | - | 263,008 | Unknown |
| Cash on Hand / at Bank | 705 | 705 | 18,976 | 705 |
| Stock | - | - | - | - |
| Plant & Equipment | - | - | - | - |
| Other Assets | - | - | - | - |
| Total Assets | 196,387 | 705 | 281,983 | Unknown |
| Liabilities | | | | |
| Secured Creditors | - | - | - | - |
| Priority Creditors | 17,478 | 17,478 | 19,721 | 17,478 |
| Partly Secured Creditors | 4,600 | 4,600 | - | 4,600 |
| Unsecured Creditors | 169,004 | 169,004 | 265,406 | Unknown |
| Total Liabilities | 191,082 | 191,082 | 285,126 | Unknown |
| Net Surplus/(shortfall) | 5,305 | (190,377) | (3,143) | Unknown |

Assets

Plant & equipment

As at the date of my appointment, the management accounts and RATA recorded that the Trust did not own any property, plant and equipment aside from a number of nominal chairs.

The majority of plant and equipment utilised by the business appears to have been provided by the landlord pursuant to the premises lease which was actually held in the name of the director, Coleen Walker.

Cash on Hand / at Bank

I wrote to all banks on my appointment and I have identified that the Company held two bank accounts with Westpac. The accounts have balances of \$704.97 and \$50.00 respectively. The Bank has advised that the funds are held on trust for the GKK Trust and I am currently liaising with the bank to have these funds transferred to the liquidation account.

Debtors (Directors Loan Accounts)

As a retail café, the business did not generate material customer accounts receivable from trading operations.

The RATA records the Trust as a debtor of the Company for \$195,682. The balance sheet of the Trust as at 7 September 2018 records director loan accounts of \$263,000 (or \$156,650 after netting off distributions of 'profit shares'). Accordingly, the only debtors of the Company are the Directors.

Details of the Directors' loan accounts are summarised below, with the loans to the Directors increasing by \$87,000 during the 14 months prior to my appointment:



Directors' Loan Accounts

| | As at date of appointment (\$) | Movement (\$) | As at 30/06/2017 (\$) |
|-------------------------------|-----------------------------------|------------------|--------------------------|
| Colleen Walker - Loan account | 172,204.08 | 71,771.96 | 100,432.12 |
| Andre Walker - Loan account | 44,873.66 | 7,944.00 | 36,929.66 |
| Jayde Walker - Loan account | 45,930.00 | 6,980.00 | 38,950.00 |
| Total | 263,007.74 | 86,695.96 | 176,311.78 |

Further details on the loans are discussed in the insolvent trading section of the report.

I have written to the Directors in an attempt to recover these loans which are likely to be the only recoveries in the Liquidation.

Liabilities

The liabilities reported in the RATA appear to generally align to the Trust accounts with a few exceptions discussed below.

Partly Secured Creditors

On my appointment, I identified and wrote to the following secured parties registered on the PPSR:

- Jacobs Douwe Egberts Au Pty Ltd which appears to be a supplier of stock; and
- Silver Chef Rentals Pty Ltd.

According to the Company's RATA there is a partly secured claim for Jacobs Douwe Egbert Au Pty Ltd worth \$4,600.

Priority Creditors - Superannuation and wages

The RATA has identified that the Company owes \$17,478 to preferential creditors for outstanding superannuation with superannuation not having been paid since May 2017. There is a small discrepancy of c. \$2k between the balance of superannuation payable in the RATA and the management accounts. At present I have not been able to determine how much of the superannuation liability is due to the Directors, noting that there is a limit to the priority afforded to Director entitlement claims.

A review of the management accounts has also identified that there are unpaid wages of \$1,948 which will receive priority over unsecured creditors.

Unsecured Creditors – Statutory and trade creditors

According to the Directors' RATA, there is an unsecured claim of c. \$166k to the ATO as a result of outstanding statutory liabilities including GST and PAYG withholdings. The management accounts also include a liability for the Integrated Client Account / Income Tax Liability of c. \$122k which is not included in the RATA. I am further investigating this liability and whether it is in fact applicable to the Trust.

Liabilities to trade creditors are minimal.

Receipts and Payments to date

There have been no receipts or payments during the Liquidation as at the date of this report.



Investigations and possible recovery actions

Investigations undertaken

I have completed my initial investigations into the affairs of the Company prior to my appointment and any potential recovery actions that may be available to the Liquidator to pursue.

My findings of these investigations are detailed below under the following sections:

- Directors' obligation to assist the Liquidator;
- Directors' obligation to maintain adequate books and records;
- Possible breaches of director's duties;
- Insolvent trading; and
- Voidable transactions.

Given the limited time that has passed in the liquidation, and that further investigations will be undertaken, the below findings are preliminary and may be subject to change. Pursuant to s533 of the Corporations Act 2001 (Cth) (the "Act") I will report any breach of the Directors to ASIC.

Recovery of any potential claims against the Directors are dependent on whether the Directors are in a financial position or have the ability to meet such claims. As such, I have conducted a property search of all the Directors which have not identified any real property interests.

A motor vehicle search has identified that one of the Directors has two vehicles with an approximate value of \$40k, however, these vehicles are encumbered with there being negligible equity, if any.

Directors' and officers' obligation to assist the Liquidator

Section 530A of the Act states that that a director has the positive obligation to assist the liquidator or provisional liquidator of a company. As at the date of the report, the Directors have returned the RATA, Director's questionnaire and a statement of personal assets and liabilities. The Directors have generally been responsive to my request for information.

Directors' obligation to maintain adequate books and records

The Trust used the Xero accounting software to maintain its management accounts. This account was held by the Company's accountant and appears to be adequately maintained up to 30 June 2018.

Insolvent trading

I have reviewed both the cash flow and balance sheet tests of insolvency and have determined that the Trust, and therefore the Company, likely became insolvent around 1 July 2015 if not earlier based on the following factors:

- Liquidity Ratio: The current ratio is used to determine a company's ability to meet short term liabilities with its current assets. A ratio of less than one (1) indicates an inability to meet current obligations as and when they fall due. The Company's current ratio has not exceeded 0.07 since the commencement of the business;
- Net Losses: The Trust generated trading losses since the commencement of the business in March 2015. The Company has produced net losses of \$3,882, \$8,559, \$68,019 and \$48,411 for FY15, FY16, FY17 and FY18 respectively. These net losses were driven by the significant increase in the wages / salaries expense from c. \$103k in FY16 to c. \$320k in FY17 and c. \$316k in FY18; and
- Net Asset Deficiencies: The Company has never been in a net asset position since its commencement in March 2015.



At this stage, it appears unlikely that I will pursue an insolvent trading claim against the Directors for the following reasons:

- The Directors do not appear to hold any significant assets to meet and satisfy a successful claim; and
- The principal beneficiary of any recoveries (the ATO is the primary creditor) may have more direct less costly recovery options available to it.

Voidable transactions

The Company's records indicate the following transactions in favour of the Directors that could be considered voidable as uncommercial:

- The liability of Collen Walker's loan account decreased by c. \$73k on 30 June 2018 by an end of financial year journal adjustment, which accounts for the Director's salary; and
- A journal adjustment accounting for wages / salaries on 30 June 2018 decreased the loan accounts of both Andre and Jayde Walker by c. \$41k each.

Whilst the abovementioned transactions may be voidable, I have already written to the Directors to in attempt to recover the loan account debts recorded in the Xero accounts. Attempts to recover these transactions as uncommercial transactions will only be considered once the debtor recovery avenue is exhausted.

As at the date of this report, I have not identified any preference payments. It was common practice for the business, since commencement, to pay suppliers in cash or purchase stock from supermarkets.

My preliminary investigations have not identified any recoverable, uncommercial transactions, unfair loans or unreasonable director-related transactions (other than those already mentioned) that are commercial to pursue.

Further inquiries to be undertaken

I plan to undertake the further investigations into the Directors' loan accounts and the possibility of any recoveries.

Meetings held

As of the date of this report, there have not been any meetings of creditors.

Likelihood of a dividend

At the current time, there is not expected to be sufficient funds to pay a dividend to priority or unsecured creditors. However, if this changes and I do declare a dividend, any creditor whose claim has not yet been admitted will be contacted and asked to submit a proof of debt.

Cost of the liquidation

In my initial information to creditors, I estimated that my total remuneration for the liquidation would be \$10,000 to \$20,000. In the event that I am able to affect sufficient recoveries to support a distribution to creditors, it is likely that the upper estimate of my remuneration may exceed my initial estimate by up to \$10,000. This additional time would relate to time-costs affecting legal recoveries, adjudicating creditor claims and processing distributions.



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What happens next in the liquidation?

I will proceed with the liquidation, including:

- Complete my investigations into the Company's affairs;
- Recovery of the Directors' loans; and
- Complete my reporting to the corporate insolvency regulator, ASIC.

I may write to you again with further information on the progress of the liquidation.

I expect to have completed this liquidation within 6 to 12 months.

Compliance with best practice

I confirm that this report complies with the requirements in the Insolvency Practice Rules (IPR), specifically IPR 70-40, as well as the statements of best practice issued by the Australian Restructuring Insolvency and Turnaround Association (ARITA) with regard to content of the Statutory Report by Liquidator and the Code of Professional Practice with regard to remuneration.

Where can you get more information?

You can access information which may assist you on the following websites:

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

Should you have any queries with respect to the above, you may also contact Kevin Yue of my office on +61 2 8297 2507 or via email on kevin.yue@au.gt.com. There is also information about this liquidation on my firm's website: <https://www.grantthornton.com.au>.

Dated: 6 December 2018

A handwritten signature in black ink, appearing to read 'C. Crichton'.

Cameron Crichton

Liquidator

List of attachments

Appendix A - Summary of ASIC information sheets - Insolvency information

Appendix B - Summary of ARITA Insolvency information sheets

Appendix C - Form 535 (Proof of Debt Form)



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Appendix A

Summary of ASIC information sheets -
Insolvency information



ASIC

Australian Securities & Investments Commission

Insolvency information for directors, employees, creditors and shareholders

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

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

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

List of information sheets

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

Where can I get more information?

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

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

Last updated: 01/09/2017 10:57

Appendix B

Summary of ARITA Insolvency information sheets

Creditor Rights in Liquidations

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



Right to request a meeting

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

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

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

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

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

Right to request information

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

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

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

Requests must be reasonable.

They are not reasonable if:

Both meetings and information:

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

Meeting requests only:

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

Information requests only:

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

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

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

Right to give directions to liquidator

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

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

An individual creditor cannot provide a direction to a liquidator.

Right to appoint a reviewing liquidator

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

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

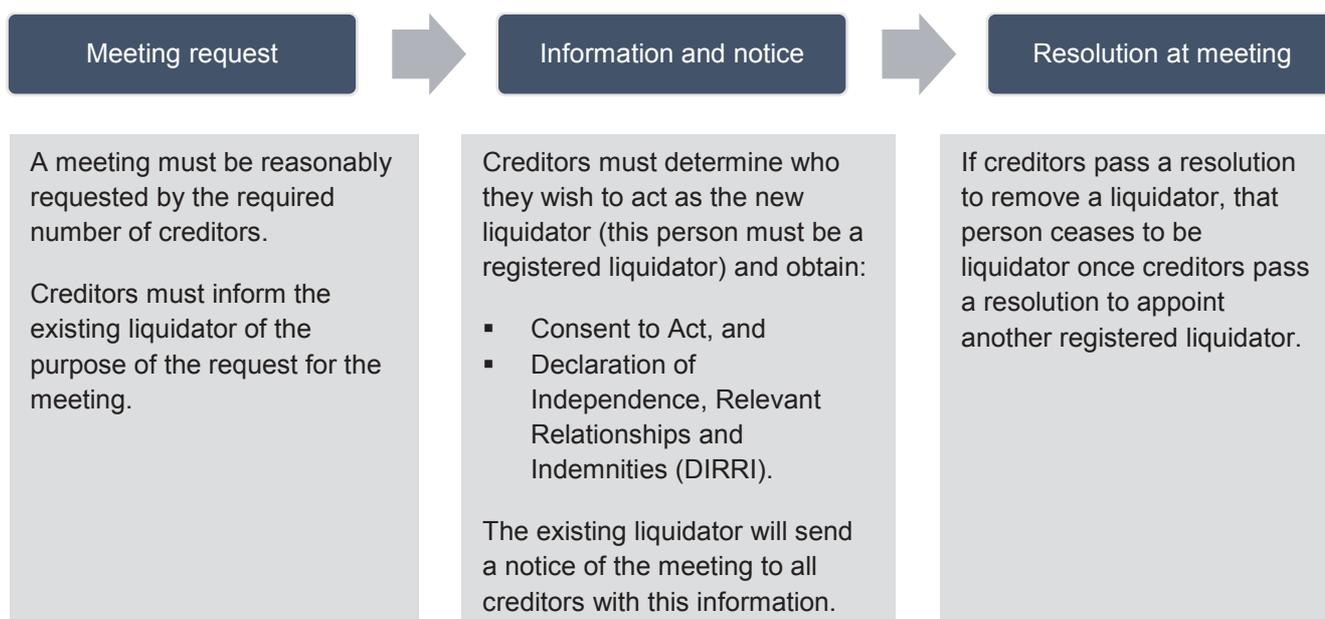
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

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

Right to replace liquidator

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

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



For more information, go to www.arita.com.au/creditors



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Appendix C

Form 535 – Proof of Debt

FORM 535

subregulation 5.6.49(2)
Corporations Act 2001

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Liquidator of Grandmas Kiwi Kitchen (In Liquidation) ACN 604 983 664 (the "Company")

1. This is to state that the Company was on 7 September 2018 (date of court order in winding up by the Court), and still is, justly and truly indebted to: _____

_____ full name, ABN and address 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) for _____ dollars and _____ cents

Particulars of the debt are:

| Date | Consideration <i>(state how the debt arose)</i> | Amount | Remarks <i>(include details of voucher substantiating payment)</i> |
|------|--|--------|---|
| \$ | | | |

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

(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).

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

3. Signed by (select option):

I am the creditor personally.

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, remains unpaid and unsatisfied.

I am the creditor's agent authorised in writing to make this statement in writing. I know the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Signature: _____ Dated: _____

Name: _____ Occupation: _____

Address: _____