

NOTICE TO CREDITORS

RE: ALLIED BRANDS LIMITED (ADMINISTRATORS APPOINTED)

ACN: 108 958 274
ABN: 20 108 958 274

I confirm that Peter Biazos and I were appointed Administrators of the above company on 27 October 2010 pursuant to Section 436A of the Corporations Act 2001.

A meeting of creditors to consider the future of the company has been convened for **2:30 pm on Tuesday, 19 April 2011** at the offices of Vincents Chartered Accountants, Level 34, 32 Turbot Street, Brisbane, Qld.

For your information and assistance the following statements and reports are attached:

- Formal Notice of Meeting
- A report prepared by me on the administration to date and future recommendations
- A statement of my opinions pursuant to Section 439A(4)(b) of the Corporations Act 2001 contained within my report
- Annexure A – Table Summarising proposals for a Deed of Company Arrangement (“DCA”)
- Annexure B – Documents Relating to Proposal for DCA by Trident Capital Pty Ltd
- Annexure C – Draft DCA proposal by the Directors
- Annexure D – ASIC Guideline on Creditors’ Trusts
- Annexure E – Estimated Outcome Statement
- Annexure F – Extract of Report as to Affairs and Summary of Financial Statements
- A Proof of Debt form and an Appointment of Proxy form enabling you to appoint a person to attend the meeting and vote on your behalf

For further information in relation to this administration and the enclosed documents, please do not hesitate to contact Matthew Varendorff (mvarendorff@vincents.com.au) on (07) 3228 4267 or Lauren Del Monte (ldelmonte@vincents.com.au) on (07) 3228 4255.

DATED this 11th day of April 2011



PETER DINORIS
ADMINISTRATOR
EMAIL: pdinoris@vincents.com.au

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NOTICE OF MEETING

RE: ALLIED BRANDS LIMITED (ADMINISTRATORS APPOINTED)

ACN: 108 958 274
ABN: 20 108 958 274

1. Notice is given that a meeting of creditors of the above company will be held the offices of Vincents Chartered Accountants, Level 34, 32 Turbot Street, Brisbane, Qld on **19 April 2011 at 2:30 pm**.
2. The purpose of the meeting is:
 - (i) To consider the Administrators' report on the company's affairs.
 - (ii) For creditors to resolve:
 - (a) That the company enter into a Deed of Company Arrangement; or
 - (b) That the administration should end; or
 - (c) That the company be wound up; and
 - (iii) To fix the remuneration of the Administrators;
 - (iv) If the company is wound up or creditors resolve that the company enter into a Deed of Company Arrangement, to consider the appointment of a Committee of Inspection; and
 - (v) If no Committee is appointed, to fix the remuneration of the Liquidators or Deed Administrators, as appropriate.
3. An Appointment of Proxy form is enclosed to enable you to appoint another person to act on your behalf at the meeting if you wish (see note below). Appointment of Proxies must be returned to my office no later than **4:00 pm on 18 April 2011**.

DATED this 11th day of April 2011.



PETER DINORIS
ADMINISTRATOR

NOTE: Under the Corporations Regulations, a creditor is not entitled to vote at a meeting unless:

- his claim has been admitted, wholly or in part, by the Administrator; or
- he has lodged with the Administrator particulars of the debt or claim (regulation 5.6.23).

Furthermore, proxies must be made available to the Administrator.

A secured creditor may vote for the whole of his debt without deduction for his security (regulation 5.6.24(4)).

The issue of telephone conferences is addressed at regulations 5.6.13A & 5.6.13B.

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REPORT TO CREDITORS

ALLIED BRANDS LIMITED (ADMINISTRATORS APPOINTED)

ACN: 108 958 274

ABN: 20 108 958 274

I confirm that Peter Biazos and I, Peter Dinoris, were appointed Administrators of the above company on 27 October 2010 pursuant to Section 436A of the Corporations Act 2001.

For the reasons set out in this report, it is our opinion that:

- **It is in the best interests of creditors to accept the proposal submitted by Trident Capital Pty Ltd for a deed of company arrangement ("DCA") which is reliant on secured creditors removing their securities over the company; and**
- **It would not be in the best interests of creditors for the company to be wound up or the administration end.**

This report, pursuant to Section 439A(4)(a) of the Corporations Act 2001, is set out as follows:

1. Statement of Independence
2. Outcome of First Meeting of Creditors
3. Statutory Information
4. Trading Operations and History
5. Summary of the Company's Assets and Liabilities
6. Financial Information
7. Investigations
8. Related Party Transactions
9. Offences
10. Recovery of Property or Compensation for the Benefit of Creditors
11. Proposal for a Deed of Company Arrangement
12. Dividend Estimate
13. Options Available to Creditors and Administrators' Recommendation
14. Meeting of Creditors
15. Remuneration of Administrators / Liquidators
16. Finalisation of Administration

1. STATEMENT OF INDEPENDENCE

Refer to the attached Declaration of Independence, Relevant Relationships.

2. OUTCOME OF FIRST MEETING OF CREDITORS

Pursuant to the provisions of the Corporations Act 2001, Administrators are required to hold a first meeting of creditors within eight (8) business days of the appointment. The first meeting of creditors was called for and held on 8 November 2010.

A Committee of Creditors was formed at the first meeting of creditors, comprising:

- Jamie Harris - Allied Brands Finance Pty Ltd (Receivers and Managers Appointed).
- Glenn Molloy - Beath Investment Services Pty Ltd
- Len Cray - BreezeCorp Pty Ltd
- Julian Lane - P.T. Limited
- Michael Gordon - Steinhoff Asia Pacific Limited

As there was no nomination for alternative Administrators, Peter Biazos and I, Peter Dinoris, remained as Administrators of the company.

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3. STATUTORY INFORMATION

The corporate database maintained by the Australian Securities & Investments Commission ("ASIC"), discloses the company was incorporated in Queensland on 5 May 2004.

Directors

A search of the records of the ASIC revealed the following regarding directors of the company since 1 December 2007:

Name	Date Appointed	Date Resigned
Lachlan Stuart McIntosh	20 July 2006	-
Peter David Elligett	20 March 2007	-
Peter Allan Graham	5 May 2004	-
Jury Ivan Wowk	4 February 2010	15 April 2010
Anthony Robert Underwood	31 August 2007	30 July 2009

Secretary

A search of the records of the ASIC revealed the secretary of the company is:

Name	Date Appointed
Sean Craig Corbin	4 February 2010

Shareholdings

The records of ASIC revealed the following regarding the shareholdings of the company:

Class	No. Of Shares
Ordinary Shares	One Hundred and Ninety-Four Million, One Hundred and Forty-Eight Thousand, One Hundred and Ninety-Five (194,148,195) fully paid Ordinary shares
Partly Paid Shares (PP1)	One Million, Two Hundred Thousand (1,200,000) partly paid shares
Partly Paid Shares (PP2)	Nine Hundred Thousand (900,000) partly paid shares

Below is a list of the top twenty-five (25) shareholders of the company as at 29 September 2009 as disclosed in the annual report:

Shareholders	No. Shares Held	%
Wavet Fund No 2 Pty Ltd	12,146,100	7.11
Contemplator Pty Ltd <ARG Pension Fund A/C>	7,515,128	4.40
Winport International Limited	6,666,667	3.90
La Costa Pty Ltd <Graham Family Unit A/C>	6,400,000	3.75
Dobco Superannuation Pty Ltd <Dobco Pension Fund A/C>	5,375,000	3.15
Shane Radbone Investment Pty Ltd <The Rads A/C>	5,307,500	3.11
Marco Group Holdings Pty Ltd	3,961,955	2.32
Bouta Pty Limited <JB Martel Practice S/F A/C>	3,692,759	2.16
Bond Street Custodians Limited <BKO – V05589 A/C>	3,562,685	2.09
Kathlac Pty Ltd <McIntosh Family Account>	3,266,667	1.91
Awesome Water (Perth) Pty Ltd <Petra Edwards Family A/C>	2,546,282	1.49
Kathlac Pty Ltd	2,471,436	1.45
HAAC Pty Ltd <HAAC Unit A/C>	2,387,076	1.40
Equipment Company of Australia Pty Limited	2,266,667	1.33
La Costa Pty Ltd <The Graham Family A/C>	2,259,806	1.32
ANZ Nominees Limited <Cash Income A/C>	2,229,028	1.31
Dobco Superannuation Pty Ltd <Dobco Pension A/C>	2,185,008	1.28
Marlena Holdings Pty Ltd	2,000,000	1.17
PPK Investment Holdings Pty Ltd	1,826,738	1.07
Wavet Fund No 2 Pty Ltd	1,708,667	1.00
Alpha Wholesale Pty Ltd <Drew Edwards Investment A/C>	1,673,067	0.98
Atkone Pty Ltd	1,666,667	0.98
Bawden Custodians Pty Ltd <Terton Corp P/L S/F A/C>	1,628,553	0.95
Kamala Holdings Pty Ltd <Kamala 1994 Super Fund>	1,572,327	0.92
Vitri Australia Pty Ltd	1,500,000	0.88
Total	87,815,783	51.43%

REPORT TO CREDITORS – ALLIED BRANDS LIMITED (ADMINISTRATORS APPOINTED)

Auditor

A search of the records of the ASIC revealed the auditor of the company is:

Name	Firm	Date Appointed
Shaun Jason Lindemann	Hacketts Chartered Accountants	28 November 2006

Charges

A fixed charge is a charge over assets that the borrower does not continually turn over in the ordinary course of business and therefore needs the lender's permission to do so. Depending on the nature of the operations of a company, these assets are generally items such as property, buildings, vehicles plant and equipment.

A floating charge is a charge over assets that the borrower does continually turn over and does not require the lender's permission to do so. Floating assets are assets such as cash at bank, debtors and stock.

Pursuant to the provisions of the Corporations Act 2001, the fixed charge holders will have first recourse to any funds realised from the sale of the fixed assets. Should the funds realised from the sale of the company's fixed assets be insufficient to satisfy the debt to the fixed charge holders, the fixed charge holders can claim as ordinary unsecured creditors for the balance of their debt.

The ASIC corporate database indicates the company is subject to the following charges:

Westpac Banking Corporation ("Westpac")

ASIC Charge No.	Date Created	Date Registered	Charge Type
1440013	5 March 2007	17 April 2007	Fixed and Floating
1524196	7 September 2007	8 October 2007	Fixed
1527020	7 September 2007	15 October 2007	Fixed
1527249	7 September 2007	15 October 2007	Fixed
1527275	7 September 2007	15 October 2007	Fixed

As at 22 February 2011; the outstanding liability to Westpac secured by an interlocking guarantee and mortgage debenture from Allied Brands Limited totalled \$12,634,371.21 plus uncollected interest and fees which the bank reserves its rights to collect.

Westpac holds an interlocking guarantee from the following companies, supported by a registered fixed and floating charge from each company:

- Allied Brands Finance Pty Ltd
- Allied Brands Services Pty Ltd
- Awesome Entertainment Pty Ltd
- Awesome Water Pty Ltd
- Cardiology Pty Ltd
- Cardology Pty Ltd
- Cards and Gifts (Group) Pty Ltd
- Cards and Gifts Pty Ltd
- Cookie Man Pty Ltd
- Dugg Holdings Pty Ltd
- Granny May's (Australia) Pty Ltd
- Granny May's (Operations) Pty Ltd
- Kenny's Cardiology (Australia) Pty Ltd
- Kenny's Cardiology (Operations) Pty Ltd
- Kenny's Cardiology Pty Ltd
- Narmada Water Pty Ltd
- Retailiation Pty Ltd
- Villa and Hut Franchising Pty Ltd
- Villa and Hut Holdings Pty Ltd

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Beath Investment Services Pty Ltd (“Beath”)

ASIC Charge No.	Date Created	Date Registered	Charge Type
1567012	7 December 2007	21 December 2007	Fixed and Floating

Beath is the entity that represents convertible note holders and appears to be owed a debt in the order of \$6,050,550. The original amount advanced to Allied Brands Limited was \$5,790,000 with interest accruing at 9% per annum.

BOQ Equipment Finance Limited (“BOQ”)

ASIC Charge No.	Date Created	Date Registered	Charge Type
1617312	31 March 2008	9 April 2008	Fixed

The charge in favour of BOQ related to funds lent to the company for the purchase of a Mitsubishi Express Van. The payout figure for the facility was \$14,975.43. BOQ has taken possession of the vehicle and arranged for its sale. I am awaiting receipt of details of any shortfall to the bank.

Cashflow Finance Solutions Pty Ltd (“Cashflow Finance”)

ASIC Charge No.	Date Created	Date Registered	Charge Type
1886987	24 November 2009	26 November 2009	Fixed and Floating

The amount owing to Cashflow Finance to satisfy the above fixed and floating charge is approximately \$839,900.

Winding Up Proceedings

Coco Design Investments Pty Ltd commenced winding up proceedings against the company in the Federal Court of New South Wales (NSD1035/2010) prior to the appointment of the Administrators.

Coco Design Investments Pty Ltd consented to dismiss the winding up application on the basis that winding up application costs are paid within twenty-one (21) days of the company going into liquidation or a Deed of Company Arrangement being executed.

Extension of Convening Period

The most recent Order of the Supreme Court of Queensland dated 25 February 2011 extended the convening period to 12 April 2011. The effect of this Order is that the second meeting of creditors will be held on 19 April 2011.

4. TRADING OPERATIONS AND HISTORY

Allied Brands Limited (Administrators Appointed) (“ABQ”) was listed on the Australian Securities Exchange (“ASX”) on 22 November 2004. The main business of the company at the time of listing was the ownership of shares in Allied Brands Services Pty Ltd that had the Australian operations of Baskin-Robbins which had commenced on or about early January 1991.

During the 2006 financial year, ABQ was involved in unsuccessful negotiations to acquire the business operations of Retail Brands Group which owned the Wendy’s Ice Creams and the Quiznos operations in Australia and New Zealand. It is noted that the financial report of ABQ disclosed that it incurred a loss in the 2006 financial year.

ABQ embarked on the acquisition of Cookie Man Pty Ltd in March 2007, Kenny’s Cardiology Group in July 2007, Awesome Water Pty Ltd in February 2008 and established Awesome Entertainment Pty Ltd in June 2008. The acquisitions appear to have been facilitated utilising a mixture of cash and equity in ABQ.

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During the financial year ended 30 June 2008, ABQ and its controlled entities reported revenue of \$39.7 million, net profit after tax of \$5.7 million and interest-bearing loans and liabilities totalling \$10.2 million.

In line with ABQ's strategy of pursuing acquisitions with strong five (5) year growth potential, the Allied Group completed the acquisition of Villa and Hut in June 2009.

In the financial year ended 30 June 2009, ABQ and its controlled entities reported increased revenue of \$53.9 million, decreased net profit after tax of \$2.9 million and interest-bearing loans and liabilities totalling \$15.7 million. ABQ reported the Allied Group had been significantly impacted due to volatility in the Australian Dollar and commodity prices during the 2009 financial year.

During the months of June and July 2010, ABQ and its controlled entities announced to the market two (2) profit downgrades following the Allied Group undertaking a strategic review of the business and following discussions with the auditors of ABQ.

The unaudited financial reports for ABQ and its controlled entities for the financial year ended 30 June 2010 disclose revenue of \$57.7 million, a net loss after tax of circa \$35 million and interest-bearing loans and liabilities totalling \$16 million.

ABQ reported in late August 2010 that "the loss included significant write downs of goodwill and the carrying value of assets across the group, provisions for the closure of company owned stores and the abandonment of the area developer concept in most segments and significant bad debts relating to this abandonment."

On 21 October 2010, ABQ reported that Dunkin Brands Inc had terminated the Australian master franchise agreement held by Allied Brands Services Pty Ltd. Subsequently, Westpac Banking Corporation appointed Receivers and Managers over certain assets of Allied Brands Services Pty Ltd and Allied Brands Finance Pty Ltd.

Allied Brands Limited is the ultimate holding company and or shareholder for the Allied Brands Group ("the Allied Group") consisting of twenty-five (25) subsidiary companies. Below is a summary of information extracted from searches of the corporate database of the ASIC:

1. ABL Project Management Pty Ltd – ACN: 108 959 673.
2. ABL Property Leasing Pty Ltd – ACN: 138 642 770.
3. Allied Brands Finance Pty Ltd (Receivers & Managers Appointed) – ACN: 108 961 851.
4. Allied Brands Services P/L (Receivers & Managers Appointed)(In Liquidation) - ACN 009 688 751.
5. Awesome Entertainment Pty Ltd – ACN: 130 673 335.
6. Awesome Technologies Pty Ltd – ACN: 130 673 326.
7. Awesome Water Pty Ltd – ACN: 106 841 187.
8. BR Operations Pty Ltd – ACN: 108 959 655.
9. Cardiology Pty Ltd (Deregistered on 30 January 2011) – ACN: 070 932 704.
10. Cardology Pty Ltd – ACN: 064 466 744.
11. Cards & Gifts (Group) Pty Ltd (In Liquidation) – ACN: 059 927 605.
12. Cards & Gifts Pty Ltd – ACN: 080 998 009.
13. Cookie Man Pty Ltd (In Liquidation) – ACN: 080 397 968.
14. Dugg Holdings Pty Ltd – ACN: 068 293 676.
15. Granny May's (Australia) Pty Ltd – ACN: 094 402 025.
16. Granny May's (Operations) Pty Ltd – ACN: 094 402 034.
17. KC Purchasing Pty Ltd – ACN: 137 440 610.
18. Kenny's Cardiology (Australia) Pty Ltd – ACN: 057 187 890.
19. Kenny's Cardiology (Operations) Pty Ltd (In Liquidation) – ACN: 066 977 973.
20. Kenny's Cardiology New Zealand Limited – NZ Co. No. 2128628.
21. Kenny's Cardiology Pty Ltd – ACN: 002 812 811.
22. Narmada Water Pty Ltd – ACN: 121 002 935.
23. Retailiation Pty Ltd – ACN: 084 672 962.
24. Villa & Hut Franchising Pty Ltd – ACN: 125 356 667.
25. Villa & Hut Holdings Pty Ltd (In Liquidation) – ACN: 104 747 677.

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ABQ performed management services for the Allied Group's retail based franchises. The following franchise businesses are no longer operated by the companies in the Allied Group:

- a) Baskin Robbins – an ice cream retailer.
- b) Cookie Man – a retailer of cookies and coffee.
- c) Kenny's Cardiology – a cards and gift retailer.
- d) Villa and Hut – a retailer of homewares, furniture and cafes.

It is understood that the Awesome Group (comprising Awesome Entertainment Pty Ltd and Awesome Water Pty Ltd) operates businesses of retail of water coolers and televisions with on or about fifty-seven (57) franchisees.

5. SUMMARY OF THE COMPANY'S ASSETS AND LIABILITIES

Upon my appointment, demands were issued to the directors of the company requiring a Report as to Affairs ("RATA") setting out the asset and liability position of the company. A RATA was received by email from Lachlan McIntosh on 7 April 2011, an extract of which is attached.

Set out below is the estimated asset and liability position of the company as at 27 October 2010 based on the information presently available to me and subject to the matters disclosed in the notes that follow:

	Note	Valuation as per RATA \$	Administrators' Realisable Value Optimistic \$	Administrators' Realisable Value Pessimistic \$
Floating Assets				
Cash at Bank and on Hand	5.1	40,000	46,000	46,000
Debtors	5.2	9,562,211	not known	12,254
Stock	5.3	nil	nil	nil
Unpaid Capital	5.4	nil	not known	nil
Dunkin Brands Inc Claim	5.5	-	not known	nil
Other Floating Assets	5.6	12,232,364	215,470	20,470
Funds Available for Priority Creditors		\$21,834,575	\$not known	\$78,724
Priority Unsecured Creditors				
Petitioning Creditor	5.7	-	10,000	10,000
Priority Unsecured Creditors	5.8	97,403	98,000	800,000
Total Priority Creditors		\$97,403	\$108,000	\$810,000
Balance of Available Funds		\$21,737,172	\$not known	\$nil
Fixed Assets				
Property	5.9	nil	nil	nil
Equipment and Office Furniture	5.10	162,286	3,000	2,035
Vehicles (net)	5.11	(140,108)	nil	nil
Other Fixed Assets	5.12	nil	nil likely	nil
Total Fixed Assets		\$22,178	\$3,000	\$2,035
Balance of Assets		\$21,759,350	\$not known	\$2,035
Secured Creditors				
Westpac Banking Corporation	5.13	10,642,000	12,000,000	13,000,000
Beath Investment Services Pty Ltd	5.14	-	6,100,000	6,500,000
Cashflow Finance Solutions Pty Ltd	5.15	-	760,000	850,000
Secured Debts		\$10,642,000	\$18,860,000	\$20,350,000
Estimated Surplus / (Shortfall)		\$11,117,350	\$shortfall likely	\$(20,347,965)

REPORT TO CREDITORS – ALLIED BRANDS LIMITED (ADMINISTRATORS APPOINTED)

	Note	Valuation as per RATA \$	Administrators' Realisable Value Optimistic \$	Administrators' Realisable Value Pessimistic \$
Unsecured Creditors				
Shortfall - Finance Agreements & Employees	5.8 & 5.11	-	nil	780,000
Ordinary Unsecured Creditors	5.16	4,754,327	10,000,000	17,000,000
Contingent Liabilities	5.17	not known	nil	not known
Total Unsecured Liabilities		\$4,754,327	\$10,000,000	\$17,780,000
Estimated Surplus / (Deficiency) (subject to costs)		\$6,363,023	\$(material deficiency likely)	\$(38,127,965)

5.1 Cash at Bank and on Hand

It was noted in the RATA that the company's bank accounts were overdrawn by \$31,306 and that \$40,000 was held in a solicitor's trust account.

Upon my appointment, demands were issued to all major banks requesting the balance of all bank accounts held in the name of the company. My inquiries revealed the company held various accounts with Westpac. No funds were available in the bank accounts for the benefit of this administration.

There appear to have been funds totalling \$46,099.64 held in a solicitor's trust account on the date of our appointment. We have collected \$30,000 from this source and the balance was utilised in paying various legal fees incurred during this voluntary administration.

5.2 Debtors

A schedule attached to the RATA listed debtors of the company and disclosed a total of \$6,836,335. That schedule however included a number of negative balances that for the purposes of this report, I have dealt with as being liabilities of the company (section 5.16 of this report):

Debtor	Valuation as per RATA (Adjusted) \$	Administrators' Realisable Value Optimistic \$	Administrators' Realisable Value Pessimistic \$
Allied Brands Services Pty Ltd – loan	6,344,270	any recovery	nil
Less Provision for Diminution	(3,343,240)	likely immaterial	nil
Awesome Water Pty Ltd – loan	1,150,171	nil likely	nil
Cookie Man Pty Ltd – loan	461,345	nil likely	nil
Christie Corporate Pty Ltd – bond	21,450	12,254	12,254
Kenny's Cardiology Pty Ltd – loan	3,922,794	nil likely	nil
Peter Graham – loan	167,842	any recovery	nil
Shane Radbone – loan	837,579	likely immaterial	nil
SC Operations (ABL Project Management P/L)	75,350	not known	nil
Less Provision for Diminution	(75,350)	nil likely	nil
Total Debtors	\$9,562,211	\$not known	\$12,254

Associated Intercompany Loans

The records of the company disclose various intercompany loans totalling \$11,953,930 owed by the following subsidiaries:

- ABL Project Management Pty Ltd
- Allied Brands Services Pty Ltd (Receivers and Managers Appointed)(In Liquidation)

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- Awesome Water Pty Ltd
- Cookie Man Pty Ltd (In Liquidation)
- Kenny's Cardiology Pty Ltd (In Liquidation)

It is my understanding that ABL Project Management Pty Ltd does not have any assets or capacity to satisfy any debt recovery action against it.

Based on the information presently available, it appears unlikely any material funds are capable of recovery from the subsidiaries listed above which are subject to formal insolvency appointments. I will be lodging a formal proof of debt form with the Liquidators of those companies in due course.

I am aware that the material debts owed to Westpac and Beath (section 3) are secured by registered fixed and floating charges over the assets and undertakings of Awesome Water Pty Ltd. The prospects of any material funds being realised from Awesome Water Pty Ltd appear low.

Christie Corporate Pty Ltd

The company operated from leased premises at Suite 1, Level 8, 320 Adelaide Street, Brisbane, Qld. A security deposit was paid by the company to Christie Corporate Pty Ltd upon entering into the lease.

Upon the vacation of the business premises on 31 December 2010, Christie Corporate Pty Ltd refunded the security deposit less costs incurred in returning the premises to their former condition. I have received \$12,254 from this source.

Director Loan – Peter Graham

The available records indicate that \$167,841.95 is owed to the company by Peter Graham. Upon my appointment, a letter of demand was issued to Mr Graham seeking the repayment of the loan.

It appears Mr Graham does not accept that a loan is owed by him to the company. I have received a statutory declaration disclosing Mr Graham does not have the financial capacity to satisfy any claim against him.

Any creditor interested in funding further investigations into this claim and any recovery action is requested to contact my offices.

Shane Radbone Investments Pty Ltd

The records refer to a loan of \$837,579 owed by Shane Radbone Investments Pty Ltd to the company.

Upon my appointment, a letter of demand was issued to Shane Radbone Investments Pty Ltd seeking payment of the debt. The solicitors for Shane Radbone Investments Pty Ltd have responded claiming that the demand is misplaced and disputing there is any debt owed to the company.

This claim involves transactions, dealings and communications that occurred prior to my appointment. I am without sufficient funds to obtain Counsel opinion on whether there is any valid claim capable of commercial recovery. Any creditor wishing to fund such an opinion is requested to contact my offices.

5.3 Stock

I am not aware of any trading stock or work in progress as at the date of my appointment.

5.4 Unpaid Capital

My investigations into the affairs of the company and its equity structure revealed there is the following outstanding unpaid capital:

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Shareholder	No. of Shares	Issue Price \$	Amount Paid \$	Unpaid Amount \$
Capital 23 Pty Ltd (Deregistered)	300,000	\$0.65	\$0.05	\$180,000
Cavanagh – Tierney Investment Trust	300,000	\$0.65	\$0.05	\$180,000
Crescendo Investments Pty Ltd	300,000	\$0.65	\$0.05	\$180,000
Kathlac Pty Ltd	300,000	\$0.60	\$0.05	\$165,000
Kindgap Pty Ltd	300,000	\$0.60	\$0.05	\$165,000
Marlena Holdings Pty Ltd	300,000	\$0.60	\$0.05	\$165,000
La Costa Pty Ltd	300,000	\$0.60	\$0.05	\$165,000
Total	2,100,000			\$1,200,000

It appears that the shares held by the above parties are as Trustees of various Trusts.

I issued written demands to each of the above parties making a call on the unpaid capital as the amounts represent debts owed to the company.

A search of the records of ASIC revealed Capital 23 Pty Ltd was deregistered on 31 October 2010.

I have to date received responses from the following parties:

- Cavanagh-Tierney Investment Trust – the Trust refutes any liability in connection to the partly paid shares and claims to have never applied for the shares.
- Kathlac Pty Ltd – claims to have paid for the shares in full. I am in receipt of a document dated 17 September 2010 disclosing that 300,000 shares were re-classified from partly paid to fully paid ordinary shares. I am examining the records to identify the receipt of funds by the company.

As at the date of this report, I have not received any funds from the shareholders.

I am not in a position at present to comment on whether the shareholders have the financial capacity to pay the outstanding amounts.

Given the lack of funds available, I am attempting to seek independent legal advice on a speculative basis on the validity of the claims against the shareholders and the available recovery options.

Any creditor interested in funding recovery action to enable appropriate timely action to be taken, is requested to contact this office.

5.5 Dunkin Brands Inc. Claim

A director of the company believes the following gives rise to a cause of action against Dunkin Brands Inc. ("Dunkin Brands"):

- The Baskin-Robbins franchise that the company operated through its subsidiary, Allied Brands Services Pty Ltd ("ABS"), was a significant part of the business operations of Allied Brands and the Allied Group.
- Governing the Baskin-Robbins franchise operations in Australia were three (3) main franchise and distribution agreements described as follows:
 - (i) A Multiple Franchise Agreement entered into on about 3 January 1991 between Baskin-Robbins International Company ("Baskin-Robbins USA"), Baskin-Robbins Australia Pty Ltd ("Baskin-Robbins Australia"), ABS, David Graham and Peter Graham;
 - (ii) A Master Franchise Agreement entered into on 9 November 2004 between Baskin-Robbins USA, Allied Brands, ABS, Peter Graham & David Graham ("Master Franchise Agreement");
 - (iii) A Distribution Agreement entered into on or about 13 October 2004 between Baskin-Robbins USA, Baskin-Robbins Australia, ABS, Allied Brands, Peter Graham and David Graham ("Distribution Agreement").
- Dunkin Brands is the parent company of Dunkin Brands LLC and the owner of the "Baskin-Robbins" brand name.

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- On or about Friday 9 September 2010, Dunkin-Brands purportedly terminated the Master Franchise Agreement and Distribution Agreement by serving Sean Corbin, Chief Executive Officer of Allied Brands and ABS, with a Notice of Termination.
- No prior notice of default was served on Allied Brands or ABS by Dunkin Brands, Baskin Robbins USA or Baskin Robbins Australia.
- The purported termination may not have complied with particular provisions of the Master Franchise Agreement and Distribution Agreement.
- At the time of the purported termination, Allied Brands and ABS were in negotiations with a third party to provide further funding facilities to the Group. The purported termination, which Allied Brands says was inconsistent with and in breach of the terms of the Master Franchise Agreement and Distribution Agreement, allegedly caused loss to Allied Brands and ABS.

I am not in a position to comment on whether there is a valid claim capable of commercial recovery against Dunkin Brands. Transactions relevant to the alleged claim occurred prior to my appointment and appear to involve complex legal issues.

I am without sufficient funds to attend to the further detailed investigations required into this matter or seek comprehensive legal advice to determine if there is a valid claim warranting litigation.

It appears that any action will be costly and vehemently defended by Dunkin Brands.

Whether the company is placed into liquidation or a Deed of Company Arrangement is entered into, the following options are likely to be available:

1. Any potential claim is not pursued.
2. Any interested party may make offer for the assignment of the chose in action to them and approval of creditors or the court is obtained.
3. Creditors advance sufficient funding to finalise investigations, obtain legal advice and pursue the claim. An alternative may be to seek funding from litigation funders.

I am not in a position to comment at this stage on whether any funds are capable of commercial recovery from this source for the benefit of creditors.

5.6 Other Floating Assets

Bartercard

The records of the company referred to an account titled "other debtors – Bartercard" with a balance of \$135,655.

My investigations revealed there does not appear to be any material balance of trade dollars available to the company and that Bartercard is in fact a creditor of the company for \$863.43.

Bear Strategic Pty Ltd ATF The Franchisee Unit Trust

It appeared from the documents made available to me that there may have been a claim of against Bear Strategic Pty Ltd ATF in respect to an agreement for the purchase of various stores of Villa & Hut Holdings Pty Ltd.

The solicitors for Bear Strategic Pty Ltd ATF have stated that it has suffered various losses and is actually a creditor of the company for at least \$1,542,038.50.

I am without sufficient funds to seek any independent legal advice regarding whether there is a valid claim against Bear Strategic Pty Ltd ATF capable of commercial recovery.

Other Assets in RATA

A schedule attached to the RATA listed other assets of the company and included a negative balance for deposits. I have removed that negative amount from the table below:

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Other Asset	Valuation as per RATA (Adjusted) \$	Administrators' Realisable Value Optimistic \$	Administrators' Realisable Value Pessimistic \$
Acquisition – Allied Brands Services	800,000	nil likely	nil
Less Provision for Diminution	(800,000)		
Acquisition – Villa & Hut	2,757,621	nil likely	nil
Acquisition – Cookie Man	7,151,100	nil likely	nil
Acquisition – Kennys	6,583,928	nil likely	nil
Acquisition – Awesome Water	12,532,275	nil likely	nil
Less Diminution	(18,224,924)		-
Acquisition – Sub Total	10,800,000	nil likely	nil
ATO Running Account Balance	163,677		
ATO GST Deductible	53,289		
ATO Deferred Tax Asset	323,993	20,470	20,470
ATO Provision for Income Tax	1,671		
Borrowing Costs	40,855	nil	nil
Capital Raising Costs	363,835	nil	nil
Intellectual Property	199,952	nil likely	nil
Prepayments	311,447	195,000	nil
Westpac Visa	1,146	nil	nil
Total Other Assets	\$12,259,865	\$215,470	\$20,470

Associated Entities

Below is a summary of information extracted from searches of the corporate database of ASIC regarding companies of which Allied Brands Ltd is the ultimate holding company and or shareholder:

1. ABL Project Management Pty Ltd – ACN: 108 959 673 – one (1) ordinary share – ultimate holding company.
2. ABL Property Leasing Pty Ltd – ACN: 138 642 770 – one (1) ordinary share – ultimate holding company.
3. Allied Brands Finance Pty Ltd (Receivers and Managers Appointed) – ACN: 108 961 851 – one (1) ordinary share – ultimate holding company.
4. Allied Brands Services Pty Ltd (Receivers and Managers Appointed)(In Liquidation) – ACN: 009 688 751 – two thousand and two (2002) ordinary shares – ultimate holding company.
5. Awesome Entertainment Pty Ltd – ACN: 130 673 335 – one (1) ordinary share.
6. Awesome Technologies Pty Ltd – ACN: 130 673 326 – one (1) ordinary share.
7. Awesome Water Pty Ltd – ACN: 106 841 187 – eleven thousand two hundred and twenty three (11,223) ordinary shares – ultimate holding company.
8. BR Operations Pty Ltd – ACN: 108 959 655 – one (1) ordinary share – ultimate holding company.
9. Cardiology Pty Ltd (Deregistered on 30 January 2011) – ACN: 070 932 704 – no shares held – ultimate holding company.
10. Cardology Pty Ltd – ACN: 064 466 744 – no shares held – ultimate holding company.
11. Cards & Gifts (Group) Pty Ltd (In Liquidation) – ACN: 059 927 605 – no shares held – ultimate holding company.
12. Cards & Gifts Pty Ltd – ACN: 080 998 009 – no shares held – ultimate holding company.
13. Cookie Man Pty Ltd (In Liquidation) – ACN: 080 397 968 – eight hundred and two thousand six hundred and thirty two (802,632) ordinary shares – ultimate holding company.
14. Dugg Holdings Pty Ltd – ACN: 068 293 676 – eighty (80) ordinary shares – ultimate holding company.
15. Granny May's (Australia) Pty Ltd – ACN: 094 402 025 – no shares held – ultimate holding company.
16. Granny May's (Operations) Pty Ltd – ACN: 094 402 034 – no shares held – ultimate holding company.
17. KC Purchasing Pty Ltd – ACN: 137 440 610 – one (1) ordinary share.
18. Kenny's Cardiology (Australia) Pty Ltd – ACN: 057 187 890 – no shares – ultimate holding company.
19. Kenny's Cardiology (Operations) Pty Ltd (In Liquidation) – ACN: 066 977 973 – no shares held – ultimate holding company.
20. Kenny's Cardiology New Zealand Limited – NZ Co. No. 2128628 – shares are held by Dugg Holdings Pty Ltd.
21. Kenny's Cardiology Pty Ltd – ACN: 002 812 811 – no shares held – ultimate holding company.
22. Narmada Water Pty Ltd – ACN: 121 002 935 – one hundred (100) ordinary shares – ultimate holding company.

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23. Retailiation Pty Ltd – ACN: 084 672 962 – one (1) ordinary share – ultimate holding company.
24. Villa & Hut Franchising Pty Ltd – ACN: 125 356 667 – one (1) ordinary share – ultimate holding company.
25. Villa & Hut Holdings Pty Ltd (In Liquidation) – ACN: 104 747 677 – two (2) ordinary shares – ultimate holding company.

The financial reports of the company indicate it could not reliably measure the unlisted assets at fair value due to the variability in the range of reasonable fair value estimates being significant. The unlisted financial assets were therefore carried at cost.

Based on the information presently available it appears unlikely any funds will be realised from the investments made by the company in the various associated entities.

ATO

During this appointment, I recovered \$20,470.94 of refunds from the Australian Taxation Office. No further funds are expected from this source.

The Deferred Tax Asset referred to in the table does not have a realisable value.

Borrowing and Capital Raising Costs

The items referred to as Borrowing Costs and Capital Raising Costs are not assets that are capable of realisation for the benefit of the creditors of the company.

Intellectual Property

My searches have not identified any patents or trademarks registered in the name of the company.

According to Sean Corbin, former CEO, the intellectual property referred to the acquisition of Cookie Man, was carried forward on consolidation and should be written off as that entity is no longer part of the Allied Group.

Prepayments

My inquiries into the asset account titled "Prepayments" revealed it represents:

- Loans to management personnel or their nominated companies totalling \$195,000 for the purchase of shares in the company; and
- Various capital expenses that are not capable of realisation.

Investigations regarding transactions processed through this account are continuing. Creditors will be informed of any funds realised from this source.

5.7 Petitioning Creditor

Coco Design Investments Pty Ltd consented to dismiss the winding up application on the basis that winding up application costs are paid within twenty-one (21) days of the company going into liquidation or a Deed of Company Arrangement being executed.

5.8 Priority Unsecured Creditors

Pursuant to the provisions of the Corporations Act 2001, the claims of employees are afforded a priority over the following:

- Floating assets of a company that are subject to a registered floating charge; and
- The claims of ordinary unsecured creditors.

The priority structure provided in the Corporations Act 2001 requires that employee claims be satisfied in the following order:

1. Firstly, outstanding wages and compulsory employer superannuation contributions;

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2. Secondly, leave entitlements such as accrued annual leave and long service leave; then
3. Thirdly, retrenchment payments and payments in lieu of notice.

Pursuant to the provisions of the Corporations Act 2001, the maximum amounts payable in respect to outstanding employee entitlements to an excluded employee (in summary, being a director or spouse of relative of a director) are:

1. Wages and superannuation contributions of \$2,000;
2. Leave entitlements of \$1,500; and
3. Retrenchment payments of \$nil.

The RATA disclosed the following outstanding priority employee entitlements:

- Superannuation - \$69,268.00
- Annual leave and long service leave - \$28,135.00

Below is a table summarising the information available and inquiries conducted to date regarding the outstanding employee entitlements owed by the company:

Employee Entitlements	As Per Company Records	Proof of Debts Submitted to Date
	(\$)	(\$)
Superannuation	78,417.86	73,617.82
Annual Leave & Annual Leave Loading	1,069.88	9,615.38
Payment in Lieu of Notice	14,596.17	67,357.70
Redundancy	4,038.48	64,230.92
Unpaid Wages	nil	308,198.17
Other Entitlements (e.g. allowances)	nil	307,794.26
Total Outstanding Entitlements	\$92,318.04	\$830,814.25

The Deputy Commissioner of Taxation has lodged a Proof of Debt form addressing outstanding superannuation liabilities totalling \$58,117.85.

A number of persons have lodged Proof of Debt forms in this administration which disclose material claims that do not appear in the available records of the company. I have addressed each of these claims below:

- Catherine Fittock – A proof of debt or claim has been received from the solicitors for Catherine Fittock claiming an outstanding entitlement totalling \$32,362.00. The claim comprises unpaid salary, unpaid living away from home allowance and unpaid balance of contract. I am awaiting receipt of documentary evidence of the claim. The records of the company do not indicate any outstanding entitlements to Ms Fittock.
- Ian William Gallagher – A proof of debt or claim has been received from Ian Gallagher claiming outstanding entitlements totalling \$61,538.60 for unpaid superannuation and unpaid termination payments. It appears the employee may have received a partial payment in respect to termination with the balance remaining unpaid. Investigations are continuing regarding this claim. I have received a proof of debt or claim from Burns Gallagher Superannuation Fund claiming an amount of \$27,692.30 in respect to outstanding superannuation contributions. The records of the company indicate that there are outstanding superannuation entitlements owed in respect to the employment of Gillian Burns and Ian William Gallagher of \$4,569.26 and \$8,134.65 respectively.
- Anthony Knapping – A proof of debt or claim has been received from Anthony Knapping claiming an outstanding entitlement of \$46,580.78 for alleged unpaid termination payments under a service agreement with Allied Brands Limited and expenses which were not reimbursed. The records of the company do not indicate any outstanding entitlements to Mr Knapping. To date, I have not been provided with a copy of any service agreement to which the claim relates and have been unable to confirm from the available information that the claim is valid. Inquiries are continuing.
- Antonio Rocca – A proof of debt or claim has been received from Antonio Rocca addressing outstanding entitlements totalling \$10,822.88 for unpaid wages, reimbursement of costs and outstanding superannuation. The records of the company do not indicate any outstanding entitlement to Mr Rocca. The documentation provided by Mr Rocca indicate he was an employee of Allied Brands Services Pty Ltd, not Allied Brands Limited.

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- Shane Radbone – A proof of debt or claim has been received from Shane Radbone claiming outstanding entitlements totalling \$538,048.38. There are various disputes and legal issues pertaining to the claim of Shane Radbone. Should sufficient funds be realised to enable the declaration of a dividend, I would seek independent legal advice on the admissibility of the claim. The claim by Mr Radbone includes the following:
 - Unpaid salary on termination - \$250,000.00
 - Unpaid bonus - \$270,000.00
 - Unpaid travel allowance - \$8,433.00
 - Unpaid annual leave - \$9,615.38
- Sean Corbin – A proof of debt or claim has been received from Sean Corbin claiming outstanding entitlements totalling \$56,821.42. The claim includes outstanding superannuation of \$5,129.10, notice of termination payment of \$49,050 and a redundancy payment of \$2,642.32. The records of the company indicate an amount owing to Mr Corbin in the amount of \$11,490.09. I have not been provided with a copy of the service agreement to make an assessment on the validity of the termination and redundancy claims.
- Jack Sakalis – I have received correspondence from the solicitors of Jack Sakalis addressing a claim against Allied Brands Limited for notice entitlements and expense reimbursements totalling \$108,541.75. The records of the company do not indicate any employment agreement or outstanding entitlements to Jack Sakalis. I have requested documentary evidence of an employment agreement with the company however no such documentation has been provided.

If creditors resolve to wind up the company at the forthcoming meeting, I will be in a position to deal with the employee entitlements under the General Employee Entitlements and Redundancy Scheme (“GEERS”) through the Department of Education, Employment and Workplace Relations. This scheme does not provide for outstanding superannuation entitlements.

My investigations are continuing into the actual extent of priority liabilities owed by the company.

5.9 Property

My searches have not identified any real property owned by the company.

5.10 Equipment and Office Furniture

The RATA disclosed the company owns plant and equipment with a book value totalling \$162,286. It was also recorded in the RATA that there are secured debts totalling \$140,108 owed by the company in respect to various fit outs and vehicles.

Upon our appointment as Administrators, the services of an independent valuer were engaged to inspect and value the equipment and office furniture of the company. It was apparent that these fixed assets had limited auction value.

Upon vacating the Brisbane offices of the company, the server was moved to the offices of Vincents Chartered Accountants by the computer forensic division and the balance of the office equipment was sold at auction. The gross sale proceeds at auction totalled \$2,035.

5.11 Vehicles

A search of the records of Queensland Transport revealed two (2) Audi A3 vehicles were registered in the name of the company. My investigations revealed the vehicles were subject to security in favour of Esanda Finance Corporation Ltd (“Esanda”). A Notice of Administrators’ Intention not to Exercise Property Rights was issued in respect to the vehicles.

Investigations revealed there were a number of vehicles subject to security in favour of Esanda. I am aware that Esanda has taken steps to locate and realise the vehicles. It is likely that Esanda will incur shortfalls on the sale of the vehicles. I am awaiting to receive an accounting of the sale results and extent of shortfall from Esanda.

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My inquiries identified a BMW X5 subject to the security of Westpac. With the authority of Westpac, the vehicle was sold at auction for a gross sale price of \$18,000 and net sale proceeds of \$13,984.18 were paid to Westpac.

A Mitsubishi Van is subject to the security of BOQ Equipment Finance Limited. I am aware the bank has secured and arranged for the vehicle to be sold at auction. I am awaiting receipt of details of the sale and extent of any shortfall.

No net funds (i.e. after selling costs and debts secured directly over the vehicles) are expected.

5.12 Other Fixed Assets

From my investigations into the affairs of the company, I have not discovered any additional fixed assets of the company capable of commercial recovery and realisation.

5.13 Westpac Banking Corporation (“Westpac”)

Refer to section 3 of the report for information regarding the security position of Westpac.

As at 22 February 2011, the outstanding liability to Westpac secured by an interlocking guarantee and mortgage debenture from Allied Brands Limited totalled \$12,634,371.21 plus uncollected interest and fees which the bank reserves its rights to collect.

5.14 Beath Investment Services Pty Ltd (“Beath”)

Refer to section 3 of the report for information regarding the security position of Beath.

It is understood that the debt owed to Beath represents amounts due and payable to convertible note holders. Beath is the acting Trustee for the note holders pursuant to an Option and Redeemable Convertible Note Trust Deed. It appears the purpose of the deed was to issue Notes of the company, deemed as redeemable convertible notes of the company to the note holders.

I obtained independent legal advice following the first meeting of creditors which provided that Beath is the party entitled to lodge a Proof of Debt form on behalf of the note holders in this administration and is the only party entitled to vote on behalf of the convertible note holders at the second meeting of creditors. That is, the convertible note holders are not entitled to lodge separate Proof of Debt forms in respect to their claims or entitled to individually vote at the second meeting of creditors.

5.15 Cashflow Finance Solutions Pty Ltd (“Cashflow Finance”)

Refer to section 3 of the report for information regarding the security position of Cashflow Finance.

The debt owed to Cashflow Finance as at 22 February 2011 totalled \$839,860.55. It is understood the represents the balance owing on an advance of funds to Villa & Hut Holdings Pty Ltd to which Allied Brands Limited provided a guarantee.

5.16 Ordinary Unsecured Creditors

Set out below is a list of the known unsecured creditors of the company together with details of the Proof of Debt forms received to date:

Creditors	As per RATA	Proof of Debt Form
	\$	\$
22 Capital	9,372.80	
ABL Project Management Pty Ltd	12,883.03	
Adam Von Giese		67,611.30
AFM (Qld) Pty Ltd	3,300.00	
Allleasing Pty Ltd		4,510.70
AMP Capital Investors Ltd		109,156.83
AMP Life Ltd		74,138.52

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Creditors	As per RATA \$	Proof of Debt Form \$
Audi Centre Gold Coast	667.00	
Austcover Pty Ltd	78,915.73	
Australia Post	1,428.02	1,072.02
ASX Operations Pty Ltd	5,572.60	5,605.19
Baskin & Robbins Shop Owners and Franchisees		1,000,000.00
Breezecorp Pty Ltd		8,690.00
Burns Gallagher Superannuation Fund		27,692.30
Candoo Creative		1,820.00
Capital 22	100,000.00	
Cate Fittolck	8,750.00	
Chez Nous Corporate	218.95	
Chief Commissioner of State Revenue NSW		25,672.95
Clarkmorgan Limited		1,900.00
Computershare Limited	9,564.88	14,017.01
Consulting Hall (Australia) Pty Ltd	4,950.00	4,950.00
Corporate Express Australia Pty Ltd	8,285.64	8,285.64
Corso Management Services Pty Ltd	142,400.00	142,323.52
Cresendo Group	53,938.00	
Dash Pty Ltd		450,000.00
Davidson Recruitment	37,656.06	37,656.06
DB RREEF Wholesale Property Limited		211,332.35
Deputy Commissioner of Taxation	254,614.00	35,683.00
Direct Factory Outlet Brisbane Pty Ltd		253,452.76
Direct Factory Outlet Cairns Pty Ltd		52,021.68
Doubtful debt loans provision	167,281.95	
Eastgardens Pty Ltd		169,964.02
Framewelgate Investment Limited		96,996.08
Geneen Street Corp Advisory Service	41,895.97	745,000.00
Glenfield Mall Limited		83,991.15
Green & Gibbs Enterprises Pty Ltd		73,090.68
HAAC Pty Ltd		134,927.95
Hopgood Ganim Lawyers	12,525.98	13,008.22
Homemaker Hub Pty Ltd		41,747.77
Import Ant Pty Ltd		2,311.10
James Fay Pty Ltd	18,537.12	15,303.45
John Sands (Australia) Ltd		1,600,371.53
Jupiters Limited		1,582.50
Karinya (Qld) Pty Ltd		269,109.59
Kennards Self Storage	2,347.00	
Kyocera Mita Australia Pty Ltd	2,440.16	2,422.38
Lachlan Stuart McIntosh	108,329.00	1.00
Lawler Hacketts	182,465.57	271,895.57
Lend Lease Real Estate Investments Limited		68,281.40
Link Logistics International		187,402.34
Makukau City Centre Limited		130,643.03
Magman Publishing Pty Ltd		8,503.00
Mega Will Investments Ltd		141,022.31
Microtown Pty Ltd	610.50	768.90
Money Tech Finance Pty Ltd		163,171.88
MR Advisory Services	1,760.00	
Ninaford Pty Ltd		96,996.08
Note holders	253,097.19	
Office of State Revenue – Qld	138,883.00	25,672.95
Pack & Send Systems Pty Ltd	1,033.12	
Peron Investments Pty Ltd		202,724.58
Perth Expohire	1,408.94	
Perpetrust Nominees Pty Ltd		100,834.84
Perpetual Trustee Company Ltd		231,701.84
Perpetual Trustees WA Limited		227,608.15
Peter Atsikbasis		20,000.00
Piper Alderman	22,714.21	30,957.62
Playercorp Pty Ltd		134,477.74
Premiere Global Services	2,015.84	

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Creditors	As per RATA \$	Proof of Debt Form \$
Protek Consulting	199.00	
P.T. Limited		554,444.18
Revenue of South Australia		16,130.81
Robert Mark Australia Pty Ltd		92,212.59
Shore City Centre (1993) Limited		102,473.37
Sothertons Chartered Accountants	196,286.85	152,233.35
SPER	110.10	110.10
Spirit Publishing		9,926.00
Steinhoff Asia Pacific Limited		3,541,678.61
Steme Holdings Pty Ltd		455,948.00
St Lukes Square (1993) Limited		134,652.01
Sunsuper	2,471.54	
Tea Tree Plaza Nominees Pty Ltd		100,834.84
Telstra Insolvency Centre of Excellence	121,844.28	148,058.32
Tenancy Solutions		50,290.14
The Plaza Pakuranga Limited		74,666.87
The Trust Company Fiduciary Services Limited		61,333.11
Toshiba Pty Ltd	1,127.43	
Ventana Pty Ltd		92,948.96
Verve Online	788.70	
Westfield Management Ltd		488,443.80
Westfield Shopping Centre Management Co. (Qld) Pty Limited		3,850.88
Westfield Shopping Centre Management Co. (Vic) Pty Limited		211,332.35
Westfield Shoppingtown Carousel Pty Ltd		3,202.60
Worldwide Online Printing Southport	395.00	395.00
Zanity	15,000.00	
Associated Entity Loans (listed as negative liabilities in RATA):		
BR Ad Fund	6,987.00	
Allied Brands Finance PL (Receivers & Managers Appointed)	584,707.00	584,706.58
Awesome Entertainment Pty Ltd	546,243.00	
Villa & Hut Franchising Pty Ltd	1,096,183.00	
Villa & Hut Holdings Pty Ltd	491,756.00	
Total		\$14,709,953.95

I would appreciate all creditors who have not already done so complete and submit with me a formal Proof of Debt form along with documentary evidence supporting their claims.

Pursuant to Section 440J of the Corporations Act 2001, a creditor is required to obtain leave of the Court to enforce any guarantee against a director during the period of the voluntary administration.

5.17 Contingent Liabilities

It was disclosed in the RATA that there are the following contingent liabilities however the estimated amount of those liabilities is not known:

- Various landlord guarantees on behalf of subsidiaries.
- Guarantee to John Sands (Australia) Pty Ltd.
- Guarantees to loans with Westpac held by subsidiaries.
- Guarantee to Steinhoff Asia Pacific Limited in respect to Villa & Hut Holdings Pty Ltd.
- Guarantee to Cashflow Financial for debt owed by Villa & Hut Holdings Pty Ltd.

The 2010 financial accounts of the company include a note disclosing that the company is being sued for misleading and deceptive conduct by a former employee of the company and the company is vigorously defending itself. I am without sufficient information to be in a position to comment on whether there is any such valid claim against the company and if so the amount that may be claimed.

In addition to the above, it is noted that pursuant to Section 588V and 588W of the Corporations Act 2001, a holding company may be liable for insolvent trading by a subsidiary company. I am not in a position at present to comment on whether there would be any such valid claims against the company by subsidiaries subject to formal insolvency appointments or the potential quantum of such claims.

6. FINANCIAL INFORMATION

I have conducted preliminary investigations into the available financial accounts of the company and its controlled entities.

Attached is a summary of the available financial statements of the company obtained from the published financial reports of the company. Creditors can obtain complete copies of the financial reports of the company from the ASX website (www.asx.com.au). I have not conducted an audit of these accounts and accordingly I cannot attest to their accuracy.

I note from the following from a review of the financial statements of the company:

- The accounts show the revenue of the Allied Group increased steadily during the period 1 July 2008 to 30 June 2010 which appears reflective of the acquisitions of Cookie Man, Kenny's Cardiology, Awesome Water, Villa & Hut and establishment of Awesome Entertainment.
- The financial report for the year ended 30 June 2009 disclosed that the cash flow for the Allied Group was significantly impacted by volatility in both the Australian dollar and in commodity prices during the period 1 July 2008 through 30 June 2009.
- The current liabilities of the company increased significantly during the period 30 June 2009 to 30 June 2010. It appears that the debts owed to the secured creditors of the company become due and payable during this period.
- The Allied Group reported a significant loss for the year ended 30 June 2010 largely due to the write down in carrying values of its wholly owned subsidiaries.
- The financials for the Allied Group indicate a positive net asset position as at 30 June 2010. Further examination of the financial records of the Group indicate that as at 30 June 2010 the Group attributed a value of \$11,550,170 to intangible assets at that time.
- The last audited financial reports for the Allied Group were prepared for the half year ended 31 December 2009. The financial statements available for the Allied Group as at 30 June 2010 have not been audited.

7. INVESTIGATIONS

I have undertaken the following searches to assist me with my investigations into the affairs of the company:

Land Title Searches

A search of the records at the Land Titles Office in Queensland and New South Wales and other inquiries undertaken by me, failed to identify any real property registered in the name of the company.

Motor Vehicle Searches

Refer to section 5.11 of this report for information regarding the vehicles owned by the company.

Books and Records

In addition to the above searches, I have attempted to verify as far as possible the estimated value of the assets and liabilities by inspecting and examining the available financial records of the company.

I engaged the services of the computer forensic division at Vincents Chartered Accountants to conduct a forensic image of the computer data of the company from its server.

Upon my appointment, I issued correspondence to the company's accountants and solicitors requesting all books and records in their possession to be delivered to my office.

Despite written requests, I am yet to receive any records of the company held by Hopgood Ganim Lawyers who provided professional legal services to the company prior to my appointment and are claiming a lien for outstanding invoices.

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It appears the company maintained adequate financial records for the current financial year that:

- (a) Correctly record and explain its transactions and financial position and performance; and
- (b) Would enable true and fair financial statements to be prepared and audited.

8. RELATED PARTY TRANSACTIONS

My investigations have revealed a number of related party transactions to which the company was a party. Please refer to section 5.2 of this report for details of debts owed to the company by wholly owned subsidiaries.

It also appears from the available records that the company may have borrowed funds from the following subsidiaries (see section 5.19):

- Allied Brands Finance Pty Ltd
- Awesome Entertainment Pty Ltd
- Villa & Hut Franchising Pty Ltd
- Villa & Hut Holdings Pty Ltd

I am not aware of any significant related party transactions that would materially affect the position of the company or allow for any recoveries for the benefit of creditors.

If the company was placed into liquidation at the forthcoming meeting, further investigations would be conducted in respect to related party transactions.

9. OFFENCES

Pursuant to Section 438D of the Corporations Act 2001, I am required to report to the ASIC on:

- (i) Offences committed by past or present officers or members of the company; and
- (ii) Misapplication, retention, liabilities, accountability, negligence, default, breach of duty or breach of trust by persons who have taken part in the formation, promotion, administration, management or the winding up of the company.

My investigations with respect to the affairs of the company are continuing. Upon completion of my investigations, I shall lodge an appropriate report with ASIC pursuant to the provisions of the Corporations Act 2001 should I deem it necessary.

Should any creditor have any information and / or evidence pertaining to potential offences committed by past or present officers or members of the company, I invite them to provide full details and documentary evidence to my office.

10. RECOVERY OF PROPERTY OR COMPENSATION FOR THE BENEFIT OF CREDITORS

An area of possible return to unsecured creditors is the possible recovery by Liquidators of transactions that may be voidable pursuant to Part 5.7B of the Corporations Act 2001. These can be summarised as follows:

- Property or compensation arising from an uncommercial transaction entered into by the company after a date commencing two (2) years prior to the relation-back day (or four (4) years if a related entity of the company is party to it); known as "uncommercial transactions" – Section 588FE(3) of Corporations Act 2001.
- Property or compensation arising from a transaction entered into by the company to defeat, delay or interfere with creditors' rights, at any time after a date commencing ten (10) years before the relation-back day; known as a "transaction for the purpose of defeating creditors" – Section 588FE(5) of Corporations Act.
- Property or compensation arising from a transaction that has the effect of giving a creditor a preference over other creditors; known as "unfair preference" – entered into any time after a date commencing six (6) months before the relation-back day, or four (4) years if a related entity is a party – Section 588FA and FE of the Corporations Act 2001.
- Property or compensation recovered because a loan to the company is judged to be unfair – there is no time limit; known as "unfair loans" – Section 588FD and FE of the Corporations Act 2001.

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- A transaction that is an unreasonable director-related transaction (involving the director or a close associate of the director) where a reasonable person in the company's circumstances would not have entered into the transactions – entered into during the four (4) years leading up to the company's liquidation – Section 588FDA of the Corporations Act 2001.
- Where an insolvent transaction otherwise voidable has had the effect of discharging a liability of a related entity, the amount of that benefit, known as "indirect benefit" – Section 588FH of the Corporations Act 2001.
- Damages recoverable from directors or officers of the corporation in consequence of their breach of fiduciary duties – Section 180 of the Corporations Act 2001.
- Moneys recoverable from directors in consequence of personal liability being imposed on them for obligations incurred by the company that amount to reckless or fraudulent trading – Section 588G of the Corporations Act 2001.
- Property charged by way of floating charge to a secured creditor, where the charge was created within six (6) months before the relation-back day, or after that day but on or before the day when winding up began, and is invalidated under Section 588FJ for lack of new or fresh consideration.
- Property charged to a related person, where that person has attempted to enforce the charge within six (6) months of its creation without the permission of the Court – Section 267 of the Corporations Act 2001.
- Property charged to any secured creditor where the registration of such a charge is required under the Corporations Act 2001, and the failure to comply makes the charge invalid against the Liquidator – Section 266 of the Corporations Act 2001.

10.1 Preferential Payments

Pursuant to Section 588FA of the Corporations Act 2001, a transaction is an unfair preference given by a company to a creditor of the company if, and only if:

- (a) The company and the creditor are parties to the transaction (even if someone else is also a party); and
- (b) The transaction results in the creditor receiving from the company, in respect of an unsecured debt that the company owes to the creditor, more than the creditor would receive from the company in respect of the debt if the transaction was set aside and the creditor was to prove for the debt in a winding up of the company; even if the transaction is entered into, is given effect to, or is required to be given effect to, because of an order of an Australian Court or a direction by an agency.

It is a defence to the transaction under Section 588FG of the Corporations Act 2001 if it is proven that:

- (a) The person received no benefit because of the transaction; or
- (b) In relation to each benefit that the person received because of the transaction:
 - (i) the person received the benefit in good faith; and
 - (ii) at the time when the person received the benefit:
- (c) the person had no reasonable grounds for suspecting that the company was insolvent at that time or would become insolvent as mentioned in paragraph 588FC(b); and
- (d) a reasonable person in the person's circumstances would have had no such grounds for so suspecting.

Pursuant to Section 513B and 513C of the Corporations Act 2001, transactions under investigation relate to the period six (6) months prior to the commencement of the administration, that is for the period 28 April 2010 to 27 October 2010.

My inquiries to date have identified various transactions involving creditors of the company that may constitute preferential payments. From an examination of the available records of the company, it appears there may be potential preferential payments that could be described as follows:

- Transactions with creditors who were parties to payment plans with the company.
- Transactions with creditors who received payments (including round sums).
- Transactions with creditors who received payments after 28 April 2010 in circumstances where it appears the creditors would have had reasonable grounds for suspecting the company had financial difficulties or would become insolvent at some time in the future.
- Transactions with creditors who received payments prior to the above dates in circumstances where the payment does not appear to have been in the ordinary course of business.

Investigations are continuing into transactions involving Kathlac Pty Ltd and the satisfaction of the amount payable for its partly paid shares (refer to section 5.4).

My estimates of the potential preferential payments to creditors of the company are as follows:

- **Pessimistic estimate** is \$nil.
- **Optimistic estimate** is \$270,000.

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Please take note of the following relevant issues when considering the potential preferential payments:

- It must be substantiated that the company was insolvent at the time of the transactions.
- I am not in a position at present to comment on whether the creditors against whom there may be a valid preferential payment claim would be in a position to satisfy any claim.
- Further lengthy investigations are required to finalise the investigations into preferential payments capable of commercial recovery.
- Any creditor who contributes funds pursuant to a successful preference claim is entitled to prove as an unsecured creditor for that amount.
- The legal fees to pursue any such preferential payment claim can be material.

If the company is placed into liquidation at the forthcoming meeting, further investigations would be conducted into such transactions and appropriate recovery action would be considered if any transactions capable of commercial recovery are identified.

10.2 Uncommercial Transactions

According to Section 588FB of the Corporations Act 2001, a transaction is an uncommercial transaction of the company if, and only if, it may be expected that a reasonable person in the company's circumstances would not have entered into the transaction having regard to:

- (a) The benefits (if any) to the company of entering into the transaction; and
- (b) The detriment to the company of entering into the transaction; and
- (c) The respective benefits to other parties to the transaction of entering into it; and
- (d) Any other relevant matter.

Uncommercial transactions are voidable if entered into within two (2) years of the relation - back date, if the company is placed into liquidation. I have not to date identified any uncommercial transactions by the company that may be capable of commercial recovery for the benefit of creditors. If the company is placed into liquidation, there would be further investigation of such transactions.

10.3 Insolvent Trading

Section 588G of the Corporations Act 2001 establishes a director's duty to prevent insolvent trading by a company. The section applies if:

- (a) A person is a **director** of the company at the time when the company incurs a debt;
- (b) The company is **insolvent** at the time or becomes insolvent by incurring that debt; and
- (c) At the time there are **reasonable grounds for suspecting** that the company is insolvent, or would so become insolvent, as the case may be.

A company is considered insolvent if it is unable to pay all its debts as and when they become due and payable.

By failing to prevent the company from incurring the debt, a director contravenes the section if:

- (a) The director is aware at the time that there are such grounds for so suspecting; or
- (b) A reasonable person in a like position in a company in the company's circumstances would be so aware.

Section 588M of the Corporations Act 2001 allows for the recovery of compensation, being a recovery from a director, of an amount equal to the loss or damage arising out of insolvent trading.

Section 588R of the Corporations Act 2001 also allows creditors to pursue the recovery of an insolvent trading claim with the written consent of the Liquidator.

Section 588H of the Corporations Act 2001 provides for a number of statutory defences for a director who is being pursued for insolvent trading. Those defences include the following:

- (a) That the director had reasonable grounds to expect that the company was solvent at the time that the debt was incurred;
- (b) That the director believed the company to be solvent based on the information provided by another person;
- (c) If the director is ill at the time the debt or debts are incurred, it is a defence if it is proved that he was not taking part in the management of the company because of that illness or for some other good reason; and
- (d) If the director can prove he took all reasonable steps to prevent company from incurring the debt or debts.

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Creditors should note that in taking any action against directors for insolvent trading there are substantial complexities involved and as is often the case with any litigation, there is a degree of uncertainty. If an action for insolvent trading is contemplated, prior to instigating any action, a Liquidator must quantify the claim and prove the insolvency of the company. It should also be noted that a Liquidator's opinion on whether a director is guilty of insolvent trading would be subject to obtaining independent legal advice.

The Liquidator should ascertain whether any of the statutory defences would be available to a director. I have not had the opportunity to investigate in detail whether the directors would be able to rely on any of the statutory defences set out in the Corporations Act 2001.

A Liquidator should also ascertain if a director has the capacity to meet any judgement that may be awarded against him. I cannot comment with any certainty on the actual extent of personal guarantees provided by the director.

Pursuant to Section 588R of the Corporations Act 2001, a creditor with the written consent of the Liquidator may commence an action against a director under Section 588M of the Corporations Act 2001 in relation to the incurring by the company of a debt that is owed to the creditor.

Creditors should note that pursuant to Section 1317E of the Corporations Act 2001, if a Court is satisfied that a person has contravened Section 588G(2) (insolvent trading), the Court must make a declaration of contravention.

Under Section 1317G of the Corporations Act 2001, the Court may order the person guilty of a contravention of insolvent trading to pay to the Commonwealth a pecuniary penalty of up to \$200,000 if the contravention materially prejudices the interests of the corporation, materially prejudices the corporation's ability to pay creditors or is of a serious nature. Please note that these are issues for the Court to adjudicate upon. In addition, an award for restitution to the company can also be made.

If the company is placed into liquidation, given the anticipated lack of funding from asset realisations and the costs and time to run an insolvent trading action, it is unlikely that I will pursue any civil proceedings against the directors for insolvent trading *without* funding and appropriate indemnities from creditors.

As previously stated, any creditor with the written consent of a Liquidator can undertake their own action against a director for insolvent trading.

The directors refute there is any claim against them for insolvent trading for reasons that include:

- They hold a strong view that they had successfully raised capital.
- They assert they had returned to the Allied Group to profitability.
- There was a party who was prepared to assist with satisfying the debts owed to Westfield.

It is understood that the directors attribute the failure of the company to the termination of the master franchise agreement by Dunkin Brands Inc.

From an examination of the available records of the company, it appears there are factors indicating potential insolvent trading as well as indicators the company was solvent:

Insolvency Indicator	Test Result
Quality of Financial Records	Passed
Continuing Losses Test	Not clear (investigations continuing)
Current Ratio Test	Failed
Balance Sheet Test	Passed
Overdue Commonwealth and State Taxes	Failed
Access to Alternative Funds	Passed
Superannuation Obligations	Failed
Payments Plans and Payments to Creditors of Rounded Sums which are Not Reconcilable to Specific Invoices	Failed
Ability to Produce Timely and Accurate Financial Information to Display Trading Performance and Financial Position and Make Reliable Forecasts	Passed

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I must stress the above assessment, is only a preliminary assessment, and is not an exhaustive list of the criteria that is applied to a company's affairs to determine if the company operated whilst insolvent.

It is also noted that pursuant to Section 588V and 588W of the Corporations Act 2001, a holding company may be liable for insolvent trading by a subsidiary company. I am not in a position at present to comment on whether there would be any such valid claims against the company by subsidiaries subject to formal insolvency appointments or the potential quantum of such claims.

Taking into consideration the complex affairs of the company, it is a time consuming and costly exercise to prepare a comprehensive solvency report to determine the actual date of the insolvency of the company and whether the directors are liable for insolvent trading.

If creditors resolve to wind up the company, substantial funding would be required to conduct the necessary investigations to determine if there is any valid claim for insolvent trading. It is also likely that a public examination would be required to attempt to obtain all the required relevant information.

Creditors should note that they cannot pursue a director for insolvent trading if at the forthcoming meeting a proposal for a DOCA is accepted.

10.4 Liquidator may Recover from Related Entity Benefit Resulting from Insolvent Transaction

Section 588FH of the Corporations Act 2001 provides that where there is an insolvent transaction which is voidable under Section 588FE of the Corporations Act 2001 and which has the effect of discharging a liability of a related entity of the company, the Liquidator can recover the sum paid to discharge the liability of the related entity, from the related entity.

I have not identified any such transactions. These transactions will be examined in more detail should creditors resolve to place the company into liquidation at the forthcoming meeting of creditors.

10.5 Unreasonable Director-Related Transactions

Section 588FDA of the Corporations Act 2001 provides that where there is a transaction of a company that is an unreasonable director-related transaction, entered into during the four (4) years ending on the relation-back day or after that day but on or before the day when the winding up began, it is voidable under Section 588FE of the Corporations Act 2001.

My inquiries to date have not located any such transactions capable of commercial recovery, though if the company is placed into liquidation, this will be an area of focus.

11. PROPOSALS FOR A DEED OF COMPANY ARRANGEMENT

The provisions of the Corporations Act 2001 provide an opportunity to parties to submit a proposal for a Deed of Company Arrangement ("DCA") for consideration by creditors at the second meeting.

The corporate shell of Allied Brands Limited listed on the Australian Securities Exchange ("ASX") is capable of generating a return for the benefit of creditors of the company.

For ASX to revoke the suspension, the company must legally compromise its pre-administration liabilities. This can be achieved through a DCA. A DCA requires approval of the majority of creditors (in number and value) represented at the second meeting.

I undertook a campaign that involved seeking proposals for a DCA from parties that had during this voluntary administration expressed an interest and published an advertisement in the Australian Financial Review seeking any expressions of interest for a DCA.

I received twenty-six (26) expressions of interest that subsequently resulted in eight (8) proposals for a DCA being received. Upon receipt of the proposals for a DCA, I sought preliminary independent legal advice on the DCA proposals received particularly in relation to the following:

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- Defects in the proposals submitted.
- Terms and conditions considered not capable of satisfaction.
- Terms and conditions in the proposals considered not to be in the interests of creditors.

Following further communications and correspondence with the proponents and other stakeholders, including secured creditors it was determined that two (2) proposals were suitable to be considered in significantly more detail.

There was a third proposal that involved a contribution of \$300,000 without any onerous terms and conditions (e.g. it was not dependent on any requirements by ASX to re-comply with Chapters 1 and 2 of the ASX listing rules). From communications with the representative of Westpac, being the major secured creditor, it appears unlikely the bank would accept an offer for this amount.

Five (5) of the proposals for a DCA included various onerous terms and conditions and were in varying levels of detail.

I have attached a summary of the two (2) DCA proposals as **Annexure A** which I consider (based on their proposed contributions, timeframe for a return and conditions precedent) are likely to be in the best interests of the creditors of the company.

A vital condition of any proposal for a DCA involving the recapitalisation of the corporate shell is to negotiate the release of the security held by the secured creditors.

For Trident Capital Pty Ltd to be able to satisfy all the terms and conditions of its DCA proposal, it is imperative that the secured creditors agree to release their fixed and floating charges over the assets and undertakings of the company. At the time of the preparation of this report, I had not received written replies from the secured creditors addressing their position in respect to this proposal.

Below is information relevant to the two (2) proposals for a DCA. Please refer to Annexure A for a table setting out a comparison of the proposals.

Proposal 1 – Trident Capital Pty Ltd

Attached as **Annexure B** copies of the following draft documents submitted by Trident Capital Pty Ltd regarding its proposal for a DCA:

- Creditors' Trust.
- Reconstruction Deed.
- Deed of Company Arrangement.

Proposal 2 – Directors

Attached as **Annexure C** is a copy of a draft proposal of DCA by the directors of the company.

Summary

It is recommended that creditors review the contents of Annexures B and C to fully appreciate the terms of the proposals for DCA being put up for consideration by creditors.

Below is a summary of some of the terms of the DCA proposals to assist creditors in determining their position and voting intentions for the forthcoming meeting of creditors:

- The proposal by Trident Capital Pty Ltd includes conditions requiring a change of directors, creditors' claims and pre-appointment assets (excluding shares in various associated entities) being assigned to a creditors' trust and ASX reinstatement of the company without re-compliance of Chapters 1 and 2 of the listing rules.
- The proposal by the directors involves those parties remaining as directors of the company and a creditors' trust would be proposed at such a time as they generate an offer. A meeting of creditors would be called at this time to consider the terms of the creditors' trust.

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- The proposal by Trident Capital Pty Ltd involves a non-refundable deposit of \$50,000 and if the terms are satisfied, \$750,000 is payable along with 10 million post-consolidation shares in the listed company.
- The proposal by the directors involves a contribution of \$15,000 towards the Deed Administrators to enable them to seek independent legal advice to finalise the terms of the Deed. The proposal does not provide for any minimum contribution should the terms of the DCA not be satisfied.
- The proposal by the directors involves a period of six (6) months from the execution of the DCA. The proposal by Trident Capital Pty Ltd has an end date of 31 December 2011 for it to satisfy the terms of the DCA.
- The proposal by the directors requires them to attempt to seek offers for the listed corporate shell of \$800,000 to \$2,500,000. If no acceptable offer is received within six (6) months of the execution of DCA, or conditions precedent are not satisfied within this time, the Deed Administrators may convene a meeting of creditors whereby the terms of the DCA may be varied or the DCA may be terminated and the company wound up.
- If the directors obtain an offer for the listed shell of \$800,000, the sum of \$160,000 would be contributed to the Deed Administrators and the balance would be paid to Westpac.
- Under the proposal by the directors, employees will be assessed on the amount they would have received under GEERS had the company been placed into liquidation and paid that amount within the six (6) month period. The proposal by the directors limits the former employees that would receive such a distribution.
- If the proposal of the directors is accepted and an offer is generated by them, a meeting of creditors would be held to consider the proposal that would involve an assignment of the rights of creditors to a creditors' trust. The terms of any such creditors' trust are not known at this stage.
- The proposal by Trident Capital Pty Ltd incorporates the priorities stipulated in the Corporations Act 2001 for dividend purposes. It appears the proposal by the directors considers the corporate shell to be a fixed asset and accordingly provides for a distribution of funds as follows:
 - \$640,000 to Westpac
 - \$160,000 in the following order of priority:
 - Administrators' and Deed Administrators' fees and expenses
 - Trustees of Creditors' Trust fees and expenses
 - Wages, superannuation contributions and superannuation guarantee charge payable by ABQ to employees (excluding McIntosh, Elligett and Graham, with amounts payable to relatives or spouses capped at \$2,000)
 - Amounts owing for injury compensation
 - Amount owing under an industrial instrument payable by ABQ to employees (excluding McIntosh, Elligett & Graham with amounts payable to relatives / spouses capped at \$1500)
 - Retrenchment payments payable to employees of ABQ (excluding McIntosh, Elligett and Graham, and their relatives or spouses)
 - Other unsecured creditors of ABQ (excluding McIntosh, Elligett Graham and their relatives or spouses)
 - McIntosh, Elligett and Graham, their spouses and relatives and any other entities related to them (insofar as they are creditors of ABQ)
 - 90% of the remainder of the purchase price is paid to Beath
 - 10% of the remainder of the purchase price is paid towards wages and other entitlements
- It is understood there are communications between Awesome Water Pty Ltd, Awesome Entertainment Pty Ltd, Westpac and other parties to a Deed of Forbearance whereby funds will be contributed by the Awesome Group to Westpac. It is noted Westpac holds a first ranking fixed and floating charge over those subsidiaries.
- The proposal by the directors provides that in consideration of the directors executing the DCA, during the term of the DCA, and on and from the termination of the DCA if effectuated ABQ and the Deed Administrators each release and discharge McIntosh, Elligett, Graham and Corbin from all claims and liabilities of any nature whatsoever which ABQ or the Deed Administrators have, at any time had, may have now or in the future, or but for the DCA could or might have against McIntosh, Elligett, Graham or Corbin.
- Peter Biazos and myself are nominated as Deed Administrators under both proposals.
- The proposal for DCA submitted by the directors is in draft.

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From a review of the proposals on hand, I believe that the proposal by Trident Capital Pty Ltd represents the best DCA proposal for reasons that include the following:

- The proposal incorporates the priority distributions available in the Corporations Act 2001.
- Should it be successful in satisfying the terms of the proposal, there is a known balance (\$800,000 in total) payable towards the creditors' trust.
- Based on the information presently available, it appears likely that the former employees of the company stand to receive a greater dividend / distribution in respect to their priority outstanding entitlements.
- Majority of the assets that would be available in a liquidation are transferred to the creditors' trust.
- The representative of Trident Capital Pty Ltd claims to have previous experience with such proposals.
- There appears to be a non-refundable deposit.
- Trident Capital Pty Ltd is an independent party.
- There is an end date of 31 December 2011 for Trident Capital Pty Ltd to satisfy the terms of the proposal.
- Trident Capital Pty Ltd will bear the costs associated with shareholder meetings, except for share registry services.
- Trident Capital Pty Ltd has made available all documents relevant to its proposal, which are attached as Annexure B.
- The terms of the proposed creditors' trust are known.

Risks with the proposal by Trident Capital Pty Ltd include the following:

- Obtaining releases from the secured creditors (Westpac, Beath and Cashflow Finance).
- Being able to satisfy the terms and conditions relating to re-compliance with the ASX listing rules.
- Shareholder approvals and capital raising are required.

Please note that a DCA may be terminated and / or varied as follows:

- Upon the DCA being wholly effectuated.
- A period of six (6) months from the date of execution of the DOCA has passed and creditors resolve that the DOCA should terminate.
- If conditions precedent required by any purchaser are not satisfied within six (6) months of the offer made.

ASIC Regulatory Guide on DCA Involving a Creditors' Trust

The recommended DCA proposal received from Trident Capital Pty Ltd is considered below after taking into consideration the guidelines of ASIC in Regulatory Guide 82:

Reasons

As discussed, pursuant to Part 5.3A of the Corporations Act 2001, a Deed of Company Arrangement may be utilised to reconstruct a listed company for the purposes of realising the value of its Australian Securities Exchange (ASX) listing.

The DCA proposal submitted by Trident Capital Pty Ltd is intended to generate a greater return for priority creditors than would otherwise be received should the company be placed into liquidation. The reconstruction of a listed company for the purpose of realising the value of its ASX listing is not an option available to a Liquidator.

The proposal of Trident Capital Pty Ltd is dependent on satisfaction of the listing requirement of ASX. The company must be solvent in order to complete the proposed DCA. The creditors' trust provides the mechanism to free the company from its pre-administration debt.

Key Events

Should creditors approve the DCA proposal of Trident Capital Pty Ltd, creditors should consider the following in respect of the anticipated key dates:

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- The DCA must be executed within fifteen (15) business days.
- The DCA will be subject to the conditions precedent in the creditors' trust deed attached as Annexure B. The relevant clauses in relation to the key events are clauses 2 to 6 in the creditors' trust deed.
- The DCA has an End Date of 31 December 2011 whereby unless agreed in writing, the parties will have no further obligation to each other under the Deed other than obligations in respect of clause 9 of the creditors' trust relating to Costs and Indemnity.
- Please refer to the attached creditors' trust deed at Annexure B for details of anticipated distribution to the beneficiaries of the creditors' trust.

Return to Creditors

Please refer to Annexure E of this report for details of the estimated return to creditors under the DCA.

The return to priority employees if the company should be placed into liquidation is limited to the payments entitled under the GEERS scheme.

Trustee Particulars

The Administrators, being Peter Biazos and myself, are to become the Trustees of the proposed creditors' trust. As the proposed Trustees are registered liquidators, the ASIC will continue to have certain supervisory powers over the conduct by the trustees where the DCA and trust deed provide that the trustees are registered liquidators.

The proposed Trustees do not believe that they have any potential conflict of interest that would exclude them from acting as trustee of the creditors trust.

The proposed Trustees understand that they hold civil liability insurance (including professional indemnity) that will cover conduct by them in their capacity as trustee of the proposed trust.

Remuneration and Expenses

The remuneration of the Trustees of the creditors' trust is to be approved by the beneficiaries of the trust or alternatively by the Court. The remuneration of the Trustees, their partners and staff shall be calculated in accordance with the Vincents scale of insolvency fees as noted in the attached remuneration report. The Trustees of the creditors' trust shall be entitled to be reimbursed for all expenses and other expenses incurred by them in the administration of the creditors' trust deed.

Indemnities

The Trustees of the creditors' trust are entitled to be indemnified by the Company and from the creditors' trust funds against any liability arising from their administration of the Creditors' Trust Deed. With the exception of any liability that may be attributable to negligence, default, breach of duty or breach of trust on their part.

Powers

The powers of the Trustees of the proposed Creditors' Trust are governed by law in force in the State of Queensland. The parties submit to the non-exclusive jurisdiction of the Courts of the State of Queensland and any Court which may hear appeals from those Courts in respect of any proceedings in connection with the DCA or this document. The powers of the Deed Administrators will continue to be governed by the provisions of the Corporations Act 2001.

Claims

The claims of creditors' against the company will be dealt with under the DCA proposal of Trident Capital Pty Ltd in accordance with the provisions of the DCA proposal which incorporate the Corporations Act 2001. Unsecured creditors' priorities (as beneficiaries of the trust) will follow the priorities set out in section 556 of the Corporations Act 2001.

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The value of the claims of creditors will be determined by either the Deed Administrators or the Trustees, who will have unrestricted and free access to all the available books and records of the company necessary to determine claims.

GEERS

As at the date of preparation of this report, GEERS had not provided formal written advice with regards to the rights of employees under GEERS or on the Commonwealth Governments right of subrogation under GEERS.

It is noted that it is anticipated that priority unsecured creditors will receive a greater return under the DCA proposal of Trident Capital Pty Ltd than would be received in liquidation under the GEERS scheme.

Compliance Opinion

The Administrators have reviewed the capability of Trident Capital Pty Ltd to comply with their obligation under the DCA proposal. Based on the information available, it is the Administrators opinion that Trident Capital Pty Ltd appears capable of complying and is likely to comply with its obligation to the trustees, if the DCA proposal is approved by creditors.

Solvency Statement

Provided the proposed capital raising is successfully completed, the company will be solvent at the date of effectuation of the DCA, if the DCA is wholly effectuated on the terms proposed.

Taxation Implications

At this stage, I am not in a position to comment on any taxation implications on creditors having their rights transferred to a creditor's trust. Creditors may wish to seek their own independent advice on this issue.

Other Creditor / Beneficiary Differences

It is noted that the Deed Administrators will be required to adjudicate upon a Creditor's proof of debt in accordance with the rules prescribed by the Corporations Act 2001 and the Corporations Regulations for proof of debts or claims on a winding up of the company.

During the period of the Deed of Company Arrangement and in accordance with the terms of the Creditors' Trust the Deed Administrators and / or Trustee of the Creditor's Trust must report to admitted creditors on any matters which the Trustees consider should be brought to the attention of the admitted creditors.

12. DIVIDEND ESTIMATE

Attached as **Annexure E** is a table summarising the estimated optimistic and pessimistic outcomes to creditors of the company under the two (2) DCA proposals and liquidation.

It is assumed for the purposes of the estimates recorded in Annexure E that the parties putting forward proposals for a DCA are able to satisfy the terms and conditions of their proposals.

The following notes are made in respect to the table at Annexure E:

12.1 Contributions under DOCA

The proposal for a DCA submitted by Trident Capital Pty Ltd involves a contribution of \$800,000.

The proposal by the directors for a DCA involves the following potential contributions:

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Contributions	Optimistic (\$)	Pessimistic (\$)
Offer	2,500,000	800,000
Less:		
Westpac	640,000	640,000
Beath	1,530,000	nil
Net Contributions	\$330,000	\$160,000

The proposal by the directors includes a contribution of \$15,000.

12.2 Floating Assets

Refer to sections 5.1 to 5.6 of this report for information regarding the floating assets of the company.

At present there is a balance of approximately \$30,000 on hand from funds realised to date from floating assets. Given there are likely to be immaterial differences between the future realisations from floating assets under the two (2) DCA proposals and liquidation and that it is not possible at this stage to estimate the extent of any future realisations being made from floating assets, I have recorded \$30,000 as funds to be realised from floating assets to enable the scenarios to be compared.

Under the proposal by Trident Capital Pty Ltd, the floating assets would be available for the benefit of creditors with the exception of the following shares in subsidiaries:

- ABL Project Management Pty Ltd
- ABL Property Leasing Pty Ltd
- Awesome Entertainment Pty Ltd
- Awesome Technologies Pty Ltd
- Awesome Water Pty Ltd
- Narmada Water Pty Ltd

Based on the information presently available, the above shares appear to have no realisable value.

Under the proposal by the directors, the floating assets other than any claims against the directors and Sean Corbin would be available for the benefit of creditors.

12.3 Fixed Assets

Refer to sections 5.9 to 5.12 of this report for information regarding fixed assets. Based on the information presently available, it appears unlikely any further funds will be realised from this source.

12.4 Preferences, Uncommercial Transactions and Insolvent Trading

Refer to section 10 of this report for further particulars regarding such transactions.

If either proposal for a DCA is accepted, no funds are capable of recovery from these provisions of the Corporations Act 2001.

From my investigations to date it appears that substantial funding is required from creditors to determine if there are any valid preferential payment and insolvent trading claims. Given the complexity of the company's affairs, I am not in a position to comment on whether any funds are capable of realisation from this source.

12.5 Professional Fees

Reference should be made to the attached remuneration report for information regarding the professional fees relevant to the Administrators and any Deed Administrators, Trustees of a Creditors' Trust and Liquidation.

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REPORT TO CREDITORS – ALLIED BRANDS LIMITED (ADMINISTRATORS APPOINTED)

It is noted that the fees of the Deed Administrators and Trustees of a Creditors' Trust are likely to be higher under the proposal by the directors as it involves holding a further meeting in due course to consider a proposal for a Creditors' Trust.

The proposal by the directors also appears to limit the amount to be contributed towards our professional fees to \$160,000 (inclusive of GST). I have recorded in the table the estimated amount of fees likely to be incurred in administering the formal insolvency appointments to give creditors an indication of the likely actual fees that would be incurred. The table does however take into account the actual amount that would become available to priority unsecured creditors under that proposal.

The extent of professional fees should the company be placed into liquidation depends on the extent of investigations to be conducted. Given the lack of available funds, any Liquidators would require funding from creditors to conduct any detailed investigations and pursue any recovery action.

If creditors resolve at the second meeting of creditors to accept the company's proposal for a DOCA, I estimate the professional fees of the Deed Administrator to be \$22,000. Please note that if the costs of the Deed Administrator are less than this amount, only the lesser amount will be drawn.

The amounts in the table reflect the fees without GST.

12.6 Petitioning Creditor Costs

The sum of \$10,000 is payable to the creditor that was pursuing the liquidation of the company.

12.7 Outlays

I am not in a position to estimate with any certainty the extent of potential outlays to be incurred in administering a DCA, Creditors' Trust or liquidation.

The extent of outlays is likely to be dependent on the extent of legal fees required to be incurred in attending to issues such as:

- Reviewing and finalising the terms of a DCA and Creditors' Trust.
- Examining employee entitlements for admissibility for dividend purposes.
- Any advice and action for voidable transactions and insolvent trading.
- Any public examination that may be required.

12.8 Employee Entitlements

Refer to section 5.8 of this report for information regarding outstanding employee entitlements. There are a number of former employees with disputes claims and would require independent legal advice as to their admissibility should sufficient funds be realised to enable a distribution to them.

The proposal by the directors provides that the claims of various former employees (with various disputes – see Annexure C) will receive an amount equivalent to a distribution that they would receive under GEERS should the company be placed into liquidation. From my preliminary inquiries it appears that any such distribution would total approximately \$16,000.

12.9 Ordinary Unsecured Creditors

Refer to sections 5.13 to 5.17 for information regarding creditors. For the purposes of the comparison of results, I have assumed that the secured creditors will not claim as ordinary unsecured creditors.

13. OPTIONS AVAILABLE TO CREDITORS AND ADMINISTRATORS' RECOMMENDATION

Pursuant to Section 439A of the Corporations Act 2001, I am required to convene a meeting of creditors within five (5) business days before or after the convening period. At this meeting, creditors may resolve to take one of the following options:

1. That the administration should end;

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2. That the company execute a Deed of Company Arrangement; or
3. That the company be wound up.

Pursuant to Section 439A(4)(b) of the Corporations Act 2001 I am required to make a statement and give the reasons for my opinions in relation to the following matters:

1. Whether it would be in the creditors' interests for the company to execute a Deed of Company Arrangement; or
2. Whether it would be in the creditors' interests for the administration to end; or
3. Whether it would be in the creditors' interests for the company to be wound up.

1. Deed of Company Arrangement

I confirm that I have presented for consideration by creditors, two (2) proposals for a DCA:

- Proposal submitted by Trident Capital Pty Ltd; and
- Proposal submitted by the directors.

In my opinion, it would be in the creditors' best interests to accept the proposal for a DCA submitted by Trident Capital Pty Ltd.

It is my role to form an opinion as to whether creditors' interests are best served by accepting the DCA, liquidator of the company or handing back control of the company to the director.

When considering creditors' interests, I have considered the following:

- The estimated rate of dividend to be paid under each alternative;
- Possible offences committed by the current and former directors;
- Matters that would require investigation by a Liquidator;
- Likely recoveries by a Liquidator and necessity for funding by creditors; and
- The likelihood of funding required from creditors under liquidation.

After careful consideration, I am of the opinion it is in the best interest of creditors to accept the director's proposal for a DCA based on:

- The investigations undertaken by the Administrators;
- The documents and information supplied by the directors and third parties;
- The estimated return to priority unsecured creditors under the DCA as opposed to liquidation.

If creditors do not wish to accept the proposal for a DCA submitted by Trident Capital Pty Ltd, it is my opinion that it is in their best interests to consider accepting the proposal for a DCA submitted by the directors.

Creditors should note that irrespective of my opinion, they are able to vote as they so require.

2. Administration to End

It is inappropriate for the administration to end and the control of the company to be returned to its director. The company has ceased trading and has significantly more liabilities than assets.

3. Company to be Wound Up

If creditors do not accept the proposal for a DCA, in my opinion, the company should be wound up.

Voidable Transactions

Pursuant to Corporations Regulation 5.3A.02, I must specify whether there are any transactions that appear to be voidable transactions in respect of which money, property or other benefits may be recoverable by a Liquidator under Part 5.7B of the Corporations Act 2001. I refer you to section 10 of this report for information in this regard.

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14. MEETING OF CREDITORS

The second meeting of creditors has been convened for **19 April 2011 at 2:30 pm** at my offices located at **Level 34, 32 Turbot Street, Brisbane**.

The purpose of this meeting is to discuss this report, my recommendation and to resolve the future of the company.

A Notice of Meeting of Creditors in accordance with Regulation 5.6.12(2), formal Proof of Debt form and an Appointment of Proxy form are enclosed.

In accordance with Regulation 5.6.23, only those creditors who have lodged a formal Proof of Debt or Claim are entitled to vote at the meeting of creditors. Creditors who have not lodged a Proof of Debt form are requested to complete this form and lodge it with my office, or alternatively with the Chairman at the meeting. Where the creditor is a company, the attendee is required to hold an Appointment of Proxy form in the name of the company.

I request that all documentation be received by me no later than 4:00 pm on 18 April 2011 to facilitate checking and recording.

15. REMUNERATION OF ADMINISTRATORS / LIQUIDATORS

I advise that Section 449E(1) of the Corporations Act 2001 states as follows:

- "The Administrator of a company under administration, or of a deed of company arrangement, is entitled to:*
- (a) such remuneration as is fixed by a resolution of the company's creditors passed at a meeting convened under Section 439A, or under Section 439A of 445F, as the case may be; or*
 - (b) if no remuneration is fixed – such remuneration as the Court fixes on the application of the Administrator."*

A computer print out of time costing and quantum of fees will be tabled at the meeting of creditors.

Creditors should note that the extent of remuneration will be limited to the funds available and may be less than the remuneration approval being sought.

Please refer to the attached **Remuneration Report** for further particulars.

16. FINALISATION OF ADMINISTRATION

I will correspond with creditors further upon conclusion of the voluntary administration and outcome of the second meeting of creditors.

If you have any queries regarding this report or the administration in general, please do not hesitate to contact Matthew Varendorff (mvarendorff@vincents.com.au) of this office on (07) 3228 4267.

DATED this 11th day of April 2011.



PETER DINORIS
ADMINISTRATOR

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**DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS
AND INDEMNITIES**

RE: ALLIED BRANDS LIMITED (ADMINISTRATORS APPOINTED)

**ACN: 108 958 274
ABN: 20 108 958 274**

This document requires the Practitioners appointed to an insolvent entity to make declarations as to:

- A. Their independence generally;
- B. Relationships, including:
 - i. The circumstances of the appointment;
 - ii. Any relationships with the insolvent and others within the previous 24 months;
 - iii. Any prior professional services for the insolvent within the previous 24 months;
 - iv. That there are no other relationships to declare; and
- C. Any indemnities given, or up-front payments, made to the Practitioners.

This declaration is made in respect of ourselves our partners and Vincents Chartered Accountants.

A. INDEPENDENCE

On 27 October 2010 pursuant to Section 436A of the Corporations Act 2001 we were appointed Administrators of the above company.

We have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Administrators of the company in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to our independence. We are not aware of any reasons that would prevent us from accepting this appointment.

B. DECLARATIONS OF RELATIONSHIPS

i. Circumstances of the Appointment

A meeting was held shortly before the appointment of Administrators to the company was made with the advisers immediately prior to the appointment for the purposes of:

- Obtaining the financial situation and solvency of the debtor;
- Explaining the consequences of insolvency; and
- Explaining the alternative courses of action in the case of insolvency.

No remuneration was received for this advice.

This meeting does not affect Nick Combis' independence for the following reasons:

- The Courts and IPA's Code of Professional Practice specifically recognise the need for Practitioners to provide advice on the insolvency process and the options available and do not consider that such advice results in a conflict or an impediment to accepting the appointment;
- The nature of the advice provided to the debtor's adviser is such that it would not be subject to review and challenge during the course of the bankruptcy; and
- The pre-appointment advice will not influence my ability to be able to fully comply with the statutory and fiduciary obligations associated with the bankruptcy in an objective and impartial manner.

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DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES

ii. Relevant Relationships

Neither we, nor our firm, have, or have had within the preceding twenty-four (24) months, any relationships with the directors, any associate of the directors or entity that has a charge on the whole or substantially whole of the company's property.

On 5 November 2010, we were appointed as Administrators to Allied Brands Services Pty Ltd ACN 009 688 751. This company is a wholly owned subsidiary of Allied Brands Limited, which was placed into liquidation on 15 February 2011 following a resolution passed by its creditors.

We were appointed Administrators to Villa & Hut Holdings Pty Ltd ACN 104 747 677 on 10 November 2010. This company was subsequently placed into liquidation by an Order of the Court and we are not administering the liquidation.

The IPA Code of Professional Conduct recognises sound commercial and practical reasons to appoint a practitioner to a group of related companies. A group appointment can result in cost savings, data sharing and a more complete and accurate picture of group activities and financial position.

Undertaking the appointments has not and will not influence our ability to be able to fully comply with the statutory and fiduciary obligations associated with the administration of the company in an objective and impartial manner.

iii. Prior Professional Services for the Insolvent

Neither we, nor our firm, have provided professional services to the directors in the previous twenty-four (24) months.

iv. No Other Relevant Relationships to Disclose

There are no other known relevant relationships, including personal, business and professional relationships, from the previous twenty-four (24) months with the directors, any associate of the directors or entity that has a charge on the whole or substantially whole of the company's property that should be disclosed.

C. INDEMNITIES

Please note that at the time of the preparation of this report, we had not been indemnified in relation to this matter, other than any indemnities that we may be entitled to under statute.

DATED this 11th day of April 2011.



PETER DINORIS
ADMINISTRATOR
EMAIL: pdinoris@vincents.com.au



PETER GEORGE BIAZOS
ADMINISTRATOR
pbiazos@vincents.com.au

NOTE: If circumstances change, or new information is identified, we are required under the IPA Code of Professional Practice to update the Declaration and provide a copy to creditors with our next communication and table a copy of any replacement declaration at any next meeting of creditors.

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REMUNERATION REPORT

RE: ALLIED BRANDS LIMITED (ADMINISTRATORS APPOINTED)
ACN 108 958 274
ABN: 20 108 958 274

PART 1 – DECLARATION

I, Peter Dinoris of Vincents Chartered Accountants, have undertaken a proper assessment of this remuneration claim for my appointment as Administrator of Allied Brands Limited (Administrators Appointed) in accordance with the law and applicable professional standards. I am satisfied that the remuneration claimed is respect of necessary work, properly performed in the conduct of the administration.

PART 2 – DESCRIPTION OF WORK COMPLETED

Matter:	Allied Brands Limited (Administrators Appointed)
Practitioners:	Peter Dinoris and Peter Biazos
Type of Administration:	Voluntary Administration

Following is a summary of some of the tasks undertaken by my partners, staff and me for the period 27 October 2010 to 10 April 2011:

Task Area	General Description of Tasks	Additional Description
	Assets Subject to Specific Charges	<ul style="list-style-type: none"> • Liaise with secured creditors regarding sale of assets subject to their security • Liaise with auctioneers to organise sale of assets subject to security • Consider offers for potential sale of assets subject to security
	Debtors	<ul style="list-style-type: none"> • Collection of debtor records • Detailed examination of available company records to establish amounts owed by debtors
Assets		<ul style="list-style-type: none"> • Communications with director and former staff regarding debts owed to the company • Preparation and issue of letters of demand to debtors • Correspondence with debtors • Review claims made by debtors for offsets, defects and other allegations reducing the debts owed by them
[143.7 hours] [\$39,461.40]		
	Vehicles	<ul style="list-style-type: none"> • Conduct and review results of motor vehicle searches

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Task Area	General Description of Tasks	Additional Description
		<ul style="list-style-type: none">• Communications with secured creditors• Liaise with PVAS to sell motor vehicle subject to security of Westpac Banking Corporation• Liaise with Pickles Auctioneers regarding collection of Audi motor vehicles subject to security of Esanda Finance Corporation
	Plant & equipment	<ul style="list-style-type: none">• Inspect physical assets• Arrange valuation of office equipment• Communications with the landlord and CEO regarding ownership of office equipment• Arrange collection of office equipment
	Insurance	<ul style="list-style-type: none">• Identification of potential issues requiring attention of insurance specialist• Correspondence with company CEO regarding insurance policies
	Leasing	<ul style="list-style-type: none">• Review lease documents• Liaise with owners/ landlord/ lessors• Determine equity position of leased assets• Tasks associated with disclaiming leases
	Other assets	<ul style="list-style-type: none">• Meeting with company CEO to discuss the corporate shell, debtors, shares in associated entities and intercompany loans• Preparation of Information Memorandum and Confidentiality Agreement for potential Deed of Company Arrangement (DCA) Proposals• Liaise with Solicitor regarding necessary amendments to Information Memorandum and Confidentiality Agreement• Assessment of expressions of interest received for DCA proposals involving the corporate shell and creditors trust• Correspondence with expression of interest parties for potential DCA• Communications with ASX regarding recapitalisation of corporate shell and re-

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Task Area	General Description of Tasks	Additional Description
Creditors [99.1 hours] [\$24,528.90]	Creditor enquiries	compliance with Chapters 1 & 2 of the ASX Listing Rules <ul style="list-style-type: none"> • Liaise with Solicitor regarding expressions of interest received for DCA proposals and the merits of each proposal and noting any shortcomings • Review of issues relating to unpaid capital of the company • Attend to issues relating to transfer of telephone lines • Inquiries into bank accounts held by the company • Correspondence with banks seeking details of any balances • Tasks associated with identifying other assets and reviewing results of detailed investigations of company books and records • Receive, address and follow up creditor enquiries by telephone, email and correspondence • Maintaining file notes on creditor enquiries • Review and prepare correspondence to creditors and their representatives by facsimile, email and post • Correspondence with committee of creditors members • Preparation of update to committee of creditors
	Committee of Creditors	<ul style="list-style-type: none"> • Receive initial notification of creditors' intention to claim • Communications with creditors' seeking additional information and documentation • Review and assess creditors' claim
	Creditor reports	<ul style="list-style-type: none"> • Preparation of reports dated 29 October 2010, 19 November 2010, 29 November 2010, 18 January 2011, 25 February 2011 and 11 April 2011 • Review of file and investigations conducted to prepare detailed report to creditors
	Dealing with proofs of debt	<ul style="list-style-type: none"> • Preparation of a detailed report dated 11 April 2011 along with all annexures • Receipting and filing PODs

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Task Area	General Description of Tasks	Additional Description
Employees [14.5 hours] [\$2,407.90]	Meetings of creditors	<ul style="list-style-type: none">• Review validity and supporting documents of PODs to determine whether debts are owed by the company or an associated entity• Preparation of meeting notices, proxies and advertisements for first and second meetings of creditors• Forward notices of meetings to all known creditors• Preparation of meeting file, including agenda, certificate of postage, attendance register, listing of creditors, reports to creditors, advertisement of meeting and draft minutes• Prepare for meeting by reviewing status of the administration• Attend and chair the first meeting held on 8 November 2010• Preparation and lodgement of minutes of meeting with ASIC
	Shareholder Enquiries	<ul style="list-style-type: none">• Attending to queries of Shareholders• Preparation of update to shareholders
	Secured creditors	<ul style="list-style-type: none">• Identifying the secured creditors of the company that hold specific security over assets and those holding fixed charges and fixed & floating charges• Obtain and review records and information addressing the debt and security positions of all secured creditors• Communications with secured creditors regarding the assets subject to their security and their intentions• Ensure notices of intention not to exercise rights were issued to the relevant secured creditors
	Enquiries	<ul style="list-style-type: none">• Preparation of report to employees dated 5 November 2010• Communications with employees regarding outstanding entitlements and the status of the administration
	Calculation of Entitlements	<ul style="list-style-type: none">• Review available company

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Task Area	General Description of Tasks	Additional Description
Investigations [137.1 hours] [\$36,197.70]	Conducting investigations	<ul style="list-style-type: none">records regarding employee entitlements• Review of all employee claims• Assessment of outstanding employee entitlements• Assessment of employee claims under the GEERS scheme• Receipt and examination of books and records (including computer files and hard copy records) recovered from the company• Review of financial statements, prior year audit reports and information of the company• Liaising with director and CEO regarding various transactions• Liaising with former accountants of company regarding various transactions• Conducting and summarising statutory searches• Detailed inquiries into unfair preferences, uncommercial transactions, unfair loans, director-related transactions, insolvent trading, related-entity transactions and any other voidable transactions• Examination of correspondence and information regarding ASX Listing Rules• Conduct investigations into subsidiaries of the company (including international subsidiaries), including assessing share holdings in each subsidiary• Review of documents pertaining to Dunkin Brands Inc. Licence agreement• Liaise with Computershare regarding share registry• Detailed review of company books and records for evidence of preferential payments and uncommercial transactions• Preliminary investigations into solvency of company for evidence that the company could / could not meet its short term liabilities
	Litigation & recoveries	<ul style="list-style-type: none">• Verbal and written

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Task Area	General Description of Tasks	Additional Description
Administration [90.3 hours] [\$24,855.60]	Correspondence	<ul style="list-style-type: none">communication with stakeholders in regard to winding up application• Review of affidavit material• Instructions to solicitors in regard to winding up proceedings• Instructions to solicitors in regard to extension of convening period• Verbal and written communication with stakeholders in regard to extension of convening period• Review of litigation issues in general• Assess issues relating to convertible note holders and seek legal advice
	Director Correspondence	<ul style="list-style-type: none">• Issue day one appointment letters to relevant government agencies, sheriffs of local courts, essential service providers and the director• General correspondence issued e.g. initial letter to director advising the appointment, etc
	Document maintenance / file review / checklist	<ul style="list-style-type: none">• Communications with the directors regarding the affairs of the company and its asset and liability position• Review of the status of the administration• File reviews and monitoring of outstanding issues• Updating checklists
	Bank account administration	<ul style="list-style-type: none">• Open administration bank account• Monitoring of collections• Bank account reconciliations
	Books and records ASIC Form 524 and other forms	<ul style="list-style-type: none">• Listings of books and records• Preparing and lodging ASIC forms including 505, and other statutory notices• Lodgement of minutes of first meeting of creditors

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Task Area	General Description of Tasks	Additional Description
	ATO & other statutory reporting	<ul style="list-style-type: none">• Arrange publication of notification of appointment in relevant newspapers• Correspondence relating to meeting arrangements and status of administration• Prepare Business Activity Statement
	Planning / review	<ul style="list-style-type: none">• Discussions regarding status of administration• Planning of investigations and possible recoveries

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REMUNERATION REPORT

PART 3 – CALCULATION OF REMUNERATION

Below is a table summarising the composition of professional fees (including GST) for the period 27 October 2010 to 10 April 2011:

Employee	Position	\$/hour (incl. GST)	Total Actual Hours	Total (\$)	Task Area					
					Assets hrs \$	Creditors hrs \$	Employees hrs \$	Investigation hrs \$	Administration hrs \$	
Peter Dinoris	Appointee	484.00	67.9	\$32,863.60	13.1 hrs 6,340.40	12.4 hrs 6,001.60	0.2 hrs 96.80	31.9 hrs 15,439.60	10.3 hrs 4,985.20	
Peter Biazos	Appointee	484.00	31.8	\$15,391.20	3.8 hrs 1,839.20	6.0 hrs 2,904.00		1.2 hrs 580.80	20.8 hrs 10,067.20	
Nick Combis	Director	484.00	1.9	\$919.60					1.9 hrs 919.60	
Brenda Dinoris	Senior	275.00	42.9	\$11,797.50	39.5 hrs 10,862.50	0.7 hrs 192.50		0.2 hrs 55.00	2.5 hrs 687.50	
Matthew Varendorff	Senior	275.00	77.7	\$21,367.50	18.4 hrs 5,060.00	24.3 hrs 6,682.50	0.9 hrs 247.50	30.1 hrs 8,277.50	4.0 hrs 1,100.00	
Kylie Della-Piana	Senior	275.00	34.1	\$9,377.50	33.3 hrs 9,157.50	0.1 hrs 27.50			0.7 hrs 192.50	
Amit Kumar	Intermediate	220.00	21.4	\$4,708.00	10.7 hrs 2,354.00			7.5 hrs 1,650.00	3.2 hrs 704.00	
James McKeon	Intermediate	220.00	4.9	\$1,078.00	0.2 hrs 44.00	3.0 hrs 660.00			1.7 hrs 374.00	
Brittany White	Graduate	154.00	105.3	\$16,216.20	6.6 hrs 1,016.40	43.4 hrs 6,683.60	13.4 hrs 2,063.60	32.9 hrs 5,066.60	9.0 hrs \$1,386.00	
Cameron Wall	Graduate	154.00	9.6	\$1,478.40	1.1 hrs 169.40	0.9 138.60			7.6 hrs \$1,170.40	
Lauren Del Monte	Graduate	154.00	69.4	\$10,687.60	17.0 hrs 2,618.00	7.7 hrs 1,185.80		33.3 hrs 5,128.20	11.4 hrs 1,755.60	
Lorraine Day	WPO	88.00	0.6	\$52.80		0.6 hrs 52.80				
Natalie Sharp	WPO	88.00	17.2	\$1,513.60					17.2 hrs 1,513.60	
TOTAL (including GST)				\$127,451.50 484.7 hrs	143.7hrs \$39,461.40	99.1hrs \$24,528.90	14.5 hrs \$2,407.90	137.1hrs \$36,197.70	90.3hrs \$24,855.60	
<i>Average hourly rate</i>				\$262.95/hr	\$274.61/hr	\$247.52/hr	\$166.06	\$264.02/hr	\$275.26/hr	

REMUNERATION REPORT

DISBURSEMENTS

Disbursements are divided into three types: **A, B1, B2**:

- A** Disbursements are all externally provided professional services and are recovered at cost. An example of an A disbursement is legal fees.
- B1** Disbursements are externally provided non-professional costs such as travel, accommodation and search fees. B1 disbursements are recovered at cost.
- B2** Disbursements are internally provided non-professional costs such as photocopying and document storage. B2 disbursements are charged at cost except for photocopying, printing and telephone calls which are charged at a rate which is intended to recoup both variable and fixed costs.

Full details of disbursements on this appointment to date are provided:

Disbursements	Description	Amount (\$)
B1	Search Fees	578.05
	Courier Services	139.07
B2	Postage	132.00
		\$849.12

PART 4 – REPORT ON PROGRESS OF THE ADMINISTRATION

Please refer to my report dated 11 April 2011 for particulars regarding the status and progress of my administration.

If you have any queries or require additional information, please do not hesitate to contact Matthew Varendorff (mvarendorff@vincents.com.au) of this office on (07) 3228 4267 or Lauren Del Monte (ldelmonte@vincents.com.au) on (07) 3228 4255.

PART 5 – SUPPORTING INFORMATION

Current fees

I confirm that professional fees for period 27 October 2010 to 10 April 2011 at **\$127,451.50** (inclusive of GST) have been incurred.

Future fees

In addition to seeking approval of the professional fees for period 27 October 2010 to 10 April 2011 as set out earlier in this Remuneration Report, at the meeting of creditors to be held on 19 April 2011 I will be seeking approval of the following future professional fees:

- For the balance of the period of the voluntary administration, being 11 April 2011 to 19 April 2011, I am prepared to set an upper limit of **\$11,000.00** (inclusive of GST);
- For the period of the Deed of Company Arrangement and as Trustee of the Creditors' Trust, I am prepared to set an upper limit of **\$66,000.00** (inclusive of GST); and
- For the period of the liquidation, being from 20 April 2011, an upper limit of **\$132,000.00** (inclusive of GST) on an interim basis to be drawn progressively as earned.

Please note that if the actual professional fees incurred is less than this amount, I will be seeking the lesser amount.

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REMUNERATION REPORT

It will be necessary for me to convene a further meeting of creditors to obtain approval of any additional fees, or obtain Court approval or the approval of a Committee of Creditors to draw any additional fees as Liquidator.

It should be noted that the extent of remuneration will be limited to the funds available and may be less than the remuneration approval being sought.

The following tasks remain for the period of the voluntary administration:

- Dealing with queries of creditors and other stakeholders;
- Internal meetings to discuss the issues arising in the voluntary administration;
- Continue to investigate priority and unsecured creditor claims;
- Continue to investigate the issue of potential unfair preferences, uncommercial transactions and director related transactions;
- Continue to investigate insolvent trading;
- Preparation of meeting material including agenda, certificate of postage, attendance register, listing of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting;
- Finalise our recommendations to creditors and members with full consideration of the proposals made by all interested parties;
- Examine and communicate with the interested parties to finalise the terms and conditions of their proposals for a DOCA and Creditors' Trust;
- Continue investigations into the complex affairs of the company and its subsidiaries.

If creditors accept the proposal for a DOCA, some of the many tasks to be undertaken include the following:

- Monitor collections from debtors;
- Pursue appropriate legal recovery action against the debtors;
- Finalise examination of available books and records of the company;
- Liaise with the directors regarding ongoing investigations into the company's affairs;
- Deal with the queries of creditors and other interested parties;
- Updates to unsecured creditors addressing all material developments;
- Statutory obligations under the Corporations Act 2001;
- Determination and assessment of liabilities owed to former employees; and
- Attend to all statutory reporting requirements.

Upon the appointment of Liquidators, should the company be placed into liquidation, some of the many tasks to be undertaken include the following:

- Finalise examination of records of the company;
- Finalise investigations into priority and unsecured creditor claims;
- Finalise investigations into voidable transactions (preferential payments, uncommercial transactions and director related transactions) and pursue any claims capable of commercial recovery;
- Finalise investigations into insolvent trading;
- Deal with the queries of creditors and other interested parties;
- Updates to unsecured creditors, as required;
- Liaise with the directors of the company regarding ongoing investigations into the company's affairs and collection of debtors;
- Report any offences to the ASIC;
- Statutory obligations under the Corporations Act 2001;
- Call an annual general meeting, if necessary; and
- Finalise the liquidation.

The upper limit for the period of the liquidation has been estimated based on the information presently available. If any currently unexpected or unforeseen material issues arise I will seek additional fee approval in due course. I will keep creditors informed of all material developments in this regard. My estimate of the upper limit has been determined as follows:

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REMUNERATION REPORT

Task Area	General Description of Tasks	Estimated Fee (\$)
Assets	Debtors	\$20,000.00
	Other assets	\$40,000.00
Creditors	Unsecured creditor enquiries and communications	\$6,000.00
	Communications with Committee of Inspection	\$5,000.00
	Secured creditor communications	\$4,000.00
	Creditor reports	\$5,000.00
	Dealing with proofs of debt	\$2,000.00
	Meetings of creditors	\$1,500.00
Investigation	Employee claims (including GEERS)	\$5,000.00
	Finalise investigation & pursue any recovery action	\$30,000.00
Dividend	ASIC reporting	\$1,000.00
	Processing proofs of debt	\$2,000.00
	Distributions to any class of creditors	\$2,000.00
	General correspondence	\$2,000.00
	Document maintenance / file review / checklist	\$1,000.00
Administration	Bank account administration	\$1,000.00
	ASIC Form 524 and other forms	\$1,000.00
	ATO & other statutory reporting	\$500.00
	Finalisation	\$1,000.00
	Planning / Review	\$1,500.00
	Books and records storage	\$500.00
Total		\$132,000.00

Summary of Receipts and Payments

Below is a summary of receipts and payments from 27 October 2010 to 10 April 2011:

	\$
RECEIPTS	
Collection of Cash on Hand	30,000.00
Collection of Trust Balances	12,249.64
GST Collected	1,654.55
GST Refunds	22,170.94
Sale of Assets	16,545.45
Sundry Refunds	12,254.10
Voluntary Contribution	25,000.00
Total Receipts	<u>123,724.68</u>
PAYMENTS	
Accounting Fees	1,200.00
Advertising	2,287.98
ASX Fees	3,104.55
Auctioneers & Other Costs	1,117.27
Counsel Fees	7,000.00
Legal Fees	44,018.34
Secured Creditor Distribution	13,984.18
Share Register Fees	4,683.78
GST Paid	6,067.17
Telephone Expenses	1,241.97
Valuation Expense	1,450.00
Total Payments	<u>86,155.24</u>
Cash at Bank	<u>\$37,569.44</u>

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REMUNERATION REPORT

Statement of Remuneration Claim

The resolutions that will be sought at the second meeting of creditors include:

"that the remuneration of the Administrator and his partners and staff is hereby approved for the period 27 October 2010 to 10 April 2011 in the sum of \$127,451.50 (inclusive of GST) and for the period 11 April 2011 to 19 April 2011 in the sum of \$11,000.00 (inclusive of GST), being a total of \$138,451.50 for the period of the voluntary administration calculated by reference to the hourly rates applicable to the grades or classifications set out in the Vincents Scale of Insolvency Fees, plus outlays and the remuneration of Vincents Forensic Technology for the period 27 October 2010 to 10 April 2011 in the sum of \$9,515.00 (inclusive of GST)"

If the proposal for a DOCA is accepted:

"that the remuneration of the Deed Administrators including in their capacity as Trustees of the Creditors' Trust Deed, their partners and staff from 20 April 2011 to the conclusion of the Deed of Company Arrangement be hereby fixed in the sum of \$66,000.00 plus outlays, to be calculated by reference to the hourly rates applicable to the grades or classifications set out in the Vincents Scale of Insolvency Fees, such remuneration to be subject to review by the Court on the application of any creditor in accordance with Section 473(6) of the Corporations Act 2001 and that the Deed Administrators be empowered to draw their fees and outlays progressively as earned"

If the company is placed into liquidation:

"that the remuneration of the Liquidator, his partners and staff from 20 April 2011 to the conclusion of the liquidation be hereby fixed in the sum of \$132,000.00 (inclusive of GST) plus outlays, to be calculated by reference to the hourly rates applicable to the grades or classifications set out in the Vincents Scale of Insolvency Fees, such remuneration to be subject to review by the Court on the application of any creditor in accordance with Section 504 of the Corporations Act 2001 and that the Liquidator be empowered to draw his fees and outlays progressively as earned"

I confirm the upper limit has been estimated based on the information presently available and if any currently unexpected or unforeseen material issues arise I will seek additional fee approval in due course.

Queries

Creditors are welcome to contact Matthew Varendorff (mvarendorff@vincents.com.au) of this office on (07) 3228 4267 or Lauren Del Monte (ldelmonte@vincents.com.au) on (07) 3228 4255 if they have any queries or require additional information.

Information Sheet

A copy of the Information Sheet titled "Approving Fees: A Guide for Creditors" is attached to this Remuneration Report.

PART 6 – REMUNERATION SCALE

Please refer to my initial remuneration advice to creditors dated 1 March 2011. The rates for the remuneration calculation from 1 July 2010 are as follows:

Title	Description	Hourly Rate (incl. GST)
Appointee / Director	Registered Liquidator, Official Liquidator and	\$484.00

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REMUNERATION REPORT

	Registered Trustee in Bankruptcy	
Senior Associate	At least five years at manager level, highly qualified accountant, capable of controlling all aspects of an insolvency appointment	\$418.00
Manager	Six years or more experience, qualified accountant with well developed technical & commercial skills	\$385.00
Supervisor	Four to six years experience, CA or CPA qualified accountant, able to conduct minor administrations, experience to control up to four staff and assists with planning & control of medium to large jobs	\$319.00
Senior	Two to four years experience, CA or CPA program commenced or completed, able to control small jobs and responsible for assisting fieldwork on medium to large matters	\$275.00
Intermediate	Up to two years experience, little professional experience and assist under supervision	\$220.00
Graduate	Undergraduate with no previous experience in insolvency or other relevant accounting areas	\$154.00
Word Processing Operator	Skilled in computer processing work	\$88.00
Junior	Required to assist in day to day tasks	\$66.00

The above rates are current from 1 July 2010 and may vary from time to time as the cost structure of the firm changes. Adjustments to the scale will occur from time to time as required. It is envisaged that adjustments will occur at the commencement of each financial year though this could vary.

It is considered appropriate to keep and maintain a number of different staff levels. This is a reflection of the different levels of staff required and experience necessary in order to undertake the numerous tasks in any insolvency appointment.

The insolvency partners of Vincents Chartered Accountants are members of the Insolvency Practitioners Association of Australia and follow the IPA Code of Professional Practice ("COPP"). A copy of the COPP can be found at IPA website (www.ipaa.com.au).

DATED this 11th day of April 2011.



PETER DINORIS
ADMINISTRATOR

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ASIC

Australian Securities & Investments Commission

Insolvency information for directors, employees, creditors and shareholders

ASIC has 11 insolvency information sheets to assist you if you're affected by a company's insolvency and have little or no knowledge of what's involved.

These plain language information sheets give directors, employees, creditors and shareholders a basic understanding of the three most common company insolvency procedures—liquidation, voluntary administration and receivership. There is an information sheet on the independence of external administrators and one that explains the process for approving the fees of external administrators. A glossary of commonly used insolvency terms is also provided.

The Insolvency Practitioners Association (IPA), the leading professional organisation in Australia for insolvency practitioners, endorses these publications and encourages its members to make their availability known to affected people.

List of information sheets

- INFO 41 *Insolvency: a glossary of terms*
- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 75 *Voluntary administration: a guide for employees*
- 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 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*
- INFO 85 *Approving fees: a guide for creditors*

Getting copies of the information sheets

To get copies of the information sheets, visit ASIC's website at www.asic.gov.au/insolvencyinfosheets. The information sheets are also available from the IPA website at www.ipaa.com.au. The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.

Important note: The information sheets contain 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. These documents may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

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- legal fees
- valuer's, real estate agent's and auctioneer's fees
- stationery, photocopying, telephone and postage costs
- retrieval costs for recovering the company's computer records, and
- storage costs for the company's books and records.

Creditors have a direct interest in the level of fees and costs, as the external administrator will, generally, be paid from the company's available assets before any payments to creditors. If there are not enough assets, the external administrator may have arranged for a third party to pay any shortfall. As a creditor, you should receive details of such an arrangement. If there are not enough assets to pay the fees and costs, and there is no third party payment arrangement, any shortfall is not paid.

Who may approve fees

Who may approve fees depends on the type of external administration: see Table 1. The external administrator must provide sufficient information to enable the relevant decision-making body to assess whether the fees are reasonable.

Table 1: Who may approve fees

	Creditors' committee	Creditors	Court
Administrator in a voluntary administration	✓ ¹	✓	✓
Administrator of a deed of company arrangement	✓ ¹	✓	✓
Creditors' voluntary liquidator	✓ ¹	✓ ³	X ³
Court-appointed liquidator	✓ ¹	✓ ^{4,5}	✓ ²

- ¹ If there is one.
- ² If there is no approval by the committee or the creditors.
- ³ Unless an application is made for a fee review.
- ⁴ If there is no creditors' committee or the committee fails to approve the fees.
- ⁵ If insufficient creditors turn up to the meeting called by the liquidator to approve fees, the liquidator is entitled to be paid up to a maximum of \$5000, or more if specified in the Corporations Regulations 2001.

Creditors' committee approval

If there is a creditors' committee, members are chosen by a vote of creditors as a whole. In approving the fees, the members represent the interests of all the creditors, not just their own individual interests. There is not a creditors' committee in every external administration. A creditors' committee makes its decision by a majority in number of its members present at a meeting, but it can only act if a majority of its members attend.

To find out more about creditors' committees and how they are formed, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors*, INFO 74 *Voluntary administration: a guide for creditors* and INFO 41 *Insolvency: a glossary of terms*.

Creditors' approval

Creditors approve fees by passing a resolution at a creditors' meeting. Unless creditors call for a poll, the resolution is passed if a simple majority of creditors present and voting, in person or by proxy,



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Australian Securities & Investments Commission

INFORMATION SHEET 85

Approving fees: a guide for creditors

If a company is in financial difficulty, it can be put under the control of an independent external administrator.

This information sheet gives general information for creditors on the approval of an external administrator's fees in a liquidation of an insolvent company, voluntary administration or deed of company arrangement (other forms of external administration are not discussed in this information sheet). It outlines the rights that creditors have in the approval process.

Entitlement to fees and costs

A liquidator, voluntary administrator or deed administrator (i.e. an 'external administrator') is entitled to be:

- paid reasonable fees, or remuneration, for the work they perform, once these fees have been approved by a creditors' committee, creditors or a court, and
- reimbursed for out-of-pocket costs incurred in performing their role (these costs do not need creditors' committee, creditor or court approval).

External administrators are only entitled to an amount of fees that is reasonable for the work that they and their staff properly perform in the external administration. What is reasonable will depend on the type of external administration and the issues that need to be resolved. Some are straightforward, while others are more complex.

External administrators must undertake some tasks that may not directly benefit creditors. These include reporting potential breaches of the law and lodging a detailed listing of receipts and payments with ASIC every six months. The external administrator is entitled to be paid for completing these statutory tasks.

For more on the tasks involved, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors* and INFO 74 *Voluntary administration: a guide for creditors*.

Out-of-pocket costs that are commonly reimbursed include:

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. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

indicate that they agree to the resolution. Unlike where acting as committee members, creditors may vote according to their individual interests.

If a poll is taken, rather than a vote being decided on the voices or by a show of hands, a majority in *number* and *value* of creditors present and voting must agree. A poll requires the votes of each creditor to be recorded.

A separate resolution of creditors is required for approving fees for an administrator in a voluntary administration and an administrator of a deed of company arrangement, even if the administrator is the same person in both administrations.

A proxy is where a creditor appoints someone else to represent them at a creditors' meeting and to vote on their behalf. A proxy can be either a *general proxy* or a *special proxy*. A general proxy allows the person holding the proxy to vote as they wish on a resolution, while a special proxy directs the proxy holder to vote in a particular way.

A creditor will sometimes appoint the external administrator as a proxy to vote on the creditor's behalf. An external administrator, their partners or staff must not use a general proxy to vote on approval of their fees; they must hold a special proxy in order to do this. They must vote all special proxies as directed, even those against approval of their fees.

Calculation of fees

Fees may be calculated using one of a number of different methods, such as:

- on the basis of *time spent* by the external administrator and their staff
- a quoted *fixed fee*, based on an upfront estimate, or
- a percentage of asset realisations.

Charging on a time basis is the most common method. External administrators have a scale of hourly rates, with different rates for each category of staff working on the external administration, including the external administrator.

If the external administrator intends to charge on a time basis, you should receive a copy of these hourly rates soon after their appointment and before you are asked to approve the fees.

The external administrator and their staff will record the time taken for the various tasks involved, and a record will be kept of the nature of the work performed.

It is important to note that the hourly rates do not represent an hourly wage for the external administrator and their staff. The external administrator is running a business—an insolvency practice—and the hourly rates will be based on the cost of running the business, including overheads such as rent for business premises, utilities, wages and superannuation for staff who are not charged out at an hourly rate (such as personal assistants), information technology support, office equipment and supplies, insurances, taxes, and a profit.

External administrators are professionals who are required to have qualifications and experience, be independent and maintain up-to-date skills. Many of the costs of running an insolvency practice are fixed costs that must be paid, even if there are insufficient assets available to pay the external administrator for their services. External administrators compete for work and their rates should reflect this.

These are all matters that committee members or creditors should be aware of when considering the fees presented. However, regardless of these matters, creditors have a right to question the external administrator about the fees and whether the rates are negotiable.

It is up to the external administrator to justify why the method chosen for calculating fees is an appropriate method for the particular external administration. As a creditor, you also have a right to question the external administrator about the calculation method used and how the calculation was made.

Report on proposed fees

When seeking approval of fees, the external administrator must send committee members/creditors a report with the notice of meeting setting out:

- information that will enable the committee members/creditors to make an informed assessment of whether the proposed fees are reasonable
- a summary description of the major tasks performed, or to be performed, and
- the costs associated with each of these tasks.

Committee members/creditors may be asked to approve fees for work already performed or based on an estimate of work yet to be carried out.

If the work is yet to be carried out, it is advisable to set a maximum limit ('cap') on the amount that the external administrator may receive. For example, future fees calculated according to time spent may be approved on the basis of the number of hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X. If the work involved then exceeds this figure, the external administrator will have to ask the creditors' committee/creditors to approve a further amount of fees, after accounting for the fees already incurred.

Deciding if fees are reasonable

If asked to approve an amount of fees either as a committee member or by resolution at a creditors' meeting, your task is to decide if that amount of fees is reasonable, given the work carried out in the external administration and the results of that work.

You may find the following information from the external administrator useful in deciding if the fees claimed are reasonable:

- the method used to calculate fees
- the major tasks that have been performed, or are likely to be performed, for the fees
- the fees/estimated fees (as applicable) for each of the major tasks
- the size and complexity (or otherwise) of the external administration
- the amount of fees (if any) that have previously been approved
- if the fees are calculated, in whole or in part, on a time basis:
 - the period over which the work was, or is likely to be performed
 - if the fees are for work that has already been carried out, the time spent by each level of staff on each of the major tasks
 - if the fees are for work that is yet to be carried out, whether the fees are capped.

If you need more information about fees than is provided in the external administrator's report, you should let them know before the meeting at which fees will be voted on.

What can you do if you think the fees are not reasonable?

If you do not think the fees being claimed are reasonable, you should raise your concerns with the external administrator. It is your decision whether to vote in favour of, or against, a resolution to approve fees.

Generally, if fees are approved by a creditors' committee/creditors and you wish to challenge this decision, you may apply to the court and ask the court to review the fees. Special rules apply to court liquidations.

You may wish to seek your own legal advice if you are considering applying for a court review of the fees.

APPROVING FEES: A GUIDE FOR CREDITORS

Reimbursement of out-of-pocket costs

An external administrator should be very careful incurring costs that must be paid from the external administration—as careful as if they were dealing with their own money. Their report on fees should also include information on the out-of-pocket costs of the external administration.

If you have questions about any of these costs, you should ask the external administrator and, if necessary, bring it up at a creditors' committee/creditors' meeting. If you are still concerned, you have the right to ask the court to review the costs.

Queries and complaints

You should first raise any queries or complaints with the external administrator. If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ASIC at www.asic.gov.au/complain, or write to:

ASIC Complaints
PO Box 9149
TRARALGON VIC 3844

ASIC will usually not become involved in matters of commercial judgement by an external administrator. Complaints against companies and their officers can also be made to ASIC. For other enquiries, email ASIC through infoline@asic.gov.au, or call ASIC's Infoline on 1300 300 630 for the cost of a local call.

To find out more

For an explanation of terms used in this information sheet, see ASIC's information sheet INFO 41 *Insolvency: a glossary of terms*. For more on external administration, see ASIC's related information sheets at www.asic.gov.au/insolvencyinfosheets:

- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 75 *Voluntary administration: a guide for employees*
- 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 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*

These are also available from the Insolvency Practitioners Association (IPA) website at www.ipaa.com.au. The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.

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ANNEXURE A

ALLIED BRANDS LIMITED (ADMINISTRATORS APPOINTED)

SUMMARY OF DOCA PROPOSALS

Proponent	Directors Proposal	Trident Capital Pty Ltd
Parties Involved	Lachlan Stuart McIntosh, Peter David Elligett, Peter Allan Graham and Sean Craig Corbin	Simon Lill
Consideration if ASX insist Chapters 1 & 2 of the ASX listing rules must be complied with	Not applicable	Nil
Consideration if ASX agree Chapters 1 & 2 of the ASX listing rules need not be complied with	Not applicable	\$ 800,000.00 10,000,000 (post consolidation) fully paid up ordinary shares in ABL
Conditions	<p>Deed fund be established to hold the listed shell and any other assets of Allied Brands Limited (Administrators Appointed) excluding shares in Awesome Water Pty Ltd and Awesome Entertainment Pty Ltd</p> <p>Creditors Trust established with terms of which include McIntosh, Elligett and Graham taking reasonable steps to sell on behalf of the Creditors' Trust the listed shell</p> <p>Prior to entering into any Creditors' Trust the Deed Administrators will convene a meeting of the creditors of ABQ for the purposes of voting on a resolution to vary the DCA to establish the Creditors' Trust Deed Effectuation of DCA is dependant on receiving offer of at least \$800,000 for the recapitalisation of the company</p> <p>Execution of DCA results in release and discharge of McIntosh, Elligett, Graham and Corbin from all claims and liabilities which ABQ or Deed Administrators may have against those parties only upon effectuation of DCA and sale for at least \$800,000</p> <p>Employee entitlements will be paid to employees determined by Deed Administrators to have valid claims under GEERS within six (6) months of entering into DCA</p>	<p>All creditors claims to be transferred to a Creditors Trust (including secured creditors and convertible noteholders)</p> <p>Seek the retention of Awesome Entertainment Pty Ltd and Awesome Water Pty Ltd and other associated entities</p> <p>ASX providing confirmation that it will reinstate the quotation of the company's securities to ASX</p> <p>Approval of creditors and shareholders to enter into the proposed DCA and approval of the proposed recapitalisation</p> <p>Resignation of the current directors</p> <p>Existing convertible note holders to convert their shares to equity on a pre-consolidation basis</p>
Costs of Shareholder Meetings & Materials	Not addressed in proposal	Costs will be met by the proponent (excluding share registry costs)
Deposit	Not applicable	\$50,000 upon execution of the DOCA (non-refundable)
Proposed settlement with secured creditors	Secured creditors to vote in favour of DOCA and be bound by terms of same. If realisations greater than \$800,000 made from sale of shell then \$640,000 to be paid to Westpac Banking Corporation and balance to Administrators fees and costs, Trustees of Creditors Trust fees and costs, employees, Beath, unsecured creditors	Trident Capital Pty Ltd have noted that they expect that Westpac Banking Corporation would demand 100% of the cash funds available paid to the Creditors Trust in order to release their security however this is not a condition of the proposal. Convertible Note Holders would be required to convert their shares to equity
Assets to be included	All assets of company to be transferred to Deed Fund except those detailed below	Seek the retention of Awesome Entertainment Pty Ltd, Awesome Water Pty Ltd, Intellectual Property, shares of subsidiaries as detailed in the proposal
Assets to be excluded	Shares in Awesome Water Pty Ltd and Awesome Entertainment Pty Ltd	All assets are to be excluded save for the above
Date consideration to be paid	Not addressed in proposal and dependant on listed shell being realised	Consideration to be made available for distribution subject to completion of conditions precedent to the proposal
End Date	If no suitable offer for purchase received within six (6) months of execution of DCA, Deed Administrators to call meeting of creditors to consider amendments to DCA or that the DCA should terminate	31 December 2011
Shares	Not addressed in proposal as will be dependant upon the nature of any offer by proponent	<p>Existing shares and convertible notes to be converted resulting in approximately 13,000,000 post consolidation shares</p> <p>Option holders and Party Paid Shareholders to reconstruct in accordance with Corporations Law</p> <p>New Shares totalling 100,000,000 to be issued to proponent and / or nominees at issue price of \$0.005 each</p> <p>New Shares totalling 250,000,000 to be issued to clients of proponent at issue price of \$0.01 each</p> <p>Proponent to reserve rights to issue 30,000,000 fully paid shares to facilitate recapitalisation process</p>

Note: For further particulars of the two (2) proposals, creditors should refer to Annexures B and C of this report.

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DEED OF COMPANY ARRANGEMENT

ALLIED BRANDS LIMITED
(ADMINISTRATORS APPOINTED)

MESSRS PETER DINORIS &
PETER BIAZOS
(ADMINISTRATORS)

TRIDENT CAPITAL PTY LTD
(TRIDENT CAPITAL)

PHONE (618) 9211 6733 | FAX (618) 9211 6744 | ABN 83 662 850 668

POSTAL ADDRESS: PO Box 25493 St Georges Terrace Perth WA 6831

ADDRESS: Level 24, St Martin's Tower, 44 St Georges Terrace Perth WA 6000



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This Deed is made on the _____ day of _____ 2011

Between

ALLIED BRANDS LIMITED (ADMINISTRATORS APPOINTED) (ACN 108 958 274) of care of Vincents Chartered Accountants, Level 34, 32 Turbot Street, Brisbane in the State of Queensland ("Company");

MESSRS PETER DINORIS AND PETER BIAZOS of Vincents Chartered Accountants, Level 34, 32 Turbot Street, Brisbane in the State of Queensland ("**Administrators**"); and

TRIDENT CAPITAL PTY LTD (ACN 100 561 733) of Level 24, 44 St George's Terrace, Perth in the State of Western Australia, 6000 ("**Trident Capital**")

Recitals:

- A. On 27 October 2010, the Administrators were appointed as joint and several administrators of the Company pursuant to section 436A(1) of the Corporations Act, by resolution of the directors of the Company.
- B. At a meeting of Creditors held pursuant to section 439A(1) of the Corporations Act on [19] April 2011, the Creditors resolved pursuant to section 439C of the Corporations Act that the Company enter into a deed of company arrangement in terms substantially in the form of this Deed.
- C. The Administrators are registered liquidators and are not disqualified from acting as administrators of the Deed.

Operative Provisions:

1 Interpretation

1.1 Definitions

In this document, unless the context otherwise requires:

- (a) "**Administrators**" means Peter Dinoris and Peter Biazos of Vincents Chartered Accountants, Level 34, 32 Turbot Street, Brisbane, in their capacity as the administrators of the Company;
- (b) "**Administrators' Costs**" means the remuneration and costs incurred by the Administrators and their staff with respect to acting as administrators from the Appointment Date to the Commencement Date calculated in accordance with the rates of charge issued from time to time by the Administrators, plus any GST payable thereon, as approved by the Creditors by Resolution at the creditor's meeting on [8 November 2010];
- (c) "**Administrators' Disbursements**" means all incidental costs and disbursements incurred by the Administrators from the Appointment Date to the Commencement

Date in connection with the implementation of this Deed and the performance of the Administrators' duties including, but not limited to, all legal costs incurred by the Administrators plus any GST payable thereon;

(d) "**Administration Liabilities**" means:

- (i) any debts or other obligations incurred by the Company for which the Deed Administrators are liable and which were incurred during the period from the Commencement Date to the Termination Date;
- (ii) any debts or other obligations incurred by the Deed Administrators during the period from the Commencement Date to the Termination Date;
- (iii) all actions, suits, proceedings, accounts, claims and demands arising after the Commencement Date, out of or relating to this Deed or out of or relating to the Creditors' Trust Deed which may be commenced, incurred by or made on the Administrators (in any capacity), or the Trustees by any person and against all costs, charges and expenses incurred by the Administrators or the Trustees in respect of them; and
- (iv) without limitation to paragraphs (a) and (b) above;

(A) any debts to which the statutory indemnity under section 443D of the Corporations Act applies;

(B) any amounts in respect of which the Deed Administrators are entitled to exercise a lien whether in law, equity or under section 443F of the Corporations Act on the property of the Company; and

(C) any amount in respect of which the Deed Administrators are entitled to the benefit of the indemnity in clause 16 of this Deed;

(e) "**Admitted Claim**" means the amount of a Creditor's Claim as determined by the Deed Administrators in accordance with clause 9 of this Deed or by the Trustees in accordance with clause 8 of the Creditors' Trust Deed;

(f) "**Admitted Creditor**" means a Creditor whose Claim has been admitted by the Deed Administrators pursuant to clause 9 of this Deed or by the Trustees pursuant to clause 8 of the Creditors' Trust Deed;

(g) "**Agreed Amount**" means the payment, less the Deposit, as described in the Proposal, in settlement of Creditors Claims including the Administrators fees and expenses in order to effect a release of all Security Interests held by Creditors and in respect of the Company, together with their respective Claims against the Company;

(h) "**Appointment Date**" means 27 October 2010;

(i) "**ASIC**" means the Australian Securities & Investments Commission;

(j) "**Assets**" means all property of the Company as at the Appointment Date, whether or not those assets have been identified by or otherwise made known to the Deed Administrators as at the Appointment Date;

(k) "**ASX**" means ASX Limited (ACN 008 624 691);

- (l) "Business Day" means a day that is not a Saturday, Sunday, or a public or bank holiday in Western Australia;
- (m) "Claim" means a debt owing by, or a claim subsisting against the Company in favour of a person, or a debt or claim the circumstances giving rise to which occurred, or any action, suit, causes of action, arbitration, cost, demand, verdict, or judgment at law or in equity or under any statute which arose (whether at law, in equity, whether present, prospective or contingent whether liquidated or sounding only in damages and whether sounding in contract, or tort or otherwise arising) on or before the Appointment Date, including any claim arising under a Convertible Note;
- (n) "Commencement Date" means the date of this Deed;
- (o) "Company" means Allied Brands Limited (Administrators Appointed) ACN 108 958 274;
- (p) "Completion" means the effectuation of the DOCA upon successfully completing the raising of the Recapitalisation Amount;
- (q) "Completion Date" means:
 - (i) The date no later than 15 Business Days after the date which the Prospectus closes fully subscribed; or
 - (ii) Such other date as the parties may agree in writing.
- (r) "Competing Proponent" means each of the parties listed in part 6 of the report to creditors issued by the Administrators on [11] April 2011;
- (s) "Competing Proposal" means each of the proposals for recapitalisation listed in the report to creditors issued by the Administrators on [11] April 2011;
- (t) "Convertible Note" means any convertible note issued by the Company;
- (u) "Corporations Act" means the Corporations Act 2001 (Cth);
- (v) "Court" means any court having jurisdiction to hear and determine matters under the Corporations Act;
- (w) "Creditors" means all creditors of the Company having a Claim, including Employees and the Secured Creditors but excluding Convertible Note holders;
- (x) "Creditor's Meeting" means a meeting convened in accordance with section 445F(1) of the Corporations Act;
- (y) "Creditors Trust Deed" means the trust deed to be entered into by the Deed Administrators as Trustees, pursuant to the terms of this Deed, for and on behalf of the Company's Creditors, substantially in the form of the document forming Schedule 1 to this Deed;
- (z) "Creditors' Trust Shares" means the 10,000,000 Shares to be issued into the Trust for the benefit of Creditors (post-Consolidation and escrowed for a period of 12 months);
- (aa) "Deed" means this deed of company arrangement;
- (bb) "Deed Administrators" means Peter Dinoris and Peter Biazos of Vincents Chartered Accountants, Level 34, 32 Turbot Street, Brisbane, in their capacity as the deed administrators or any replacement administrator(s) appointed pursuant to the provisions of the Corporations Act;

- (cc) "Deed Fund" means the aggregate of the Property transferred or assigned to the Deed Administrators under clause 12.3;
- (dd) "Deed Period" means the period commencing on the Commencement Date and ending on the Termination Date;
- (ee) "Deposit" means the amount of \$50,000 payable by Trident Capital on execution of this Deed to the Administrators in consideration for their associated costs;
- (ff) "Dividend" means the amount to be paid out of the balance of the Trust Fund to Admitted Creditors, having regard to each Creditor's Pro-rata Entitlement, which the Deed Administrators declare;
- (gg) "Director(s)" means any person who, by reason of the definition of "director" in section 9 of the Corporations Act, is a director of the Company;
- (hh) "Employees" means a Creditor of the Company who was an employee of the Company as at the Appointment Date, including employees whose employment by the Company is continuing;
- (ii) "Enforcement Process" has the same meaning as in section 9 of the Corporations Act;
- (ij) "GST" means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charges;
- (kk) "GST Law" has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999, or if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act;
- (ll) "Notice" means either of the notices referred to in clause 9.2, 20.2 or clause 21.1;
- (mm) "Property" means a legal or equitable estate or interest in property of any description;
- (nn) "Proponent" means Trident Capital;
- (oo) "Proposal" means the proposal put forward by the Proponent and subsequently adopted to recapitalise the Company as fully described in the Reconstruction Deed contained at Schedule 2;
- (pp) "Pro-rata Entitlement" means for each Creditor, the fraction expressed as a percentage, calculated by dividing that Creditor's Admitted Claim by the total dollar value of Admitted Claims for all Creditors taking into account the priorities specified in clause 8.3;
- (qq) "Prospectus" means a prospectus to be issued by the Company in relation to the proposed reconstruction of the Company;
- (rr) "Recapitalisation Amount" means the total capital to be raised in respect of an adopted Proposal to be conducted by Trident Capital under the Reconstruction Deed to recapitalise the Company;
- (ss) "Receivable(s)" means each amount owing to the Company from a debtor as at the Commencement Date, and includes any amount payable to the Company in relation to any claim under a policy of insurance held by the Company for losses arising from acts or omissions arising prior to the Commencement Date;
- (tt) "Reconstruction Deed" means reconstruction deed dated [X] 2011 and attached as Schedule 2;

- (uu) "Regulations" means the Corporations Regulations 2001 (Cth);
- (vv) "Resolution" means a resolution passed at a meeting of Creditors convened in accordance with this Deed;
- (ww) "Secured Creditor" means a Creditor who has the benefit of a Security Interest at the Commencement Date over all or any Property of the Company securing all or any part of that Creditor's Claim;
- (xx) "Security Interest" means any mortgage, charge, lien or pledge as security for the payment or repayment of a monetary obligation or the observance of any other obligation;
- (yy) "Termination Date" means the earlier of:
 - (i) the date upon which the Deed is terminated in accordance with clause 21.1 of this Deed; or
 - (ii) if the Deed is terminated in accordance with clauses 20.2 or 20.3 of this Deed, the date upon which the Deed is terminated;
- (zz) "Trident Capital" means Trident Capital Pty Ltd (ACN 100 561 733);
- (aaa) "Trust" means the trust created by the Creditors' Trust Deed;
- (bbb) "Trust Fund" means all the monies, securities and Property that the Trustees are required to hold on trust pursuant to the terms of the Creditor's Trust Deed and this Deed, as paid or transferred to the Trustees; and
- (ccc) "Trustees" means Peter Dinoris and Peter Biazos of Vincents Chartered Accountants, Level 34, 32 Turbot Street, Brisbane, and their successors and assigns;
- (ddd) "Vincents" means Vincents Chartered Accountants and any of its associated entities;

1.2 General

- In this Deed, unless the context otherwise requires:
- (a) singular includes plural and conversely;
 - (b) a gender includes all genders;
 - (c) references to a person includes any body corporate, unincorporated body, a corporation, association partnership, government authority, or other legal entity;
 - (d) a reference to any party to this Deed or any other agreement or document includes the party's executors, administrators, substitutes, successors and permitted assigns;
 - (e) a reference to any agreement or document is a reference to the agreement or document as amended, novated, supplemented, varied or replaced from time to time, in accordance with this Deed or that other agreement or document.
 - (f) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws, ordinances and statutory instruments made under those statutes;

- (g) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (h) references to clauses, schedules, or annexure refer to clauses, schedules or annexure of this Deed
- (i) headings and the table of contents are used for convenience only and do not affect interpretation;
- (j) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (k) where a word or phrase that has been defined in clause 1.1 of this Deed is used in the context of referring to a deed of company arrangement, the word or phrase is to be read as meaning the same word or phrase as defined in that deed of company arrangement;
- (l) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- (m) no rule of construction of documents shall apply to the disadvantage of a party, on the basis that the party put forward this document or any relevant part of it;
- (n) when a day on or by which anything to be done is not a Business Day, that thing may be done on the next Business Day;
- (o) reference to subsidiaries means subsidiaries as defined under the Corporations Act; and
- (p) a reference to 'dollars' or '\$' is to Australian currency.

2 Commencement, Term and Interim Effect

2.1 Commencement

This Deed commences on the Commencement Date and continues until the Termination Date unless terminated prior to the Termination Date.

2.2 Interim Effect

Insofar as a person would be bound by this Deed if this Deed had already been executed, the person must not, at any time after Creditors resolve that the Company enter into this Deed but before this Deed is executed, do anything inconsistent with the terms of this Deed except with the leave of a Court.

3 Period of Appointment

The Deed Administrators' appointment shall begin on the Commencement Date and continue until the Termination Date or until their retirement or removal from office.

4 Scope of This Deed

4.1 Deed binds all Persons

This Deed binds:

- (a) all parties to this Deed;
- (b) in accordance with section 444D of the Corporations Act, all persons having a Claim against the Company; and
- (c) in accordance with section 444G of the Corporations Act, the Company, the Deed Administrators and the members and officers of the Company.

5 Prescribed Provisions

5.1 Regulations
Except as expressly included in the Deed, each of the prescribed provisions contained in Schedule 8A of the Regulations is expressly excluded from the Deed.

5.2 Part 5.3A
This Deed is intended to take effect in accordance with Part 5.3A of the Corporations Act.

6 Reconstruction of the Company by the Administrators

The Administrators are empowered to execute and do all things reasonably necessary or convenient to be done to give effect to this Deed, the Reconstruction Deed and the Creditors' Trust Deed.

7 Payment on Execution

Upon execution of this Deed, Trident Capital shall pay the Deposit to the Administrators.

8 Creditors' Trust Deed

8.1 Parties shall enter into Creditors' Trust Deed

- (a) Before transfer of the balance of the Deed Fund in accordance with clause 12.4, the Deed Administrators shall cause the Company to execute and require the Trustees to execute the Creditors' Trust Deed.
 - (b) The Trustees shall act as trustees for each of the Creditors pursuant to the Trust as created by terms of the Creditors' Trust Deed.
 - (c) Notwithstanding that the Creditors' Claims against the Company are released pursuant to the terms of clause 10, the Creditors will maintain a right as a beneficiary under the Creditors' Trust Deed to a share of the Trust Fund under the terms of the Creditors' Trust Deed.
- 8.2 Moneys for Distribution to Creditors**
- (a) The only moneys that shall become available for distribution to the Creditors are constituted by the Trust Fund and will be distributed pursuant to the Creditors' Trust Deed.
 - (b) No other moneys retained or received by the Directors or the Company are available for distribution to the Creditors.

- (c) The Creditors shall, as the beneficiaries of the Trust, prove their claims against the Trust Fund in accordance with the Creditors' Trust Deed.

8.3 Order of distribution

The Trust Fund will be applied in the order of priority as follows:

- (a) FIRSTLY, in payment of the Administration Liabilities, the Administrators' Costs, the Administrators' Disbursements, Deed Administrators' Costs, the Deed Administrators' Disbursements, the costs and remuneration of the Trustees and other costs payable under the Creditors' Trust Deed;
- (b) SECONDLY, in payment of entitlements that would, in a liquidation, be accorded a priority under section 556(1) and section 560 of the Corporations Act plus any share registry and ASX costs;
- (c) THIRDLY, in payment to the Secured Creditors;
- (d) FOURTHLY, in payment of a Dividend to the remaining Admitted Creditors, and
- (e) FIFTHLY, any remaining balance to the Company.

Subject to the above, the terms of section 556 and section 560 of the Corporations Act shall apply as if the references to the "liquidator" were references to the "Trustees", references to "winding up" were references to the "Trust" and with such other modifications as are necessary to give effect to the terms of this document.

9 Adjudication of Proof of Debt

9.1 Claims by Creditors

The Deed Administrators shall consider the Claims of each of the Creditors for the purpose of determining the Creditors' Pro-rata Entitlement under the Trust. Claims by Creditors shall be determined by the Deed Administrators in accordance with this clause 9.

9.2 Notice to Creditors

- Within fourteen (14) days from the Commencement Date, the Deed Administrators shall, in their absolute discretion, send out either of the following Notices to each known Creditor of the Company:
- (a) a Notice advising them of the value of the Claim proposed to be admitted for formal proof of debt purposes, based on the information available to the Deed Administrators and the value of the Creditor's Claim which was allowed by the Administrators for voting purposes at the second meeting of Creditors; or
 - (b) a Notice advising them that the Deed Administrators require the Creditor to provide a proof of debt within thirty (30) days of the date of the Notice (the Notice may also identify particular issues to be addressed by the Creditor), in which case the Deed Administrators must adjudicate on the proof of debt in accordance with the rules prescribed by the Corporations Act and the Regulations for proof of debts or claims on a winding up of the Company.

- 9.3 **Reply by Creditors**
The Creditor must, within fourteen (14) days of the date of the Notice referred to in clause 9.2(a):
- (a) notify the Deed Administrators of its decision to accept the Deed Administrators' adjudication of the Creditor's claim, and if so, the Creditor must be admitted to proof for that amount; or
 - (b) notify the Deed Administrators of its decision to object to the Deed Administrators' adjudication of the Creditors Claim and provide to the Deed Administrators a proof of debt and supporting documentation in accordance with the Regulations, in which case the Deed Administrators must adjudicate on the proof of debt in accordance with the rules prescribed by the Corporations Act and the Regulations for proof of debts or claims on a winding up of the Company.

9.4 **Amount determined by the Deed Administrator**
If the Deed Administrators have not received a notification from the Creditor as described in clause 9.3(a) fourteen (14) days after sending the Notice described in clause 9.2(a) to the Creditor, the claim of the Creditor against the Company must be admitted for the amount contained in the Notice issued pursuant to clause 9.2(a).

9.5 **Advertisement**
The Deed Administrators, at the time of sending out the Notices referred to in clause 9.2 shall advertise once in a principal daily newspaper circulated in each State and Territory of Australia in which the Company conducts business, to the effect that any person claiming to be a Creditor may, within thirty (30) days of the date of publication or such advertisement, submit a claim to the Deed Administrators by way of proof of debt specifying in detail the nature and amount of their claim against the Company as at the Appointment Date, in which case the Deed Administrators must adjudicate on the proof of debt in accordance with the rules prescribed by the Corporations Act and the Regulations for proof of debts or claims on a winding up of the Company.

9.6 **Extension of time**
The Deed Administrators may, in their discretion, extend the time limits prescribed in clauses 9.2 to 9.5 (inclusive).

9.7 **Adjudication of Proof**
Subject to clause 9.6, the Deed Administrators must adjudicate upon a Creditor's proof of debt in accordance with the rules prescribed by the Corporations Act and the Regulations for proof of debts or claims on a winding up of the Company.

9.8 **Making Claims**
(a) Subdivisions A, B, C and E of Division 6 of Part 5.6 of the Corporations Act apply to claims made under this Deed as if the references to the "liquidator" were references to the Deed Administrators.
(b) For subclause (a), the remainder of the Corporations Act is taken to apply, as far as practicable, as if:
(i) a reference that is relevant to the liquidator were a reference in a form that is applicable to the Administrators; and

(ii) a reference that is relevant to any other matter relating to liquidation were a reference in a form that is applicable to the administration of this Deed; and
(iii) a reference to a relevant date were a reference to the date of the Administrators' appointment.

9.9 **Lodging of accounts**
Section 434 of the Corporations Act applies to the Administrator as if the reference to a controller were a reference to the Deed Administrators.

9.10 **Cost of Proof**
Any costs and expenses incurred by a Creditor in preparing and submitting a claim to the Deed Administrators shall be borne by that Creditor and shall not form part of the Creditor's Claim.

9.11 **Interest on Claim**
Interest shall not accrue, and shall not be payable, in respect of any Creditor's Claim.

9.12 **Time**
Time shall be of the essence in respect to each and every obligation of a Creditor pursuant to this clause.

10 Release and Extinguishment of Claims against the Company

10.1 **Discharge of debts**
The Creditors must accept their entitlements under this Deed in full satisfaction and complete discharge of all debts and Claims which they have or claim to have against the Company as at the day when the administration began and each of them will, if called upon to do so, execute and deliver to the Company such forms of release of any such Claim as the Administrators require.

10.2 **Claims extinguished**
If the Administrators have paid to the Creditors their full entitlements under this Deed, all debts or Claims, present or future, actual or contingent, due or which may become due by the Company as a result of anything done or omitted by or on behalf of the Company before the day when the administration began and each claim against the Company as a result of anything done or omitted by or on behalf of the Company before the day when the administration began is extinguished.

10.3 **Forms of Release**
Creditors must execute and deliver to the Company all such documents including forms of release of debts and claims as the Company or the Deed Administrators may reasonably require from time to time to give effect to the release in clause 10.2.

11 Bar to Creditor Claims

Subject to section 444D of the Corporations Act this Deed may be pleaded by the Company against any Creditor in bar of any debt or Claim that is admissible under this Deed and a Creditor (whether the Creditor's debt or Claim is or is not admitted or established under this Deed) must not, before termination of this Deed;

- (a) take, or concur in the taking of, any step to wind up the Company; or
- (b) except for the purpose and to the extent provided in this Deed, institute or prosecute any legal proceedings in relation to any debt incurred or alleged to have been incurred by the Company before the day when the administration began; or
- (c) take any further step (including any step by way of legal or equitable execution) in any proceedings pending against or in relation to the Company at the day when the administration began; or
- (d) exercise any right of set-off or cross action to which the person would not have been entitled had the Company been wound up at the day when the administration began; or
- (e) commence or take any further step in any arbitration against the Company or to which the Company is a party; or
- (f) begin or continue with any Enforcement Process in relation to the Company's Property.

12 Administration Fund

12.1 Establishment of Deed Fund

The Deed Administrators must establish the Deed Fund as soon as practicable after the Commencement Date.

12.2 Deed Fund to be Held for the Benefit of the Deed Administrators and Creditors

The Deed Administrators must hold all amounts in the Deed Fund on trust for the benefit of the Deed Administrators and for Creditors in accordance with the terms of this Deed. The Deed Fund, once established, will not form part of the Assets.

12.3 Payment into Deed Fund

On the Commencement Date or as soon thereafter as they become available, the Company and the Administrator must pay into the Deed Fund:

- (a) the Agreed Amount;
- (b) the Creditors' Trust Shares;
- (c) all cash-on-hand or at bank held by the Administrators or the Company together with receipts of any Receivables; and
- (d) any realisations of the Assets including cash, inventory, debtors and plant and equipment and recoveries.

12.4 Transfer of the Deed Fund

Subject to clause 12.5, upon receipt and payment into the Deed Fund of all monies referred to in clause 12.3 and execution of the Creditors' Trust Deed, the Deed Administrators must transfer the Deed Fund to the Trustees, to be distributed in accordance with the terms of the Creditors' Trust Deed.

12.5 Payment of Administrators Costs

Prior to the transfer of the Deed Fund pursuant to clause 12.4, and on and from the date of receipt of monies referred to in clauses 12.3(a) and (b), the Deed Administrators may apply the Deed Fund in payment of the Administrators' Costs, the Administrators' Disbursements, the Administration Liabilities, the Deed Administrators' Costs and the Deed Administrators' Disbursements.

12.6 Payment of Surplus

If, after the transfer of the Deed Fund to the Trust, any further moneys are received pursuant to the terms of this Deed by the Deed Administrators or the Company, or otherwise remain with the Deed Administrators or the Company (as the case may be), then the Deed Administrators or the Company (as the case may be) shall pay those moneys to the Trustees of the Creditors' Trust Deed, to be distributed according to the terms of the Creditors' Trust Deed.

13 The Deed Administrators

13.1 Deed Administrators

The Deed Administrators are joint and several deed administrators for the purpose of this Deed.

13.2 Administer the Deed

- (a) The Deed Administrators will administer this Deed and have all the powers, functions and duties conferred on them by this Deed and the Corporations Act.
- (b) The Company acknowledges that the Deed Administrators will continue to maintain control of the Assets and the Company's affairs and trading from the Commencement Date until the Termination Date, but that the Deed Administrators may delegate to the Directors such operations, functions and powers as the Deed Administrators in their sole discretion think fit for anything done by the Directors in respect of any operations, function or power so delegated.
- (c) On the Termination Date the Company's Assets and undertaking will be returned to the control of the Company and its Directors. The Trustees will not be required to monitor the operations of the Company or have any responsibility therefore. The Trustees' role will be to enforce the rights of the Trustee against the Company and the duties and obligations of the Company to the Trustee under the Creditors' Trust Deed and the Reconstruction Deed until such time as these duties and obligations are fully performed.

13.3 Administrator deemed agent of Company

In exercising the powers conferred by this Deed and carrying out the duties arising under this Deed, the Administrators are taken to act as agents for and on behalf of the Company.

13.4 Deed Administrators Not Personally Liable

Subject to any relevant provisions of the Corporations Act in the performance or exercise of the Deed Administrators' powers, obligations, functions and duties under this Deed, the Deed Administrators will not be personally liable for:

- (a) any debts, liabilities, obligations or claims of any kind whatsoever incurred by or on behalf of the Company whether before, during or after the period of the operation of this Deed; or
- (b) any loss or damage of any kind whatsoever excluding loss or damage arising from fraud or gross negligence default or omission of the Deed Administrators or any person or body corporate or incorporate acting on their behalf in exercising their powers, obligations functions or duties under this Deed.

13.5 Survival of Clause

Clause 13.4 will continue to apply despite termination of this Deed.

13.6 Termination

Upon termination of the Deed by reason of the terms of this Deed being wholly effectuated, the Deed Administrators will administer the Deed Funds as Trustees under the Trust.

13.7 Joint and Several Deed Administrators

- (a) The functions and powers of the Deed Administrators may be performed or exercised by any one of them or both of them together.
- (b) The rights, benefits and obligations of the Deed Administrators under this Deed, including with respect to the indemnity in clause 16, are joint and several.

14 Powers of the Deed Administrators

14.1 Powers of administrator

For the purpose only of administering this Deed, the Administrators have the following powers:

- (a) to enter upon or take possession of the property of the Company;
- (b) to lease or let on hire property of the Company;
- (c) to grant options over property of the company on such conditions as the Administrators think fit;
- (d) to insure property of the Company;
- (e) to repair, renew or enlarge property of the Company;
- (f) to call in, collect or convert into money the property of the Company;

- (g) to administer the assets available for the payment of Claims of Creditors in accordance with the provisions of this Deed;
- (h) to purchase, hire, lease or otherwise acquire any property or interest in property from any person or corporation;
- (i) to borrow or raise money, whether secured upon any or all of the assets of the Company or unsecured, for any period on such terms as the Administrators think fit and whether in substitution for any existing security or otherwise;
- (j) to bring, prosecute and defend in the name and on behalf of the Company or in the name of the Administrators any actions, suits or proceedings;
- (k) to refer to arbitration any question affecting the Company;
- (l) to make payments to any secured Creditor of the Company and any person who is the owner or lessor of property possessed used or occupied by the Company;
- (m) to convene and hold meetings of the members or Creditors of the Company for any purpose the Administrators think fit;
- (n) to make interim or other distributions of the proceeds of the realisation of the assets available for the payment of claims of Creditors as provided in this deed;
- (o) to appoint agents to do any business or to attend to any matter or affairs of the Company that the Administrators are unable to do, or that it is unreasonable to expect either of the Administrators to do, in person;
- (p) to engage or discharge employees on behalf of the company;
- (q) to appoint a solicitor, accountant or other professionally qualified person to assist the Administrators;
- (r) to permit any person authorised by the Administrators to operate any account in the name of the Company;
- (s) to sell, call in or convert into money any of the property of the Company, to apply the money in accordance with this Deed and otherwise effectively and properly to carry out their joint and several duties as Administrators;
- (t) to do all acts and execute in the name and on behalf of the Company all Deeds, receipts and other documents, using the Company's common or official seal when necessary;
- (u) subject to the *Bankruptcy Act 1966*, to prove in the bankruptcy of any contributory or debtor of the Company or under any deed executed under that act;
- (v) subject to the Corporations Act, to prove in the winding up of any contributory or debtor of the Company or under any scheme of arrangement entered into, or deed of company arrangement executed, under the Corporations Act;
- (w) to draw, accept, make or endorse any bill of exchange or promissory note in the name and on behalf of the Company;
- (x) to take out letters of administration of the estate of a deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor, or the estate of a contributory or debtor, that cannot be conveniently done in the name of the Company;
- (y) to bring or defend an application for the winding up of the Company;

- (z) to carry on the business on such terms and conditions and for such purposes and times and in such manner as the administrator thinks fit subject only to the limitations imposed by this Deed;
 - (aa) to sell any or all of the property of the Company including the whole of the business or undertaking of the Company at any time the Administrators think fit, either by public auction or by private contract and either for a lump sum or for a sum payable by instalments or for a sum on account and to obtain a mortgage charge or encumbrance for the balance or otherwise;
 - (bb) to close down the whole or any part of any business of the Company;
 - (cc) to enter into and complete any contract for the sale of shares in the Company;
 - (dd) to compromise any debts or claims brought by or against the Company on such terms as the Administrators think fit and to take security for the discharge of any debt forming part of the property of the Company;
 - (ee) to pay any class of Creditors in full, subject to Subdivision D of Division 6 of Part 5.6 of the Act;
 - (ff) to do anything that is incidental to exercising a power set out in this clause;
 - (gg) to do anything else that is necessary or convenient for the purpose of administering this Deed; and
 - (hh) to appoint and remove Directors of the Company.
- 14.2 Termination of Deed where arrangement fails**
If the Administrators or the committee of inspection determine(s) that it is no longer practicable or desirable either to continue to carry on the business of the Company or to implement this Deed, the Administrator:
- (a) may cease to carry on the business of the Company except so far as is necessary for the beneficial winding up of the Company;
 - (b) must summon a meeting of Creditors for the purpose of passing a resolution under section 445C(b) of the Corporations Act; and
 - (c) must forward to each Creditor not less than 14 days prior to the meeting an up-to-date report as to the position of the Company accompanied by such financial statements as the Administrators think fit, together with a statement that each of them do not think it practicable or desirable to carry on the business of the Company or to continue this Deed and that this Deed will be terminated if the Company's Creditors resolve.

14.3 Books and Records

The Deed Administrators have the power to access books and records of the Company. To the extent that the Deed Administrators are given access to or possession of the books and records of the Company, the Deed Administrators agree to maintain them in accordance with the requirements of the Corporations Act.

14.4 Overlap with Director's Powers

Where the powers of the Deed Administrators and the Directors overlap, the Deed Administrators' powers operate to the exclusion of the Directors powers unless the Deed Administrators grant prior consent.

15 Remuneration, Costs, Charges and Expenses of the Deed Administrators

15.1 Calculation of Remuneration

The Deed Administrators will be remunerated by the Company, and will be entitled to draw from the Deed Fund for their work as Deed Administrators. The Deed Administrators will be entitled to employ staff to assist them in the performance or exercise of their duties, obligations, responsibilities and powers under this Deed and the remuneration of the Deed Administrators, their employees and staff will be calculated in accordance with the rates of charge issued from time to time by the Deed Administrators plus GST payable thereon, determined according to and as required by law.

15.2 Payment to Deed Administrator

The Deed Administrators' Costs, the Deed Administrators' Disbursements, and the Administration Liabilities shall be paid to the Deed Administrators firm Vincents Chartered Accountants.

16 Deed Administrator's Indemnity

16.1 Nature or Indemnity

The Administrators and Deed Administrators are entitled to be indemnified and to be kept indemnified out of the Deed Fund for:

- (a) the Deed Administrators' Costs;
- (b) the Deed Administrators' Disbursements; and
- (c) the Administration Liabilities.

16.2 Continuing Indemnity

This indemnity will take effect on and from the Appointment Date and be without limitation as to time and shall ensure for the benefit of the Administrators and Deed Administrators respective legal personal representatives notwithstanding the removal of the Deed Administrators and the appointment of replacement administrators or the termination of this Deed for any reason whatsoever.

16.3 Indemnity Not to be Affected or Prejudiced

- (a) The indemnity under clause 16.1 will not be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Administrators or Deed Administrators and shall extend to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Administrators or Deed Administrators, the approval and execution of this Deed or otherwise.
- (b) The indemnity under clause 16.1 will not affect or prejudice all or any rights that the Administrators or Deed Administrators may have in respect of the Company's Property or against any other person to be indemnified against the costs, charges, expenses and liabilities incurred by the Administrators or Deed Administrators of or incidental to the exercise or performance of any of the powers or authorities conferred on the Deed Administrators by this Deed or otherwise.

16.4 Deed Administrator's Lien

The Administrators and the Deed Administrators are entitled to exercise a lien over the Deed Fund and the Trust Fund to secure the indemnity conferred by this clause 16. This lien is in addition to any lien or other right that may arise by operation of law, including pursuant to section 443E or 443F of the Corporations Act.

16.5 Survival Clause

Clause 16 will continue to apply despite termination of this Deed.

17 Priority Payment

In the event that Trident Capital is removed as the Proponent to the recapitalisation of the Company either by Creditors Meeting or by any other means whatsoever, Trident Capital will be entitled to the repayment in full of the Deposit. For the avoidance of doubt, if Trident Capital ceases to be the Proponent as a result of an act or omission of Trident Capital then the Deposit will not be repayable.

18 Meetings

18.1 Convening meetings

Meetings of Creditors may be convened by the Deed Administrators from time to time in accordance with section 445F of the Corporations Act.

18.2 Corporations Regulations

Except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this Deed, regulations 5.6.12 to 5.6.36A of the Regulations apply, with such modifications as are necessary, to meetings of the Creditors or of the Committee as if the references to "the liquidator", the "liquidator or provisional liquidator", "the liquidator, provisional liquidator or chairman", or "a liquidator, provisional liquidator or trustee for debenture holders", as the case may be were references to the Deed Administrators.

19 Reports to Admitted Creditors

19.1 Reports to Creditors

During the Deed Period, the Deed Administrators may report to Creditors on the Company's state of affairs and on any matters which the Deed Administrators consider should be brought to their attention.

20 Termination

20.1 Termination date

Upon the transfer of the Deed Fund from the Deed Administrators to the Trustees in accordance with clause 12.4, this Deed will terminate.

20.2

Meeting of Admitted Creditors

The Deed Administrators may convene a meeting of the Admitted Creditors in accordance with section 445F of the Corporations Act to consider a Resolution to terminate or vary the terms of this Deed if:

- (a) any term of this Deed is not complied with and the non compliance is not remedied within fourteen (14) days of notice in writing from the Deed Administrators to the person required to perform the relevant obligation, specifying the breach and requiring its remedy; or
- (b) Completion does not occur on or before the Completion Date.

20.3

Survival of Deed

Should the Proposal included in the Reconstruction Deed for any reason not be affected, including but not limited to if the conditions precedent set out in the Reconstruction Deed are not met, this Deed will not terminate and the Deed Administrators may, subject to the exercise of the other provisions in this Clause 20 by them, in their sole and absolute discretion engage a Competing Proponent to implement a Competing Proposal.

20.4

Termination of Deed where arrangement fails

If the Administrators or the committee of inspection determine(s) that it is no longer practicable or desirable either to continue to carry on the business of the Company or to implement this Deed, the Administrators:

- (a) may cease to carry on the business of the Company except so far as is necessary for the beneficial winding up of the Company;
- (b) must summon a meeting of Creditors for the purpose of passing a resolution under section 445C(b) of the Corporations Act; and
- (c) must forward to each Creditor not less than 14 days prior to the meeting an up-to-date report as to the position of the Company accompanied by such financial statements as the Administrators think fit, together with a statement that either of each of them do not think it practicable or desirable to carry on the business of the Company or to continue this Deed and that this Deed will be terminated if the Company's Creditors resolve.

20.5

Termination of this Deed by court order or Admitted Creditors' Resolution:

This Deed will terminate if:

- (a) a Court so orders in accordance with section 445D of the Corporations Act; or
- (b) pursuant to a meeting convened pursuant to clause 20.2, the Admitted Creditors pass a Resolution terminating this Deed.

For the avoidance of doubt, a Resolution to terminate this Deed may also include a requirement that the Company be wound up.

20.6

Creditors Claims not released

If the Deed is terminated pursuant to clauses 20.2 or 20.3, Creditors' Claims are not released except to the extent of the amount or credits received, if any, by Creditors under this Deed or otherwise.

20.7 Resignation of Directors

On termination of this Deed or such other date as is agreeable in writing by all Parties to this Deed, the Deed Administrators must as soon as possible procure the resignation of all Directors of the Company.

20.8 Previous operation of this Deed preserved

- (a) The termination or avoidance, in whole or in part, of this Deed does not affect the previous operation of this Deed.
- (b) Upon termination of this Deed pursuant to clause 20.1:
 - (i) to the extent that the Company or any other party bound by this Deed make a covenant under this Deed, which, by its terms, takes effect after termination of this Deed, the Company covenants in favour of the Trustee for his benefit and for the benefit of the Admitted Creditors, with the intent that those covenants will continue, subject to the terms of this Deed, in full force and effect after the termination of this Deed; and
 - (ii) to the extent that any other party bound by this Deed gives a covenant, that covenant is repeated, in substance in the Creditors' Trust Deed as if that party had executed the same.

20.9 Termination of Deed where arrangement achieves purpose

If the Administrators have applied all of the proceeds of the realisation of the assets available for the payment of Creditors or has paid to the Creditors the sum of 100 cents in the dollar or any lesser sum determined by the Creditors at a general meeting, the Administrators must certify to that effect in writing and must within 28 days lodge with ASIC a notice of termination of this Deed in the following form:

ALLIED BRANDS LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 108 958 274

We, Peter Dinoris and Peter Biazos of Vincents Chartered Accountants, Level 34, 32 Turbo Street, Brisbane as Deed Administrators of the Deed of Company Arrangement executed on [X] 2011 CERTIFY that the Deed has been fully effectuated.

and the execution of this notice terminates this Deed, but nothing in this clause relieves the Administrators of their obligations under clause 10 of this Deed.

21 General

21.1 Notices

- A notice given under this Deed is only effective if it is;
- (a) in writing, signed by or on behalf of the person giving it;
 - (b) addressed to the person to whom it is to be given at the address last notified by the intended; and
 - (c) either
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or

- (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full.
- (d) A notice that complies with this clause is regarded as given and received: if it is delivered or sent by fax:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day.

- (e) if it is sent by mail:
 - (i) within Australia - three (3) Business Days after posting; or
 - (ii) to or from a place outside Australia - seven (7) Business Days after posting.

21.2 Governing Law

This document is governed by the law in force in Western Australia. Any proceedings brought in connection with this Deed must be commenced and conducted in either the Supreme Court of Western Australia or the Perth Registry of the Federal Court of Australia and each party submits to the jurisdiction of those courts and any Court that may hear appeals from any of those Courts, and each party waives any right it might have to claim that those courts are an inconvenient forum.

21.3 Giving Effect to this Document

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this Deed.

21.4 Waiver of Rights

- A right may only be waived in writing, signed by the party giving the waiver, and:
- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
 - (b) a waiver of a right on one or more occasions does not operate as a waiver of that right or if it arises again; and
 - (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

21.5 Operation of this Document

- (a) This Deed contains the entire agreement between the parties about its subject matter, any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document

enforceable, unless this would materially change the intended effect of this document

21.6 Operation of Indemnities

Each indemnity in this document survives the expiry or termination of this document. A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

21.7 Consents

Where this document contemplates that the Deed Administrators may agree or consent to something (however it is described), the Deed Administrators may:

- (a) agree or consent, or not agree or consent, in their absolute discretion and
- (b) agree or consent subject to conditions, unless this document expressly contemplates otherwise.

21.8 Inconsistency with other Documents

If this Deed is inconsistent with any other document or agreement between the parties, this document prevails to the extent of the inconsistency.

21.9 Time is of the Essence

Time is of the essence of this document.

21.10 Counterparts

This document may be executed in any number of counterparts and all those counterparts taken together constitute one and the same instrument.

21.11 Attorneys

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

21.12 Deed Administrators' Costs and Disbursements

The parties agree that the Deed Administrators are entitled to draw:

- (a) amounts on account of the Deed Administrators' Costs, determined according to and as required by law; and
- (b) the Deed Administrators' Disbursements, from time to time from monies held by them pursuant to this Deed.

21.13 Inconsistency with the Corporations Act

If there is any inconsistency between the provisions of this Deed and the Corporations Act then the Corporations Act will, only to the extent of the inconsistency, prevail and this Deed will be interpreted accordingly.

21.14 Inconsistency with Constitution, Contracts etc

If there is any inconsistency between the provisions of this Deed and the Constitution of the Company or any other obligations binding on the Company, then the provisions of this Deed will prevail to the extent of the inconsistency.

21.15 Survival of Clauses

Clauses 2, 12, 13.4, 16, 21.1, 21.2, 21.4, 21.5, 21.6, 21.8, 21.13, 21.14, 21.15 and 21.16 will continue to apply despite termination of this Deed.

21.16 Liability of Parties

If a party to this document is made up of more than one person, or a term is used in this document to refer to more than one party:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

Schedule 1

Creditors' Trust Deed

DRAFT

Schedule 2

Reconstruction Deed

DRAFT

For personal use only

Executed as a deed:

EXECUTED by ALLIED BRANDS LIMITED)
(ADMINISTRATORS APPOINTED) (ACN 108)
958 274) in accordance with section 127 of the)
Corporations Act)

EXECUTED by TRIDENT CAPITAL PTY LTD)
(ACN 100 561 733) in accordance with section)
127 of the Corporations Act)

Director/Company Secretary

Director

Name of Director/Company Secretary
(BLOCK LETTERS)

Name of Director
(BLOCK LETTERS)

SIGNED by PETER DINORIS in the presence)
of:)

Witness Signature

Witness Name

Witness Address

Witness Occupation

SIGNED by PETER BIAZOS in the presence)
of:)

Witness Signature

Witness Name

Witness Address

Witness Occupation

Director/Company Secretary

Director

Name of Director/Company Secretary
(BLOCK LETTERS)

Name of Director
(BLOCK LETTERS)

For personal use only

ALLIED BRANDS LIMITED
CREDITORS' TRUST DEED

ALLIED BRANDS LIMITED
(COMPANY)

PETER DINORIS
PETER BIAZOS
(TOGETHER THE ADMINISTRATORS)

PHONE (618) 921 6732 | FAX (618) 921 6724 | ARSN# 461 859 448
POSTAL ADDRESS
ADDRESS
PO Box 25433 St Georges Terrace Perth WA 6831
Level 24 St Martin's Tower, 44 St Georges Terrace
Perth WA 6000



PRICE SIERAKOWSKI
CORPORATE

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This Creditor's Trust Deed is made on the _____ day of _____ 2011
Between

ALLIED BRANDS LIMITED (ADMINISTRATORS APPOINTED) (ACN 108 958 274) of care of
 Vincents Chartered Accountants, Level 34, 32 Turbot Street, Brisbane in the State of
 Queensland ("Company"); and

MESSRS PETER DINORIS AND PETER BIAZOS of Vincents Chartered Accountants, Level 34,
 32 Turbot Street, Brisbane in the State of Queensland (together the "Administrators")

Recitals:

- A. On 27 October 2010, the Administrators were appointed as joint and several administrators of the Company pursuant to section 436A(1) of the Corporations Act, by resolution of the directors of the Company.
- B. At a meeting of Creditors held pursuant to section 439A(1) of the Corporations Act on [19] April 2011, the Creditors resolved pursuant to section 439C of the Corporations Act that the Company enter into a DOCA with Trident.
- C. This Trust Deed is entered into to comply with and to give effect to the DOCA.

The parties agree:

1 Interpretation

1.1 Definitions

Terms defined in the DOCA have the same meaning when used in this Trust Deed unless otherwise required by the context or the subject matter. In addition, the following definitions apply in this Trust Deed.

- (a) "Admitted Claim" means the amount of a Trust Creditors' Claim as determined by the Deed Administrators in accordance with clause 9 of the DOCA or by the Trustee in accordance with clause 8 of this document;
- (b) "Admitted Creditor" means a Trust Creditor, whose Claim has been admitted by the Deed Administrator pursuant to clause 9 of the DOCA or by the Trustee in accordance with clause 8 of this document;
- (c) "Appointment Date" means 27 October 2010;
- (d) "Claim" has the same meaning as in the DOCA;
- (e) "Costs" means
 - (i) the Administration Liabilities, Administrators' Costs, Administrators' Disbursements, Deed Administrators' Costs and the Deed Administrators' Disbursements;

- (ii) the Trustees' Costs;
- (iii) any Costs associated with the preparation, execution and completion of:
 - (A) the DOCA; and
 - (B) this Trust;
 - (C) the costs associated with convening and holding the meetings in clause 14 of this document; and
 - (D) any stamp duty assessed on this document;
- (f) "Creditor(s)" means all creditors of the Company having a Claim;
- (g) "Director(s)" means any person who by reason of the definition of "director" in section 9 of the Corporations Act, is a director of the Company;
- (h) "Dividend" means the amount to be paid out of the balance of the Trust Fund to Admitted Creditors, having regard to each Trust Creditor's Pro-rata Entitlement, which the Deed Administrators declare;
- (i) "DOCA" means the Deed of Company Arrangement entered into by the Company executed on [XX] 2011;
- (j) "Entitlement" means for each Admitted Creditor, the sum calculated by multiplying that Trust Creditor's Pro-rata Entitlement, by the balance of the Trust Fund, in accordance with the priorities specified in clause 8.4;
- (k) "Pro-rata Entitlement" means for each Trust Creditor, the fraction expressed as a percentage, calculated by dividing that Trust Creditor's Admitted Claim by the total dollar value of Admitted Claims for all Trust Creditors taking into account the priorities specified in clause 8.4;
- (l) "Reconstruction Deed" means the Deed entered into by the parties and Trident on [XX] 2011;
- (m) "Resolution" means a resolution, passed at a meeting of Admitted Creditors convened in accordance with the terms of this document;
- (n) "Termination Date" means the date of termination of this Trust;
- (o) "Trident" means Trident Capital Pty Ltd (ACN 100 561 733);
- (p) "Trust" means the trust created by the terms of this Trust Deed;
- (q) "Trust Creditor" means a Creditor;
- (r) "Trust Deed" means this trust deed as amended from time to time;
- (s) "Trust Fund" means all the monies and property that the Trustees are required to hold on trust pursuant to the terms of this Trust Deed and the DOCA, as paid or transferred to the Trustees including the monies, securities and property transferred to the Trustees pursuant to clause 12.4 of the DOCA, such monies and property constituting the Trust;
- (t) "Trustees' Costs" means the remuneration and costs of the Trustee as set out in clause 18 of this document; and
- (u) "Trustees' Powers" means the trusts, rights, powers and remedies granted by law and exercisable by the Trustee.

1.2 Rules for Interpreting this Document

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this deed, except where the context makes it clear that a rule is not intended to apply;
- (b) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate issue under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this deed or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (v) anything (including a right, obligation or concept) includes each part of it;
 - (vi) a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this deed;
 - (vii) amendment includes addition, alteration, deletion, extension, modification and variation; and
 - (viii) property includes real and personal property and any estate, right or interest in or to any real or personal property, money, debt or other thing in action;
- (c) A singular word includes the plural, and vice versa;
- (d) A word which suggests one gender includes the other genders;
- (e) If a word is defined, another part of speech has a corresponding meaning;
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (g) Words defined in the GST Law have the same meaning in this deed unless the context makes it clear that a different meaning is intended.
- (h) A recital, schedule or annexure, a description of the parties forms part of this deed; and
- (i) An expression defined in or given a meaning for the purposes of the Act (except where defined or given a meaning in this deed) has the same definition or meaning in this deed where it relates to the same matter as the matter for which it is defined or given a meaning in the Act.

1.3 Business Days

If the day on or by which a person must do something under this document is not a Business Day;

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

1.4 Applied DOCA Provision

A provision of the DOCA that is applied or incorporated in this document is (as so applied or incorporated) to be interpreted in accordance with the same definitions and interpretation principles that apply to the provision as it has effect in or under the DOCA unless a contrary intention appears in the application or incorporation provision in this document.

2 Commencement Date

This Trust shall come into effect and the Deed Administrators shall act as Trustees pursuant to the terms of this Trust Deed on the date of completion of the Reconstruction Deed.

3 Appointment and Authority of Trustees

3.1 Appointment

In accordance with the terms of the DOCA, each Trust Creditor and the Company appoint the Trustees as their trustees on the terms and conditions contained in this Trust Deed.

3.2 Irrevocable

Subject to clause 16, the appointment of the Trustees is irrevocable prior to the payment out of the whole of the Trust Fund pursuant to the terms of this document.

3.3 Termination

Once:

- (a) the Trust Fund has been realised to the extent the Trustees in their discretion believe it possible and appropriate to do so; and
 - (b) the Trust Fund has been distributed under the terms of this Trust Deed and the Trustees have received payment for all remuneration and costs to which they are entitled pursuant to clause 18 of this document,
- then this Trust Deed and the Trust created by it shall be at an end.

4 Declaration of Trust

4.1 Declaration

The Trustees declare that they will hold:

- (a) the sum of ten dollars (\$10) paid to them on the date of this Deed by the Company (receipt of which the Trustees acknowledge);
- (b) the Trust Fund; and

(c) the benefit of the covenants made in the Trustees' favour in the DOCA or in this Trust Deed, subject to the Trust.

4.2 Beneficiaries

The Trustees shall receive and hold the Trust Fund on trust for Trust Creditors and distribute the Trust Fund in accordance with the terms of this Trust Deed.

5 Trustees' Duties and Powers

5.1 Determine Claims

The Trustees are empowered by the Trust Deed, subject to the terms of this Trust Deed, to determine the Claims of Trust Creditors and to distribute the Trust Funds to the Trust Creditors in one or more instalments at such time as determined by the Trustees in their absolute discretion.

5.2 Trustees' Duties

The Trustees must (a) collect, sell or otherwise realise the property held on trust (including, for the avoidance of doubt, any causes of action forming part of the Trust Fund), to the extent and in a manner the Trustees believe is appropriate; and (b) distribute the Trust Fund in accordance with clause 8 of this document.

5.3 Trustees' Powers

For the purpose of performing their duties under this document the Trustees have all of the rights, powers, discretions and remedies granted by law to Trustees including the power to: (a) determine the Claims of Trust Creditors; and (b) distribute the Trust Fund in accordance with the terms of this Trust Deed.

6 Perpetuity Period

Notwithstanding any other provision of this Trust Deed, each:

- (a) interest in property, and
- (b) Trustees' powers over or in connection with Property, created or granted by this Trust Deed, that but for this provision, might vest, take effect, or be exercisable, after the expiry of eighty years commencing on the date of this document:
- (c) if it has not vested or taken effect by that date will vest or take effect on the last day of that period; and
- (d) is exercisable only on or before the last day of that period.

7 Name of Trust

The name of the trust constituted by this document is the Allied Brands Creditors' Trust.

8 Distribution of Trust Fund

8.1 Entitlements

Each Admitted Creditor is entitled to its Entitlement in accordance with the terms of this Trust Deed.

8.2 Ascertaining Creditors

So far as the Deed Administrators have not ascertained all of the Admitted Creditors and all of their Admitted Claims under clause 9 of the DOCA before the termination of the DOCA, the Trustees must ascertain those Admitted Creditors and their Admitted Claims to the extent that they were entitled to claim under the DOCA, and shall thereby establish their Entitlements (if any) in accordance with clause 8.3.

8.3 Determining Entitlements

- (a) For the purposes of determining the Entitlements under this document, the terms of clause 9 of the DOCA are incorporated into this Trust Deed, read as if the references to the Deed Administrators are references to the Trustees, and with such other modifications as are necessary to give effect to this Trust Deed.
- (b) Where the Trustees propose to reject a Claim (whether in part or in full) the Trustees shall send a notice to the Trust Creditor under section 68(1) of the Trusts Act 1973 (QLD) (the "Trusts Act") informing the Trust Creditor of the proposed rejection and giving to that party a reasonable period of time within which to make an application to the Court under section 68(1) of the Trusts Act to determine the questions relating to the Claim.
- (c) The Trustees shall be entitled to rely upon determinations made by the Deed Administrators as to the admissibility of Claims of Trust Creditors under the DOCA prior to its termination together with any information and proofs of debt submitted to the Administrators and Deed Administrators in relation to the Claims of Trust Creditors.

8.4 Distribution

The Trustees shall apply the Trust Fund held in accordance with clause 8.3 of the DOCA.

8.5 No Interest

Interest shall not accrue, and shall not be payable, in respect of any of the Admitted Claims.

8.6 Payments not made

In the event that the Trustees, for any reason, are unable to locate an Admitted Creditor, or if any cheque sent by the Trustees to an Admitted Creditor has not been presented by the time this Trust would otherwise terminate, then: (a) the Trustees shall stop payment of such cheque; (b) the monies represented by such stopped cheque or held by the Trustees on behalf of the Trust Creditor shall be paid to the ASIC; and

(c) the provisions of section 544(1) and 544(3) of the Corporations Act shall apply, with such modifications as are necessary, to such payment as if references in those sections to "liquidator" were references to the "Trustees".

8.7 Discharge

- (a) A payment made by the Trustees in accordance with this Trust Deed shall constitute a full and final discharge of the obligations of the Trustees to the Creditor under the Trust.
- (b) All claims and rights of action, remedies and Claims by a Trust Creditor who has been notified by the Trustees in accordance with clause 8, and has failed to submit a sworn proof of debt, and to whom the Trustees have not granted an extension of time, are absolutely barred and extinguished against the Trust.

9 Register

9.1 Maintain a register

The Trustees shall maintain in Brisbane, Queensland, or elsewhere as the Trustees shall determine, an up-to-date register and shall enter in the register in respect of each Trust Creditor's Entitlement

- (a) the Trust Creditor's name and address;
- (b) details of each Claim and the Trust Creditor's Entitlement including the balance outstanding after payment of any amount under this document; and
- (c) amounts paid to each Trust Creditor pursuant to this document.

9.2 Register to be kept open

The Trustees shall keep the register open at all reasonable times during business hours for the inspection of Trust Creditors or any person authorised in writing by a Trust Creditor.

9.3 Register conclusive

The register is conclusive evidence of the matters entered on the register.

10 Payment from Trust Fund

10.1 Dividend

After the Trustees have paid the Costs, the Trustees must pay the amounts as specified in clause 8.3 of the DOCA.

10.2 Timing of payment of dividends

The Trustees shall make payments out of the Trust Fund by one or more instalments, and at such times, as the Trustees in their absolute discretion determine.

11 Moratorium

A Trust Creditor must not take actions or steps to enforce the Trust Creditor's rights to recover the whole or part of the Trust Claim or Entitlement owed to the Trust Creditor whilst the Trustees remain the Trustees for the Trust Creditors on the terms of this document.

12 Instructions from Creditors

12.1 Instructions from Trust Creditors

In the exercise of the Trustees' powers, the Trustees:

- (a) may, if they see fit, seek instructions from the Trust Creditors, including instructions to vary the terms of this Trust Deed; and
- (b) shall act in accordance with the instructions of the Creditors delivered at a meeting convened in accordance with clause 14.

12.2 Best Interest of Creditors

In the absence of an instruction received by the Trustees from the Trust Creditors at a meeting convened in accordance with clause 14 by the Trustees to obtain their instructions, and except as otherwise provided in this document, the Trustees may, but are not obliged to, act as the Trustees determine is in the best interests of the Creditors.

12.3 Binding Effect

Any action taken by the Trustees in accordance with clause 12.2 is binding on each Trust Creditor.

12.4 Approval for Variation

The Trustees shall not seek to vary the terms of this document without receiving the instructions of the Majority Creditors approving any proposed amendments.

13 Deed May Be Plead in Bar

13.1 No action by Creditors

Subject to section 444D of the Corporations Act, the DOCA and this Trust Deed may be pleaded by the Company against any Creditor in bar of any debt or Claim that is admissible under the document and a Creditor (whether the Creditor's debt or claim is or is not admitted or established under the document) must not, before the termination of this Trust Deed:

- (a) take or concur in the taking of any step to wind up the Company;
- (b) except for the purpose and to the extent provided in this Trust Deed, institute or prosecute any legal proceedings in relation to any debt or liabilities incurred or alleged to have been incurred by the Company before the Appointment Date;
- (c) take any further step (including any step by way of legal or equitable execution) in any proceedings pending against or in relation to the Company at the Appointment Date;

- (d) exercise any right of set-off, cross-claim or cross-action to which the Creditor would not have been entitled had the Company been wound up at the Appointment Date, or
- (e) commence or take any further step in any arbitration against the Company or to which the Company is a party.

13.2 Acceptance of Entitlements and Release

Trust Creditors must accept their Entitlements under this Trust in full satisfaction and complete discharge of all debts, liabilities or claims which they have or claim to have against the Company, as at the Appointment Date, or against the Trust Fund and each of them will, if called upon to do so, execute and deliver to the Trustees, Company and Directors such forms of release of any such claim as the Trustees require.

13.3 Claims extinguished

Payment by the Trustees to a Trust Creditor of an amount declared by the Trustees to be a final payment or dividend under the Trust (even if the amount of the payment is nil) will be in full satisfaction of all debts, liabilities or claims, present or future, actual or contingent, due or which may become due by the Trust and the Company, as a result of anything done or omitted by or on behalf of the Company before the Appointment Date, and each Claim against the Trust and the Company, as a result of anything done or omitted by or on behalf of the Company before the Appointment Date, will thereby be extinguished.

14 Meetings of Admitted Creditors

14.1 Convening meetings by Trustees

The Trustees may at any time convene a meeting of Admitted Creditors of the Company.

14.2 Convening Meetings at the Request of Admitted Creditors

The Trustees must convene a meeting of the Admitted Creditors if so requested in writing by an Admitted Creditor or Admitted Creditors the value of whose Admitted Claims is not less than 10% of the value or the total of the Admitted Claims.

14.3 Manner of Convening Meetings

Meetings of Admitted Creditors must be convened by the Trustees in accordance with section 445F of the Corporations Act, as though references in that section to "administrators" were references to "Trustees" and references to "deed of company arrangement" were references to this Trust Deed.

14.4 Right of Admitted Creditors to Attend Meetings

Admitted Creditors who have been paid the full amount of their Entitlements under clause 8 of this Trust Deed will no longer be entitled to attend and participate in meetings of Admitted Creditors.

15 Reports to Admitted Creditors

The Trustees must report to Admitted Creditors on any matters which the Trustees consider should be brought to the attention of the Admitted Creditors. The Trustees must send a copy of the report to each Admitted Creditor.

16 Trustees May Resign

The Trustees may resign at any time by giving not less than thirty (30) days prior notice to the Trust Creditors and to the Company in which event the Trustees must assign, to a replacement trustee nominated by the Trust Creditors, the Trust Fund and the Trustees' rights under this Trust Deed.

17 Exclusion of Liability

The Trustees are not liable for any loss, damages, costs or expenses which may result from the exercise or attempted exercise of the Trustees' Powers in the absence of wilful default, fraud, gross negligence or breach of trust.

18 Trustees' Remuneration and Indemnity

18.1 Remuneration

The Trustees must be:

- (a) remunerated from the Trust Fund in respect of any work done by the Trustees, their partners and staff, in their former capacities as voluntary Administrators or Deed Administrators of the DOCA, or in connection with the Trust or their role as Trustees, in accordance with the hourly rates charged by Vincents Chartered Accountants; and
- (b) reimbursed from the Trust Fund in respect of all costs, fees and expenses incurred in connection with the performance of their duties, obligations and responsibilities in their former capacity as voluntary Administrators or Deed Administrators of the DOCA, or in connection with the Trust or their role as Trustees, including any GST payable in respect of their remuneration of such costs, fees and expenses, as set out in the DOCA.

18.2 Payment of Remuneration

The Trustees' remuneration and costs as referred to in this clause shall be reimbursed and paid out of the Trust Fund. The Trustees shall be entitled to draw from the Trust Fund, at the end of each calendar month or in any other manner as may be approved by Resolution of the Admitted Creditors or the Court from time to time, their remuneration and costs (plus any GST payable in respect of their remuneration and costs) as referred to in this clause.

18.3 Scope of Indemnity

The Trustees are indemnified by the Trust and are entitled to be identified out of the Trust Fund for:

- (a) their remuneration, costs, fees and expenses payable under this clause 18;

- (b) all liabilities incurred and payments made by the Trustees in their former capacity as voluntary Administrators or Deed Administrators of the DOCA, or in connection with the Trust or their role as Trustees, including (without limitation) any moneys borrowed by the Trustees and interest on these moneys and any contracts adopted or otherwise agreed by the Trustees (the "Liabilities");
- (c) all action, suits, proceedings, accounts, claims and demands arising out of the Trust which may be commenced, incurred by, or made on the Trustees by any person, and against all costs, charges and expenses incurred by the Trustees in respect of these (the "Demands"); and
- (d) any GST payable in respect of the matters referred to in paragraphs (a), (b) and (c) above;

PROVIDED ALWAYS that, subject to any order by the court to the contrary, the Trustees will not be entitled to an indemnity in respect of any liabilities or demands if the Trustees, or any partner, employee, authorised agent or delegate of the Trustees has acted dishonestly, negligently, in breach of duty, or breach of trust, including (without arbitration) any or omission in respect of which this indemnity would be void by reason of section 199C of the Corporations Act.

18.4 Continuing Indemnity

This indemnity will take effect on and from the date of this Trust Deed and be without limitation as to time and will ensure for the benefit of the Trustees' respective legal personal representatives irrespective of the removal of the Trustees and the appointment of a new trustee or the determination of the Trust for any reason.

18.5 Indemnity not to be Affected or Prejudiced

The indemnity under this clause 18 will not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Trustees and will extend to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Trustees, the approval, execution or amendment of this document or otherwise; or
- (b) affect or prejudice all or any rights that the Trustees may have against the Company or any other person to be indemnified against the costs, charges, expenses and liabilities incurred by the Trustees incidental to the exercise or performance of any of the powers or authorities conferred on the Trustees by this document or on the Deed Administrators by the DOCA.

18.6 Trustees Lien

The Trustees will be entitled to exercise a lien over the Trust Fund for all amounts in respect of which they are entitled to an indemnity from the Trust Fund.

19 GST

19.1 GST Exclusive Amounts

All amounts referred to in this document, unless otherwise stated, are exclusive of GST.

19.2 Payment of GST

- (a) A recipient of a taxable supply under or in connection with this document must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply; and
- (b) the recipient must make that payment to the supplier as and when the consideration or part of it is provided, except that the recipient need not pay unless the recipient has received a tax invoice (or an adjustment note) for that taxable supply.

19.3 Reimbursements

Where a supplier incurs a cost or expense for which it may be reimbursed by, indemnified against, claimed against or set-off against another party under this Trust Deed, the amount to be paid or credited is the cost or expense (reduced by the input tax credit that the supplier is entitled to claim in respect of that cost or expense) plus the amount in respect of GST payable by the recipient under clause 19.2.

20 Law and Jurisdiction

This Trust Deed is governed by the law in force in the State of Queensland. The parties submit to the non-exclusive jurisdiction of the Courts of the State of Queensland and any Court which may hear appeals from those Courts in respect of any proceedings in connection with the DOCA or this document.

21 Entire Deed

Save that this Trust Deed should be read together with the DOCA, this Trust Deed is the sole and entire memorandum and agreement between the parties to this Trust Deed regarding the matters the subject of it. It supersedes any prior understandings, deeds, agreements, conditions and representations relating to those matters whether oral or written, express or implied.

22 Further Assurances

Each of the parties to this Trust Deed will do, execute, provide, acknowledge and deliver all further acts, deeds, assignments, charges, guarantees, covenants, assurances, documents and things reasonably required to most expeditiously fulfil the purposes and intentions of this Trust Deed.

23 General

23.1 Inconsistency with the DOCA

If there is any inconsistency between the terms of this Trust Deed and the DOCA then the DOCA will to the extent of the inconsistency, prevail and this Trust Deed will be interpreted accordingly.

23.2 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

23.3 Accumulative Rights

The rights, powers, discretions and remedies provided by this Trust Deed are accumulative and do not exclude any rights, powers, authorities, discretions or remedies provided by law.

23.4 Notice

Any notice or other communication required or permitted to be given under this Trust Deed may be given in accordance with the terms of clause 22.1 of the DOCA, to be read as if references to "this Deed" in that clause were references to "this Trust Deed".

23.5 Attorneys

Each person who executes this Trust Deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

23.6 Severability

Any provision in this Trust Deed which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Trust Deed or affecting the validity or enforceability of that provision in any other jurisdiction.

23.7 Counterparts

This Trust Deed may be executed in any number of counterparts and all those counterparts taken together constitute one and the same instrument.

23.8 Stamp Duty and GST

The Trustees must bear all stamp duty and GST payable on or in respect of this Trust Deed or the transactions contained in this Trust Deed for which amounts the Trustees will be entitled to payment and indemnity pursuant to the terms of clause 18 of this Trust Deed.

Executed as a deed:

EXECUTED by ALLIED BRANDS LIMITED)
(ACN 090 671 819) in accordance with section)
127 of the Corporations Act)

Director/Company Secretary

Director

Name of Director/Company Secretary
(BLOCK LETTERS)

Name of Director
(BLOCK LETTERS)

SIGNED by the said **PETER DINORIS** in the
presence of:

Witness Signature

Witness Name

Witness Address

Witness Occupation

SIGNED by the said **PETER BIAZOS** in the
presence of:

Witness Signature

Witness Name

Witness Address

Witness Occupation

For personal use only

RECONSTRUCCION DEED

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This Reconstruction Deed is made on the

2011

Between:

MESSRS PETER DINORIS AND PETER BIAZOS of Vincents Chartered Accountants, Level 34, 32 Turbot Street, Brisbane in the State of Queensland, in their capacity as deed administrators of the DOCA ("Administrators");

ALLIED BRANDS LIMITED (ADMINISTRATORS APPOINTED) (ACN 108 958 274) of care of Vincents Chartered Accountants, Level 34, 32 Turbot Street, Brisbane in the State of Queensland ("Company"); and

TRIDENT CAPITAL PTY LTD (ACN 100 561 733) of Level 24, 44 St Georges Terrace Perth, Western Australia, 6000 ("Proponent").

Recitals

- A. On 27 October 2010, the Administrators were appointed as joint and several administrators of the Company pursuant to Section 436A(1) of the Corporations Act, by resolution of the directors of the Company.
- B. The Proponent has made a proposal to reconstruct and recapitalize the Company on the terms set out in this Deed.
- C. At a meeting of Creditors held pursuant to Section 439A(1) of the Corporations Act on [19 April 2011, the Creditors resolved pursuant to Section 439C of the Corporations Act that the Company enter into a Deed of Company Arrangement with the Proponent in terms reflecting the proposal presented to Creditors.
- D. On [X] 2011, the Company and the Administrators executed a Deed of Company Arrangement pursuant to the resolution referred to in Recital C and the Administrators became the administrators of that Deed of Company Arrangement.

The parties agree

In consideration of, among other things, the mutual promises contained in this Deed:

1 Definitions

1.1 Definitions

In this Deed, unless the context otherwise requires:

- (a) "ASIC" means the Australian Securities and Investments Commission;
- (b) "ASX" means ASX Limited (ACN 008 624 691) trading as the Australian Securities Exchange;
- (c) "Business Day" means a day on which banks are open for business in Perth, Western Australia excluding a Saturday, Sunday or public holiday;
- (d) "Capital Raising" means the issue of Shares to raise a minimum amount as detailed in the Proposal comprising the Proponent Shares and the Public Issue;
- (e) "Claim(s)" has the same meaning as in the DOCA;

- (f) "Competing Transaction" means any transaction, offer or proposal made by a third party other than the Proponent or someone nominated by the Proponent in writing, which may in any way seek to acquire rights in respect of or relating to the reconstruction or proposed reconstruction of the Company;
- (g) "Completion" means the completion by the parties of the Proposal under this Deed as provided in clause 6;
- (h) "Completion Date" means:
 - (i) the date not later than 15 Business Days after the date on which the Public Issue closes fully subscribed; or
 - (ii) such other date as the parties may agree in writing;
- (i) "Conditions" means the conditions set out in clause 2.1;
- (j) "Consolidation" means consolidation of the Existing Securities based on the Consolidation Formula;
- (k) "Consolidation Formula" means the consolidation formula set out in Schedule 2 to be applied to consolidate the Existing Securities;
- (l) "Convertible Note" means any convertible note issued by the Company;
- (m) "Convertible Note Shares" means the shares to be issued on conversion of the Convertible Notes (pre-Consolidation);
- (n) "Corporations Act" means the Corporations Act 2001 (Cth), as amended from time to time;
- (o) "Creditor(s)" has the same meaning as in the DOCA;
- (p) "Creditor's Sum" means the amount payable by the Proponent as determined by the adopted Proposal which includes the Administrators fees and expenses;
- (q) "Creditors' Trust Deed" has the same meaning as in the DOCA;
- (r) "Creditors' Trust Shares" means the 10,000,000 Shares to be issued into the Trust for the benefit of Creditors (post-Consolidation and escrowed for a period of 12 months);
- (s) "Deed" means this reconstruction deed;
- (t) "Deposit" means the amount of \$50,000;
- (u) "Disclosure Document" means a disclosure document to be issued by the Company in relation to the Public Issue;
- (v) "DOCA" means the deed of company arrangement entered into by the Company and referred to in Recital D;
- (w) "Effective Date" means the date this Deed is executed by all parties;
- (x) "End Date" means the date referred to in clause 2.3;
- (y) "Existing Directors" means a person who is a director (as defined in the Corporations Act) of the Company immediately before appointment of the Proponent Directors;
- (z) "Existing Options" means the options to subscribe for shares on issue at the date of this Deed;
- (aa) "Existing Securities" means Existing Shares, Existing Options, Partly Paid Shares and Convertible Note Shares.

- (bb) "Existing Shares" means the Shares on issue, being 194,148,195 Shares, as at the date of this Deed;
- (cc) "Facilitation Shares" means up to 30 million Shares to be issued (post consolidation) to facilitate the process of recapitalisation of the Company, at the sole discretion of the Proponent;
- (dd) "GST" has the same meaning as in the DOCA;
- (ee) "Listing Rules" means the official listing rules of the ASX, as amended from time to time;
- (ff) "Meeting Documents" means a notice of meeting, explanatory memorandum and such other documents (including, if necessary, an independent expert's report) as may be required under the Listing Rules or the Corporations Act for the purpose of convening and holding the Shareholder Meeting;
- (gg) "Partly Paid Shares" means the partly paid shares on issue, as at the date of this Deed
- (hh) "Proponent Directors" means the directors appointed pursuant to clause 5.4(b);
- (ii) "Proponent Shares" means the issue of 100,000,000 Shares at an issue price of not less than 0.5 cents each per Share;
- (jj) "Proponent Sum" means \$500,000;
- (kk) "Proposal" means the recapitalisation proposal contained at Schedule 1 which also included:
 - (i) the Consolidation;
 - (ii) the Reduction of Capital;
 - (iii) the Capital Raising;
 - (iv) the payment to the Administrators of the amounts described in clause 6.2(a)(iii);
 - (v) the appointment of the Proponent Directors; and
 - (vi) Reinstatement,
 and such other reasonably incidental matters as may be acceptable to the Administrators in their discretion;
- (ll) "Public Issue" means an offer of Shares to the public under a Disclosure Document to raise \$2,500,000 (with scope for oversubscriptions) at a price per Share of no less than \$0.01 per Share;
- (mm) "Quotation" means official quotation as defined in the Listing Rules;
- (nn) "Reduction of Capital" means the capital of the Company being reduced by applying a portion of the accumulated losses of the Company against the share capital which is considered permanently lost;
- (oo) "Reinstatement" means reinstatement of the Shares to Quotation (except for Shares that may be designated as restricted securities under the Listing Rules);
- (pp) "Secured Creditor" means has the same meaning as in the DOCA;
- (qq) "Shareholders" means the holder of Shares registered in the Company's share Register;
- (rr) "Shareholder Meeting" means the general meeting of the Company to be convened and held in accordance with clause 4.1;

- (ss) "Shares" means fully paid ordinary shares in the capital of the Company;
- (tt) "Trident" means Trident Capital Pty Ltd (ACN 100 561 733);
- (uu) "Trust" has the same meaning as the DOCA.
- (vv) "Trust Fund" has the same meaning as in the DOCA.

1.2 General

In this Deed, unless the context otherwise requires:

- (a) singular includes plural and conversely;
- (b) a gender includes all genders;
- (c) references to a person includes any body corporate, unincorporated body, a corporation, association, partnership, government authority, or other legal entity;
- (d) a reference to any party to this Deed or any other agreement or document includes the party's executors, administrators, substitutes, successors and permitted assigns;
- (e) a reference to any agreement or document is a reference to the agreement or document as amended, novated, supplemented, varied or replaced from time to time, in accordance with this Deed or that other agreement or document;
- (f) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws, ordinances and statutory instruments made under those statutes;
- (g) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (h) references to clauses, schedules, or annexure refer to clauses, schedules or annexure of this Deed;
- (i) headings and the table of contents are used for convenience only and do not affect interpretation;
- (j) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (k) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- (l) no rule of construction of documents shall apply to the disadvantage of a party, on the basis that the party put forward this document or any relevant part of it;
- (m) when a day on or by which anything to be done is not a Business Day, that thing may be done on the next Business Day;
- (n) reference to subsidiaries means subsidiaries as defined under the Corporations Act, and
- (o) a reference to 'dollars' or '\$' is Australian currency.

1.3 No personal liability for Administrators

The Administrators have entered into and signed this Deed as agents for and on behalf of the Company and neither they, their firm, partners, employees, agents, advisers or representatives shall incur any personal liability whatever in respect of any of the obligations undertaken by the Company or in respect of any failure on the part of the

Company to observe, perform or comply with any such obligations or under or in relation to any associated arrangements or negotiations or under any document or assurance made pursuant to this Deed.

2 Conditions Precedent

2.1 Conditions

This Deed is conditional on and subject to:

- (a) ASX confirming to the Company and the Proponent that nothing contemplated by this Deed will prevent the Company from retaining its ASX listing and that ASX will not impose any requirements on the Company under Listing Rule 11.1.3 in relation to the Proposal;
- (b) the passing of the resolutions referred to in clause 5.1;
- (c) the Public Issue being fully subscribed;
- (d) the resignation of Existing Directors, as required by the Proponent; and
- (e) the Company receiving written unconditional approval from ASX to the Company being re-instated to the official list of the ASX.

2.2 Reasonable Endeavours

Each party will use its reasonable endeavours to ensure the conditions in clause 2.1 are satisfied as expeditiously as possible and will keep the other parties regularly informed of the progress in relation to the satisfaction of those conditions.

2.3 End Date

If the conditions in clause 2.1 are not satisfied or waived by 31 December 2011 (or such later date as the parties may agree in writing), this Deed will be at an end and the parties will have no further obligation to each other under this Deed other than any obligations under clause 9.

2.4 Waiver

The conditions in clause 2.1 may only be waived by written agreement signed by all parties.

3 Proposal Payment

The Proponent acknowledges that on the Effective Date, it shall pay to the Administrators the Deposit in consideration of the Administrator's fees to be deducted from the Creditor's Sum.

4 Shareholder approvals

4.1 Convening Shareholder Meeting

Subject to receipt from ASX of the confirmation referred to in clause 2.1(a), the Proponent will, at its own expense (subject to clause 9.4), promptly prepare, or procure the preparation of, the Disclosure Document and the Meeting Documents in a form reasonably acceptable to the Administrators. If the Disclosure Document and the Meeting

Documents are acceptable to the Administrators, the Company must use reasonable endeavours to procure the Proponent Directors to convene a Shareholder Meeting (incorporating the Meeting Documents) to consider the following resolutions:

- (a) that in accordance with the Corporations Act and the Listing Rules, the Convertible Notes be converted into Shares as detailed in the Proposal (on a pre-consolidation basis);
- (b) that in accordance with the Corporations Act and the Listing Rules, the Existing Securities be consolidated based on the Consolidation Formula;
- (c) that in accordance with sections 256B and 258F of the Corporations Act, the capital of the Company be reduced by applying a portion of the accumulated losses of the Company against the share capital of the Company which is considered permanently lost;
- (d) that in accordance with the Corporations Act (including, if necessary, section 208 and section 611, item 7) and the Listing Rules, the Company issue the Proponent Shares;
- (e) that in accordance with section 157 of the Corporations Act, the Company change its name from Allied Brands Limited if deemed necessary by the Proponent to such name as the Proponent nominates;
- (f) that in accordance with ASX Listing Rule 7.1 and, if necessary, section 611, item 7 of the Corporations Act, the Shares be issued pursuant to the Capital Raising;
- (g) that in accordance with ASX Listing Rule 7.1 and, if necessary, section 611, item 7 of the Corporations Act, the Company issue the Creditors' Trust Shares;
- (h) that in accordance with ASX Listing Rule 7.1 and, if necessary, section 611, item 7 of the Corporations Act, the Company issue the Facilitation Shares, if deemed necessary by the Proponent; and
- (i) such other resolutions as may be reasonably necessary to implement the Proposal.

The resolutions referred to in this clause 4.1 will be inter-dependent. In the event that Shareholders do not approve all resolutions, the condition in clause 2.1(b) will be deemed not to have been satisfied.

4.2 Administrators, Proponent and Company to assist

- (a) Subject to clause 9, the Administrators and the Company undertake to, and will use reasonable endeavours to procure the Proponent Directors to, provide all reasonable assistance to the Proponent to issue the Meeting Documents and the Disclosure Document.
- (b) Subject to clause 9, the Administrators and the Proponent undertake to provide all reasonable assistance to the Company to convene and hold the Shareholder Meeting.

4.3 Appointment of additional directors

Prior to the Completion Date, the Company must not appoint additional directors without first consulting the Proponent.

5 The Proposal

5.1 Implementation

Subject to the satisfaction or waiver of the conditions in clause 2.1, the Proponent and the Company agree to use their best endeavours to implement the Proposal.

5.2 Capital Raising

- (a) The Proponent will at its own expense (subject to clause 9.4), promptly prepare or procure the preparation of the Disclosure Document within 30 days of the approval of the resolutions contained in the Meeting Documents. The Proponent must obtain the written approval of the Company to the form and content of the Disclosure Document. The Proponent Directors must sign-off on the Disclosure Document. Once written approval is given by the Company and the Disclosure Document is signed by the Proponent Directors, the Proponent may distribute the Disclosure Document on behalf of the Company in such manner as the Proponent considers appropriate.
- (b) All applications and subscription moneys received pursuant to the Disclosure Document will be held by the Proponent (in the name and on behalf of the Company) in escrow pending satisfaction or waiver of the conditions referred to in clauses 2.1(c) and 2.1(e), following which the applications and subscription moneys will be provided to the Company in accordance with clause 6.2. The Proponent must deal with such moneys in such manner that the Company complies at all times and in every respect with all applicable legal requirements, including without limitation, section 722 of the Corporations Act.
- (c) If the conditions referred to in clauses 2.1(c) and 2.1(e) are not satisfied by the End Date, the applications and subscription moneys must be returned by the Proponent to the applicants in full. In such an event, interest is not payable on these returned Subscription moneys.

5.3 Additional Obligations of the Proponent

The Proponent will, at its own expense (subject to clause 9.4), promptly prepare or procure the following:

- (a) all necessary approvals required for Reinstatement of the Company;
- (b) all necessary approvals from, and the lodgement of all documents required by, ASIC and ASX, for the purpose of implementing the Proposal and the Reinstatement of the Company;
- (c) payment of any ASX re-listing fees and ASIC fees; and
- (d) completion of all outstanding taxation and audit requirements necessary to implement the Proposal and achieve the Reinstatement of the Company.

5.4 Appointment and Removal of Directors

- (a) The Administrators must use reasonable endeavours to procure the resignation of all Existing Directors and existing company secretary no later than 5 Business Days prior to the despatch of the Meeting Documents.
- (b) The Proponent must nominate, and the Administrator's must confirm such nomination, to the appointment of not less than three (3) new directors and a company secretary (which can be one of the new directors) to the Company contemporaneously with the resignation in 5.4(a).

6 Completion

6.1 Completion place

Subject to clauses 2 and 6.3, Completion will take place on the Completion Date at the offices of the Company or such other place agreed in writing by the parties.

6.2 Obligations at Completion

Contemporaneously at Completion:

- (a) the Company must:
 - (i) issue the Shares to applicants under the Disclosure Document;
 - (ii) issue the Proponent Shares to the Proponent or its nominee if directed to do so by the Proponent prior to Completion;
 - (iii) pay the Creditor's Sum (less the Deposit) to the Administrators in respect of the Administrators fees and disbursements, including those relating to the Proposal.
 - (b) the Proponent must pay the Proponent Sum to the Company in consideration for the issue of the Proponent Shares;
 - (c) the Administrators must terminate the DOCA pursuant to clause 20 of the DOCA.
- ### 6.3 Exceptions to Completion
- The parties will be under no obligation to fulfil the obligations set out in clause 6.2, in any of the following circumstances:
- (a) in the event of an intervening Court order;
 - (b) in the event of a takeover offer or other general offer relating to 50% or more of the Shares becoming or being declared unconditional; or
 - (c) pursuant to any compromise or arrangement approved by a Court pursuant to section 411(4) of the Corporations Act.

7 Trust Fund

7.1 Establishment of Trust

Upon Completion, the Administrators shall establish the Trust Fund for the benefit of the Creditors.

7.2 The Trust Fund

- (a) The Trust Fund will be established for the sole benefit of the Creditors.
- (b) The Creditors' Sum will be transferred to the Trust Fund on Completion.
- (c) The trustee of the Trust Fund shall be the Administrators.

8 Proponent's Acknowledgement

8.1 Proponent's Shares be Restricted Securities

The Proponent and third parties nominated by the Proponent acknowledge that some or all of the Proponent Shares may be designated as restricted securities under the Listing

Rules and may be required to be held in escrow in accordance with the terms of a restriction agreement, which the Proponent agrees to sign as required, for such period as may be determined by ASX.

8.2 Warranties and Representations in relation to the Company

The Administrators make no warranty, representation or other statement as to the Company or its assets, and in particular make no warranty relating to:

- (a) the economic viability of the Company;
- (b) the prospects of the Company; or
- (c) the availability to the Company of tax deductions or other tax benefits.

9 Costs and indemnity

9.1 Stamp Duty and GST

The Proponent must pay (subject to clause 9.4) any stamp duty or GST assessed on this Deed and in relation to any transaction contemplated by this Deed including without limitation the transfer of the Creditors' Sum to the Trust Fund.

9.2 Costs of Preparation of Deed

Subject to clause 9.1, each party must bear its own costs of and incidental to the negotiation, preparation and execution of this Deed.

9.3 Proponent to bear all Costs of Proposal

Subject to clauses 9.2 and 9.4, the Proponent must bear all the costs in relation to the Proposal, including without limitation, all costs relating to:

- (a) preparation of the Meeting Documents and the Disclosure Document (and any other disclosure document required in relation to the Capital Raising);
- (b) the lodgement of all statutory returns;
- (c) the preparation and auditing of accounts;
- (d) liaising with ASX and ASIC;
- (e) fees of corporate and legal advisors incurred by the Proponent in relation to clauses 9.3(a) to 9.3(d) above;
- (f) the establishment of the Trust Fund and transfer of the Creditors' Sum to the Trust Fund; and
- (g) the printing and posting of all necessary documentation to shareholders and the hiring of premises in respect of the Shareholders Meeting.

9.4 Company to Reimburse the Proponent

Subject to Reinstatement, the Company will reimburse the Proponent, after Completion of this Deed, all costs incurred by the Proponent in respect of the matters described in clauses 4.1, 5.2(a), 5.3 and 9.3.

9.5 Priority Payment

In the event that Trident is removed as the Proponent to the recapitalisation of the Company either by Creditors Meeting or by any other means whatsoever, Trident will be

entitled to the repayment in full of the Deposit. For the avoidance of doubt, if Trident ceases to be the Proponent as a result of an act or omission of Trident then the Deposit will not be repayable.

9.6 Proponent's Indemnity and Release

The Proponent releases and indemnifies the Administrators from and against all actions, suits, causes of action, proceedings, claims, demands, liabilities, costs and expenses (including legal costs and expenses) whatsoever which the Proponent now has or may at any time have against the Administrators in connection with the implementation of the Proposal or the subject matter of this Deed, except where such liability arises from the willful misconduct of the Administrators.

9.7 Company's Indemnity and Release

Subject to the performance of the Administrators obligations under this Deed, the Company releases and indemnifies the Administrators from and against all actions, suits, causes of action, proceedings, claims, demands, liabilities, costs and expenses (including legal costs and expenses) whatsoever which the Company now has or may at any time have against the Administrators in connection with the implementation of the Proposal or the subject matter of this Deed and the Trust Fund, except where such liability arises from the willful misconduct of the Administrators.

9.8 Bar to Proceedings

Save by way of enforcement of this Deed, this Deed shall operate as an absolute bar to all actions, suits, causes of action, proceedings, claims, demands, liabilities, costs and expenses (including legal costs and expenses), brought or attempted to be brought by or in the name of the Company or the Proponent against the Administrators in connection with the implementation of the Proposal or the subject matter of this Deed.

9.9 Proponent to be Reimbursed for Reasonable Costs

For the avoidance of doubt, any provision of this Deed which requires the Proponent to procure the Company to do something at the Proponent's cost does not, subject to successful completion of each of the transactions comprised in the Proposal, prejudice or affect the Proponent's right, as against the Company, to seek reimbursement from the Company of reasonable costs and expenses incurred in doing that thing where those costs and expenses would, but for this Deed, have been properly payable by the Company.

10 Termination of DOCA

The DOCA will terminate in accordance with clause 20 of the DOCA.

11 Non-Solicitation of Competition

In consideration of the obligations set out in this Deed and during the currency of this Deed, the Company and the Administrators must not authorize, permit, or require any person to either directly or indirectly solicit or initiate negotiations with third parties which may lead or may reasonably be expected to lead to a Competing Transaction.

For the avoidance of doubt, the Company and the Administrators are not restrained from authorizing, permitting or requiring any person to have contact with third parties who are also Creditors as is required by the terms of this Deed and the provisions of the Corporations Act in the said third party's capacity as a Creditor.

12 General

12.1 Notices

- (a) A notice, consent or other communication given pursuant to this Deed is only effective if it is in writing, signed by or on behalf of the person giving it,
- (i) addressed to the person to whom it is to be given; and
- (ii) either:
- (A) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
- (B) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full.
- (b) A party's mail address and fax number are those set out below or such other address and fax number as a party may have notified to the other parties from time to time.

Administrators	Address	Fax number	Attention
	Care of Vincents Chartered Accountants, Level 34, 32 Turbot Street, Brisbane, 4000.	(07) 3228 4099	Peter Dinoris Peter Biazos
Company	Care of Vincents Chartered Accountants, Level 34, 32 Turbot Street, Brisbane, 4000.	(07) 3228 4099	Peter Dinoris Peter Biazos
Proponent	Level 24, 44 St Georges Terrace Perth, Western Australia, 6000	(08) 6211 5099	Simon Lill

- (c) A notice will be deemed to have been received by the party to whom it is addressed:
- (i) on personal delivery to that address;
- (ii) where the notice is sent by mail, 3 Business Days after the posting of the notice properly paid and addressed; or
- (iii) where the notice is sent by facsimile, upon successful transmission, if that notice is sent before 5:00pm on a Business Day, otherwise it shall be deemed to have been received at the commencement of the next Business Day.

12.2 Governing law and jurisdiction

- (a) This Deed shall be governed by and construed in accordance with the laws in force in Western Australia.
- (b) The parties agree to submit to the jurisdiction of the Courts of Western Australia.

12.3 Waiver

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or any other right.

12.4 Consents

Where this Deed contemplates that a party may agree, approve or consent to something (however it is described), that party may not unreasonably withhold or delay giving that agreement, approval or consent, unless this Deed expressly contemplates otherwise.

12.5 Whole agreement

This Deed contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it other than the DOCA and the Trust Fund.

12.6 Further assurance

Each party must do and execute or cause to be done or executed all such acts, deeds and assurances that any other party may reasonably require for ensuring full and proper compliance with or performance of the terms of this Deed.

12.7 Counterparts

This Deed may be executed in any number of counterparts and all those counterparts taken together constitute one and the same instrument.

Schedule 1 – The Proposal

The following proposal shall be adopted:

- (i) the Proponent to pay the Deposit;
- (ii) the existing Convertible Note holders to convert their Convertible Notes to equity on a pre-consolidation basis;
- (iii) Consolidation of Existing Securities based on the Consolidation Formula;
- (iv) the Proponent to undertake a capital raising of at least \$3.0 million being:
 - (A) the issue of 100 million Shares at an issue price of 0.5 cents each to raise \$500,000 (through a convertible note issue); and
 - (B) the issue of 250 million Shares at an issue price of 1 cent each to raise \$2.5 million (with scope for oversubscriptions);
- (v) total payment in the amount of \$800,000 ("Creditor's Sum") in settlement of all Creditor's Claims (which includes the Deposit) under the DOCA;
- (vi) The Company shall issue the Creditors' Trust Shares to the Trust for the benefit of the Creditors;
- (vii) The Company shall issue the Facilitation Shares, at the Proponent's sole discretion; and
- (viii) the Existing Directors are to resign from their position (as required by the Proponent) and the Proponent to appoint a new Board of Directors and management team.

Schedule 2 – Consolidation Formula

The reconstruction rate ("RR") is to be calculated such that:

$$(ES + CNS)/RR < 20,000,000$$

Where:

- ES = Existing Shares
- CNS = Convertible Note Shares, being the face value of the Convertible Notes at the time of Administration (\$6,050,550) x Paid up value x the conversion rate
- RR = reconstruction rate

Executed as a deed:

SIGNED by the said PETER DINORIS in the presence of:

Witness Signature

Witness Name

Witness Address

Witness Occupation

SIGNED by the said PETER BIAZOS in the presence of:

Witness Signature

Witness Name

Witness Address

Witness Occupation

EXECUTED by ALLIED BRANDS LIMITED (Subject to Deed of Company Arrangement) (ACN 108 958 274) by PETER DINORIS AND PETER BIAZOS AS DEED ADMINISTRATORS

PETER DINORIS

PETER BIAZOS

EXECUTED by TRIDENT CAPITAL PTY LTD (ACN 100 561 733) in accordance with section 127 of the Corporations Act

Director/Company Secretary

Director

Name of Director/Company Secretary (BLOCK LETTERS)

Name of Director (BLOCK LETTERS)

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ANNEXURE C

**ALLIED BRANDS LIMITED (ADMINISTRATORS APPOINTED)
(RECEIVERS AND MANAGERS APPOINTED)**

PROPOSAL FOR A DEED OF COMPANY ARRANGEMENT

1. This proposal for a Deed of Company Arrangement (**DOCA**) is made by the directors of Allied Brands Limited (**ABQ**).
2. The intention of this proposal for a DOCA is that the directors of ABQ will take all reasonable steps to obtain within 6 months of the date of the DOCA an offer from a third party (**Purchaser**), which is acceptable to ABQ's secured creditors (being Westpac Banking Corporation (**Westpac**), Beath Investment Services Pty Ltd (**Beath**) and Cashflow Finance Solutions Pty Ltd (**CFS**)) to acquire control of ABQ and the benefit of any associated tax losses (**Listed Shell Acquisition**), with a view to the Purchaser applying for the lifting of the suspension of trading in shares in ABQ on the Australian Securities Exchange (**Recapitalisation**). Any such offer by a Purchaser will need to be between \$800,000 and \$2,500,000 to be acceptable.

It is contemplated that any offer by a Purchaser will be subject to the following conditions precedent (**Conditions Precedent**):

- (a) At the Purchaser's request, ABQ will procure the transfer of an agreed number of shares in ABQ to the Purchaser, or a resolution of the shareholders of ABQ to the effect that an agreed number of shares in ABQ be issued to the Purchaser;
- (b) All other necessary resolutions of the shareholders of ABQ to give effect to the Recapitalisation;
- (c) All necessary approvals to the Recapitalisation from the Australian Securities Exchange;
- (d) If required to give effect to the Recapitalisation, the directors of ABQ resign from the board of directors of ABQ;
- (e) A creditors' trust deed being executed, pursuant to which the creditors of ABQ transfer over to become beneficiaries of the creditors' trust; and
- (f) Westpac, Beath and CFS releasing their charges over ABQ and its assets.

If no acceptable offer is made by a Purchaser within 6 months of the date of the DOCA, or one or more of the Conditions Precedent required by the Purchaser are not satisfied, then Peter Dinoris and Peter Biazos of Vincents Chartered Accountants

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(**Deed Administrators**) may convene a meeting of the creditors of ABQ at which the creditors may resolve to either:

- (a) Vary the terms of the DOCA; or
- (b) Terminate the DOCA and wind up ABQ.

Note 1 : Awesome Water Pty Ltd (**Awesome Water**) and Awesome Entertainment Pty Ltd (**Awesome Entertainment**) are wholly owned subsidiaries of ABQ and have guaranteed the debts owed by ABQ to Westpac. Both Awesome Water and Awesome Entertainment are trading as going concerns, and have entered into a confidential agreement with Westpac to reduce ABQ's indebtedness to Westpac.

3. The parties to the DOCA will be:

- (a) ABQ;
- (b) The Deed Administrators;
- (c) Lachlan Stuart McIntosh (**McIntosh**);
- (d) Peter David Elligett (**Elligett**);
- (e) Peter Allan Graham (**Graham**);
- (f) Sean Craig Corbin (**Corbin**);
- (g) Awesome Water; and
- (h) Awesome Entertainment.

4. The salient terms of the DOCA will include:

- (a) The DOCA to bind:
 - (i) The parties to the DOCA;
 - (ii) All members of ABQ (**Members**); and
 - (iii) All persons having a claim against ABQ the circumstances giving rise to which occurred on or before 27 October 2010 (**Creditors**).
- (b) Either ABQ, Awesome Water or Awesome Entertainment will pay the Deed Administrators' fees of reviewing, and costs of retaining solicitors to review, the terms of the DOCA up to a maximum amount of \$15,000.

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- (c) Either ABQ, Awesome Water or Awesome Entertainment will pay the invoices issued by Computershare to ABQ, within 7 days of receipt of the invoice from the Deed Administrators.
- (d) Either ABQ, Awesome Water or Awesome Entertainment will pay to the following employees of ABQ within 6 months of the date of execution of the DOCA an amount representing the Deed Administrators' calculation of the amounts each of those employees would be eligible for under the General Employee Entitlements and Redundancy Scheme if ABQ was in liquidation, after these employees submit formal proofs of debt to the Deed Administrators:
- (i) Susan Cherviakov;
 - (ii) Sean Corbin;
 - (iii) Georgina Cross;
 - (iv) Sandra Gayle Harding;
 - (v) Shirley Ann Moro;
 - (vi) Lynette Maree Paterson;
 - (vii) Andrew Douglas Wynn;
 - (viii) Debbie Burrow; and
 - (ix) Joanne Manocchio.

Note 2 : Any claims for employee entitlements made by the following persons are currently disputed by the directors of ABQ as it is the directors' belief that these persons either were not employees of ABQ, or are not owed any entitlements by ABQ:

- (i) Anthony Knapping;
- (ii) Bertrand Gerard Cotte;
- (iii) Leanne Cotte;
- (iv) Ian Gallagher;
- (v) Catherine Fittock;

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- (vi) Antonio Rocca; and
- (vii) Shane Radbone.
- (e) During the 6-month period commencing from the date of execution of the DOCA, McIntosh, Elligett and Graham will take all reasonable steps to:
- (i) Obtain an offer of a Listed Shell Acquisition from a Purchaser for consideration of between \$800,000 and \$2,500,000 (**Purchase Price**);
 - (ii) If an offer described in paragraph (e)(i) above is made by a Purchaser, obtain from Westpac, Beath and CFS releases of their charges over the assets and undertakings of ABQ, and duly executed and registrable ASIC Forms 312 acknowledging that ABQ's assets and undertakings are no longer subject to the charges.
- (f) If an offer described in paragraph (e)(i) above is made by a Purchaser, ABQ, the Deed Administrators, McIntosh, Elligett, Graham, the Members of ABQ and the Creditors of ABQ will take all reasonable steps to attempt to satisfy all of the Conditions Precedent required by the Purchaser.
- (g) In order to assist McIntosh, Elligett and Graham to fulfil their obligations described in paragraphs (e) and (f) above, control of ABQ will revert to McIntosh, Elligett and Graham for the 6-month period commencing from the date of execution of the DOCA.
- (h) ABQ must direct the Purchaser to pay the Deed Administrators the Purchase Price.
- (i) The Deed Administrators will establish and control a deed fund (**Deed Fund**) which will comprise:
- (i) The Purchase Price paid by the Purchaser; and
 - (ii) Any assets of ABQ (including debts due and owing to ABQ by this third parties) recovered by the Deed Administrators from the commencement of the DOCA (**Other Assets**), other than ABQ's shares in the following companies:
 - (A) Awesome Water; and
 - (B) Awesome Entertainment.

(j) If an offer described in paragraph (e)(i) above is made by a Purchaser, the Deed Administrators must establish a trust for the benefit of the Creditors of ABQ (**Creditors' Trust**), and the Creditors appoint the Deed Administrators as trustees of that trust (**Trustees**).

~~(k) The Deed Administrators and any Committee of Creditors of ABQ will determine the terms of the document which will govern the establishment and management of the Creditors' Trust (**Trust Deed**). Prior to entering into any Creditors Trust Deed the Deed Administrators will convene a further meeting of Creditors of the Company for the purposes of voting on a resolution to vary the DOCA so that the Creditors' Trust Deed can be established, on the terms set out below.~~

(l) The Deed Fund will form the property to be held by the Trustees on trust for the benefit of the Creditors of ABQ.

(m) The terms of the Creditors' Trust Deed will include:

(i) The Purchase Price will be distributed in the following order of priority:

(A) \$640,000 to Westpac;

(B) \$160,000 in the following order of priority:

(1) The expenses incurred by, and the remuneration, or fees for services, payable to, the Deed Administrators (including as voluntary administrators of ABQ);

(2) The expenses incurred by, and the remuneration, or fees for services, payable to, the Trustees of the Creditors' Trust;

(3) Wages, superannuation contributions and superannuation guarantee charge payable by ABQ in respect of services rendered to ABQ by employees, other than McIntosh, Elligett and Graham (For any spouses or relatives of McIntosh, Elligett and

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Graham, the maximum amount they are entitled to for unpaid wages, superannuation contributions and superannuation guarantee charge is \$2,000);

- (4) Amounts owing by ABQ in respect of injury compensation;
 - (5) Amounts owing by ABQ because of an industrial instrument to employees of ABQ, other than McIntosh, Elligett and Graham, in respect of leave of absence (For any spouses or relatives of McIntosh, Elligett and Graham, the maximum amount they are entitled to for unpaid leave of absence is \$1,500);
 - (6) Retrenchment payments payable to employees of ABQ (except McIntosh, Elligett and Graham, and their spouses and relatives);
 - (7) The other unsecured Creditors of ABQ (except McIntosh, Elligett and Graham, their spouses and relatives, and any other entities related to them);
 - (8) McIntosh, Elligett and Graham, their spouses and relatives, and any other entities related to them (insofar as they are creditors of ABQ).
- (C) 90% of the remainder of the Purchase Price to Beath; and
- (D) 10% of the remainder of the Purchase Price in the order of priority described at paragraph (m)(i)(B)(3) to (8) above.
- (ii) The Other Assets will be applied in the order of priority described at paragraph (m)(i)(B) above.
 - (iii) The Trustees shall consider the claims of each of the Creditors of ABQ for the purpose of determining the Creditor's pro-rata entitlement under the Creditors' Trust. The Trustees must adjudicate upon a Creditor's proof of debt in accordance with the rules prescribed in the Corporations Act and the Corporations Regulations for proof of debts or claims on the winding up of ABQ. McIntosh, Elligett and Graham will be entitled to review any Creditor's proof of debt and the Trustees undertake to give due consideration to any objection made by McIntosh, Elligett or Graham to all or part of any

such proof of debt. McIntosh, Elligett or Graham have a right to appeal to any Court (within the meaning of the Corporations Act) in relation to any decision made by the Trustees on a Creditor's proof of debt. Any costs and expenses incurred by a Creditor in preparing and submitting a claim to the Trustee shall be borne by that Creditor and shall not form part of the Creditor's claim.

- (n) McIntosh, Elligett, Graham and Corbin will provide the Deed Administrators and the Trustees of the Creditors' Trust with any assistance they may require to effect the purpose, terms and conditions of the DOCA and the Trust Deed.
- (o) During the term of the DOCA, and on and from the termination of the DOCA if the DOCA is terminated in accordance with paragraph (s)(i) below, no Creditor of ABQ may:
- (i) commence or continue with any application for an order for the winding up of ABQ;
 - (ii) commence or continue with any legal proceedings or arbitration against ABQ;
 - (iii) exercise or purport to exercise any right of set off or cross-action against ABQ;
 - (iv) commence or continue any enforcement process in relation to the property of ABQ; or
 - (v) commence or continue with any proceedings to enforce any charge, mortgage or other encumbrance held by it over any part of the property of ABQ.
- (p) Upon receipt of the Purchase Price by ABQ, the Creditors of ABQ must accept their entitlements under the DOCA in full satisfaction and complete discharge of all debts or claims which they have or claim to have against ABQ as at 27 October 2010 and each of them will, if called upon to do so, execute and deliver to ABQ such forms of release of any such claim as the Deed Administrators require.
- (q) In consideration of McIntosh, Elligett, Graham and Corbin executing the DOCA, during the term of the DOCA, and on and from the termination of the DOCA if the DOCA is terminated in accordance with paragraph (s)(i) below:
- (i) ABQ; and

(ii) The Deed Administrators,

each release and discharge McIntosh, Elligett, Graham and Corbin from all claims and liabilities of any nature whatsoever which ABQ or the Deed Administrators have, at any time had, may have now or in the future, or but for the DOCA could or might have against McIntosh, Elligett, Graham or Corbin.

(r) If the Purchase Price has been paid by the Purchaser and the Deed Administrators have transferred the Deed Fund to the Creditors' Trust, the Deed Administrators must certify to that effect in writing and must within 28 days lodge with the ASIC a notice of termination of the DOCA in the following form:

"Allied Brands Limited

(Subject to a Deed of Company Arrangement)

We, PETER DINORIS and PETER GEORGE BIAZOS as administrators of the deed of company arrangement executed on [date] CERTIFY that the deed has been wholly effectuated."

(s) The DOCA terminates:

- (i) Upon the lodgement of the notice by the Deed Administrators with the ASIC certifying that the DOCA has been wholly effectuated; or
- (ii) If a period of 6 months from the date of the execution of the DOCA has passed and no offer described in paragraph (e)(i) above is made by a Purchaser, and the Creditors of ABQ resolve at a meeting convened by the Deed Administrators that the DOCA should terminate; or
- (iii) If the Conditions Precedent required by any Purchaser are not satisfied within 6 months of the Purchaser having made the offer described in paragraph (e)(i) above, and the Creditors of ABQ resolve at a meeting convened by the Deed Administrators that the DOCA should terminate; or
- (iv) If the Purchase Price is not paid by the Purchaser within 7 days of all of the Conditions Precedent required by the Purchaser being satisfied, and the Creditors of ABQ resolve at a meeting convened by the Deed Administrators that the DOCA should terminate.

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ANNEXURE D



ASIC

Australian Securities & Investments Commission

Important note

This guide is limited to certain conduct issues for registered liquidators appointed under Part 5.3A as a voluntary administrator or deed administrator (administrator), where a proposed deed of company arrangement (DCA) or proposed variation of a DCA (collectively, a DCA proposal) involves a creditors' trust. It is not intended to be comprehensive and does not describe ASIC's views about how administrators, or all registered liquidators, should perform all their relevant duties and functions.

This guide does not constitute legal advice. Registered liquidators should seek their own advice to confirm how the law applies to them. It is the responsibility of each registered liquidator to identify the precise nature of their obligations from time to time under the Corporations Act, the Corporations Regulations and the general law, and to determine what they must do to perform adequately and properly all their duties and functions.

REGULATORY GUIDE 82

**External administration:
Deeds of company
arrangement involving
a creditors' trust**

**A guide for registered liquidators
appointed under Part 5.3A**

May 2005

What this guide is about

- 1 This guide is for registered liquidators appointed under Part 5.3A of the *Corporations Act 2001* (Act) as a voluntary administrator or deed administrator (administrator).
- 2 It explains:
 - (a) our interpretation of administrators' obligations under s439A, 445F, 1292(2) and the general law where they are considering a proposed deed of company arrangement (DCA) or a proposed variation of a DCA (collectively, a DCA proposal) involving a creditors' trust; and
 - (b) in particular, the information that we consider is material to creditors and should therefore be disclosed when a DCA proposal involves a creditors' trust.

Why has ASIC issued this guide?

- 3 The use of creditors' trusts in DCAs is a relatively recent practice that appears to be increasing. We have issued this guide to outline our current views on this practice and indicate our interpretation of adequate and proper performance by administrators of their duties and functions in this situation.
- 4 We are concerned that administrators appear not to be aware of or are not properly considering all the relevant issues raised by the use of a creditors' trust. As a result, they may:
 - (a) submit to creditors a DCA proposal that involves a creditors' trust without properly considering whether such an arrangement is appropriate in the company's circumstances; and/or
 - (b) fail to disclose all the material information about the creditors' trust and its implications to enable creditors to consider the advantages and disadvantages of this type of arrangement for them; and/or
 - (c) make an inappropriate recommendation about the DCA proposal.
- 5 We consider that DCA proposals should not involve creditors' trusts unless administrators have adequately considered the appropriateness of using a creditors' trust in the particular case, and the advantages and disadvantages for the company, the creditors and the administrator.
- 6 DCAs involving a creditors' trust create special risks for creditors. Further, using a creditors' trust in a DCA in some cases may be an abuse of the Part 5.3A process or be otherwise contrary to the public interest. As a result, our view is that while the use of a creditors' trust in a DCA may occasionally be justified by the circumstances of a particular company, indiscriminate use of creditors' trusts in DCAs is not appropriate.

Why follow this guide?

- 7 This guide indicates how we think administrators will perform their obligations where a DCA proposal involves a creditors' trust, if they are adequately and properly performing all their duties and functions.
- 8 We will generally consider that an administrator has not complied with all their obligations under the Act and the general law if an administrator asks creditors to vote on a DCA proposal involving a creditors' trust and the administrator has not followed this guide in a material respect.
- 9 In such cases, we may:
 - (a) make an application to the court for the relevant DCA to be terminated or avoided; and/or
 - (b) seek specific orders against the administrator under s445D, 445G, 447A, 447E(1) and/or 1321 as appropriate.
- 10 In addition or alternatively, if we consider that the administrator has not adequately and properly performed their duties or functions as a registered liquidator (or is otherwise not fit and proper to remain a registered liquidator), we may make an application to the Companies Auditors and Liquidators Disciplinary Board (CALDB) under s1292(2) for cancellation or suspension of the administrator's status as a registered liquidator. The CALDB may also impose other sanctions under s1292(9).
- 11 Where a s439A report or s445F notice referring to a DCA proposal involving a creditors' trust has already been sent to creditors but the relevant creditors' meeting has not been held before publication of this guide, administrators should give creditors as much additional information referred to in this guide as it is reasonably practicable for the administrator to provide in the time between publication of this guide and the creditors' meeting.

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Section 1: DCAs and creditors' trusts

What is a creditors' trust?

- 1.1 A creditors' trust in a DCA is a mechanism used to accelerate a company's exit from external administration. To date, it has been used most commonly (but not exclusively) in connection with the rehabilitation of public companies listed on Australian Stock Exchange Ltd (ASX). In some cases, this leads to a 'backdoor' listing.
- 1.2 Typically, under the terms of the DCA and one or more interconnected deeds, a trust entity is created and the company's obligations to some or all of the creditors bound by the DCA are compromised and transferred to the trust. Those creditors become beneficiaries of the trust. Occasionally, there may be separate creditors' trusts for employee and non-employee creditors, or for secured and unsecured creditors.
- 1.3 The company and/or third parties promise to make one or more payments (or transfer other property) to the trustee in satisfaction of the creditors' claims against the company. In return, the creditors' rights against the company are extinguished.
- 1.4 The trustee of the new trust becomes solely responsible to the former creditors (now beneficiaries) for:
 - (a) ensuring that the company and/or other third parties perform their payment and other obligations to the trustee;
 - (b) determining how much each of the former creditors is entitled to receive from the trust; and
 - (c) in due course, making any distribution to those former creditors.
- 1.5 Usually, the DCA is 'effectuated' (and terminates) after the creditors' claims against the company have been removed in this way. In most cases, the DCA terminates immediately upon creation of the trust, which usually occurs when or shortly after the DCA is executed.
- 1.6 When the DCA terminates, the company ceases to be externally administered, the directors regain full control of the company and the company is no longer required to use the notification 'subject to deed of company arrangement' on its public documents as otherwise would be required by s450E(2) of the Act.

What are the special risks for creditors?

- 1.7 We consider that there are different and additional risks for creditors where a DCA proposal involves a creditors' trust. The significance of the risks in a particular case will depend on the quality of the information the administrator provides to creditors and the actual terms of the DCA, trust deed and any other related documentation.
- 1.8 The key additional risks are that:
- (a) under the DCA proposal, the DCA may be 'effectuated' and creditors' rights against the company extinguished before:
 - (i) the amount available for distribution to creditors of the company/beneficiaries of the trust has been ascertained; or
 - (ii) the trust fund has been received in full by the trustee; or
 - (iii) creditors of the company/beneficiaries of the trust have received any payment from either the deed administrator or the trustee;
 - (b) creditors may have less (or no) legal rights if the DCA proposal is not fully complied with by all relevant parties; and
 - (c) creditors may agree to the DCA proposal without being aware (or fully appreciating the implications) of these matters.

1.9 The following factors increase the severity of these risks:

- (a) creditors' lack of knowledge and inexperience;

Note: The use of a creditors' trust in a DCA will be beyond the reasonable contemplation or experience of most creditors bound by the DCA. Creditors (particularly unsecured creditors) of an insolvent company usually have limited knowledge of (or previous experience with) corporate insolvency laws and processes. Any previous experience is likely to be with the Act and ASIC as the relevant regulator, and they will generally expect their claims against the company and their dealings with the external administrator to be governed by the Act. Many creditors will have no or limited knowledge of trust law.
- (b) inadequate disclosure by administrators of material information about the DCA proposal;
- (c) the additional complexity of the legal and documentary arrangements needed to support the use of a creditors' trust under a DCA;
- (d) the trustee's identity, skills, remuneration and insurance arrangements;
- (e) non-uniformity of the State and Territory Trustee Acts governing trusts and trustees;
- (f) differences in the ways trustees and registered liquidators are regulated and supervised, particularly by ASIC and the courts;
- (g) potential difficulties for ASIC and creditors (as beneficiaries of the trust) in monitoring and enforcing proper conduct by the trustee; and

- (h) legal uncertainties and other issues for ASIC, creditors bound by the DCA or other persons in challenging a DCA that has already terminated.

What are the obligations of administrators?

1.10 Administrators have an overriding obligation to perform adequately and properly their duties and functions: s1292(2). This includes ensuring that the interests of creditors are adequately protected. Where a DCA proposal is concerned, we consider that an administrator who is fulfilling this obligation will:

- (a) evaluate the proposal before submitting it to creditors (see paragraphs 1.11–1.14);
- (b) disclose all material information about the proposal to creditors (see paragraphs 1.15–1.18); and
- (c) express an opinion about the proposal that adequately protects the interests of creditors (see paragraphs 1.19–1.22).

Evaluating the proposal

1.11 Before submitting any DCA proposal to creditors, administrators should consider whether there is a proposal suitable for submission. For example, it will rarely be appropriate for an administrator to submit to creditors a DCA proposal where the administrator does not have sufficient concrete details to comply with all their disclosure obligations: see paragraphs 1.15–1.18.

1.12 Where the DCA proposal involves a creditors' trust, administrators should specifically consider whether such a mechanism is appropriate in the company's circumstances. We think this includes considering whether the DCA proposal (if accepted) may be an abuse of Part 5.3A or otherwise contrary to the public interest. If so, it may be appropriate for the administrator to seek directions from the court before submitting the DCA proposal to creditors.

1.13 It has been asserted to ASIC that s435A (particularly paragraph (a)) always justifies the use of creditors' trusts in DCAs.

Note: Section 435A states that the object of Part 5.3A is for the business, property and affairs of an insolvent company to be administered in a way that:

- (a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or
- (b) if that is not possible, results in a better return for the company's creditors and members than would result from an immediate winding up of the company.

1.14 In our view, s435A does not justify in a DCA every kind of mechanism that would produce one of the outcomes referred to in that

section. We consider that any mechanism intended to achieve one of those outcomes should only be included in a DCA if it is:

- (a) in the interests of creditors as a whole;
- (b) in accordance with the purpose and policy of Part 5.3A; and
- (c) consistent with the public interest.

Note 1: We consider, for example, that it is likely to be an abuse of Part 5.3A or otherwise contrary to the public interest for a DCA to involve a creditors' trust where:

- (a) there is no proper and compelling legal or commercial reason why the continued existence of the company or its business could not be achieved under a DCA that does not involve a creditors' trust. This includes cases where the underlying reason for using a creditors' trust is to circumvent the effect of s450E(2), or
- (b) the DCA proposal contemplates that the company would or could (after the DCA has been effected in accordance with its terms) continue in existence in an insolvent financial condition. See *Report No. 45, General Insolvency Inquiry*, Australia Law Reform Commission, 1988 (the Hamner Report), vol 1, page 62-3.

Note 2: See also *Sydney Land Corp P/L v Kalon P/L* (1998) 26 ACSR 427 at 430; *Young v Sherman* (2002) 170 FLR 86; *Bovis Lend Lease P/L v Wily* (2003) 45 ACSR 612; *Blacktown City Council v Mesarithur Telecommunications P/L* (2004) 47 ACSR 391.

Disclosing material information

1.15 Section 439A(4) and reg 5.3A.02 set out matters that a voluntary administrator must include in the documents that accompany the notice of the second meeting of creditors. It has been held that a s439A report must contain all information that is material to the creditors' decision, including material details of what a proposed DCA will contain.

Note: See *M&S Butler Investments Pty Ltd v Grampy Map's Franchising Pty Ltd* (1997) 24 ACSR 695; *Commissioner of Taxation v Comcorp Australia Ltd* (1996) 70 FCR 356; 21 ACSR 590.

1.16 We consider that deed administrators have an implied obligation to include similar matters in the documents that accompany a s445F notice where a DCA variation is proposed.

1.17 Section 445D reinforces the disclosure obligations of administrators by providing that the court may terminate a DCA if (*inter alia*) information that is material to the creditors' decision to approve the proposed DCA was omitted or was false or misleading.

1.18 When submitting to creditors a DCA proposal that involves a creditors' trust, administrators should disclose all the information that is material to the creditors' decision about whether to accept the particular risks associated with such a proposal. In Section 2 of this guide, we set out the information we think is material to that decision.

Expressing an opinion that protects creditors' interests

1.19 Administrators have an obligation to provide creditors with a statement setting out (*inter alia*) the administrator's opinion about whether it would be in the creditors' interests for the company to execute a proposed DCA or DCA variation and the reasons for that opinion: see s439A(4)(b) and paragraph 1.16 of this guide.

1.20 Where a DCA proposal involves a creditors' trust, we consider that administrators fulfilling this obligation will discuss the advantages and disadvantages for creditors of the proposed creditors' trust when making their recommendation.

1.21 We also consider that the obligation to ensure the interests of creditors are adequately protected means that there are some circumstances where an administrator should not recommend that creditors approve a DCA proposal involving a creditors' trust.

1.22 Examples of such circumstances include where:

- (a) the proposed value of the creditors' trust fund cannot be reasonably estimated at the time the proposal will be voted on by the creditors. We consider that in such a case, the amount that may become available to the creditors as beneficiaries of the trust will be so speculative that it will never be in the creditors' interests for the company to execute a DCA which terminates almost immediately their status and rights as creditors;

Note: DCAs that do not involve a creditors' trust may in some cases propose a return to creditors that could be described as speculative. However, in those cases, the interests of creditors are different because the creditors' status as creditors (and their rights against the company under Part 5.3A) will not be prematurely extinguished as may occur where a creditors' trust is used.

- (b) there is reason for concern about whether the trustee will receive all of the trust fund, or at least adequate and enforceable security for the trust fund, before the DCA terminates and the creditors' rights (as creditors) against the company are extinguished. This is because it will rarely be in the creditors' interests to place on them (and the trustee) all the risks of failure of the trust if there is future non-performance of obligations undertaken under the DCA by the company or a third party;

Note: See also *Kalon v Sydney Land Corp P/L* (1998) 26 ACSR 393 upholding *Sydney Land Corp P/L v Kalon P/L* (1998) 26 ACSR 427.

- (c) the DCA or trust deed provisions will permit the trustee (or any replacement trustee) of the creditors' trust to be a person who does not have the necessary skills and experience or is otherwise unsuitable to be the trustee. The risk to creditors from an unsuitable trustee is severe. In our view, the interests of creditors are likely to be adequately

REGULATORY GUIDE 82: External administration: DCAs involving a creditors' trust

protected if the trustee of the creditors' trust must be a registered liquidator, but will never be adequately protected if the trustee will or could be the company to which the administrator is appointed;

Note: This does not imply that the trustee should always be the same person as the deed administrator; the trustee could be another registered liquidator.

- (d) there is reason for concern about whether the proposed trustee will have adequate civil liability insurance for their conduct as trustee of the creditors' trust;
- (e) the DCA and/or the trust deed will not provide processes and rights that are at least as favourable to the beneficiaries as the processes for and rights of creditors under the Act;
- (f) concrete details about the proposed structure and terms of the DCA and trust deed cannot be provided. Because of the additional complexity of creditors' trust arrangements, we do not consider that a broad outline of the proposed DCA and proposed creditors' trust deed is sufficient. In practical terms, we think it is unlikely that administrators will be able to satisfy their disclosure obligations to creditors unless a draft DCA and a draft trust deed have been prepared.

Note: See also *Kirwan v Cresvale Far East Ltd (in liq)* [2002] NSWCA 395 at [382] per Young CJ; (2003) 44 ACSR 21, *Commissioner of Taxation v Concorp Australia Ltd* (1996) 70 FCR 336 at 389, 21 ACSR 590 at 624.

'Holding' DCAs and 'self-executing' creditors' trusts

1.23 We are aware that creditors (particularly of large companies) have been asked to approve so-called 'holding' DCAs. These holding DCAs are typically used as a means of providing more time for a voluntary administrator (or the directors or third parties) to develop proposals for restructuring or otherwise resuscitating the company, thereby avoiding the need for the voluntary administrator to seek an extension from the court of the convening period for the second creditors' meeting under s439A. Typically, holding DCAs do not contain any concrete provisions on the future of the company or any immediate benefits for creditors.

1.24 In our view, administrators should not submit to creditors a proposal for a holding DCA where the terms of the holding DCA would permit subsequent creation of a creditors' trust and effectuation of the DCA without the need to first obtain express creditor approval of the creditors' trust by means of a formal variation of the DCA. We consider that before a creditors' trust is created, creditors should be given specific information as indicated in this guide.

1.25 Where a holding DCA is proposed, we consider that its terms should:

- (a) exclude an open-ended or very lengthy period to formulate a concrete proposal for continuing the company or its business; and

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Note: An open-ended or very lengthy period magnifies the potential remuneration of the deed administrator with little or no tangible benefit for creditors. It therefore raises significant conflict of interest issues, as well as issues about whether the holding DCA is in the interests of the creditors as a whole or infringes the purpose and policy of Part 5.3A.

- (b) include a program for interim reporting to creditors on steps taken and results obtained by the deed administrator, so that creditors can monitor the deed administrator's efforts.

Section 2: Disclosing material information

What is material information?

2.1 In this section of the guide, we set out what we think is material information where a DCA proposal involves a creditors' trust. In a particular case, there may also be other material information that should be disclosed.

Note: Parts of this section may also be relevant to DCAs that do not involve a creditors' trust.

2.2 Administrators have an obligation to give creditors information that will enable them to:

- (a) understand a DCA proposal; and
- (b) appreciate the legal and practical implications for them of authorising the company to execute the proposed DCA (or DCA variation).

The information should be set out in the s439A report (or explanation that accompanies the s445F notice of meeting) as simply, clearly and succinctly as possible in the circumstances.

2.3 Where the DCA proposal involves a creditors' trust, we consider this obligation means that information should be provided which enables creditors to understand the actual and potential implications and specific risks for them of the proposed creditors' trust arrangements. Creditors should be able to make a realistic and informed assessment of the proposal and whether they should approve it (including, but not limited to, whether they are likely to receive a better return under the particular DCA proposal, under a DCA that does not involve a creditors' trust, or under a winding up).

2.4 Much of the information that we think should be provided to creditors will describe the administrator's understanding of the law. Therefore, we consider that administrators should base such information on legal advice received by them that is applicable to the particular DCA proposal.

2.5 Because of the additional complexity involved in a DCA proposal involving a creditors' trust, we consider that creditors should be given adequate opportunity to obtain (if they wish) professional advice about the proposal, its implications and risks before they vote on the proposal. This may affect the appropriate period of notice of a meeting, the need for an extension of the convening period, or the need for an adjournment of the meeting.

2.6 Where a DCA (or DCA variation) involving a creditors' trust is approved and executed, we expect administrators to lodge with ASIC, in addition to the DCA (or DCA variation):

- (a) a copy of the creditors' trust deed; and
- (b) any other associated document (such as an 'implementation deed') that is referred to in the DCA or is otherwise necessary to support the creditors' trust arrangements.

This is because ASIC, creditors and the public can only properly understand the DCA if they understand the associated arrangements.

Table 1: Information for creditors

Reasons	The reasons why the DCA proposal involves a creditors' trust (see paragraphs 2.7-2.9)
Key events	The anticipated sequence of key events if the DCA proposal is approved, and the implications for creditors (see paragraphs 2.10-2.11)
Return	The anticipated return to creditors/beneficiaries (see paragraph 2.12)
Trustee particulars	The identity, skills, experience and insurance of the proposed trustee (see paragraphs 2.13-2.14)
Remuneration	The proposed remuneration and expenses of the deed administrator and trustee (see paragraph 2.15-2.16)
Indemnities	Details of any indemnities for fees or liabilities (see paragraph 2.17)
Powers	The differences between the powers of a deed administrator under the Act and the trustee under the DCA proposal (see paragraph 2.18-2.19)
Claims	How creditors' claims will be dealt with under the DCA proposal and in what priority (see paragraphs 2.20-2.21)
Other creditor/beneficiary differences	A comparison of the protections and rights of creditors under the Act and of beneficiaries under the DCA proposal (see paragraphs 2.22-2.24)
GEERS	Any effect on employee entitlements under GEERS (see paragraph 2.25)
Compliance opinion	An opinion on the capability of the company (and relevant third parties) to comply with obligations to the trustee (see paragraph 2.26)
Solvency statement	The basis for an opinion that the company will be solvent at the date of effectuation of the DCA (see paragraph 2.27)
Tax (company/trust)	Details of the taxation and stamp duty implications for the company and the trust (see paragraph 2.28)
Tax (creditor/beneficiary)	Potential differences in taxation implications for creditors and beneficiaries (see paragraph 2.29)
Other	Any other material aspects or implications (see paragraph 2.30)

Reasons

- 2.7 Administrators should provide an explanation of the reasons why the DCA proposal involves a creditors' trust, instead of a DCA where creditors' claims and rights would be dealt with directly under the DCA and the Act.
- 2.8 We expect this explanation to include identification of any legal or commercial reasons, and a discussion of why it is considered to be in the interests of creditors as a whole to use the proposed creditors' trust.
- 2.9 If one of the stated reasons is to enable listing of the company or re-quotations of the company's financial products on a financial market such as ASX, details should also be provided of:
- (a) the market operator's requirements for listing or re-quotations and how it is proposed that the company would meet those requirements; and
 - (b) how and why listing or re-quotations would be in the interests of the creditors (as opposed to the directors, shareholders or some other party).

Key events

- 2.10 Administrators should explain the anticipated sequence and relative timing for each of the following key events if the DCA proposal is approved, and the implications of each event for creditors:
- (a) execution of the DCA;
 - (b) creation of the creditors' trust;
 - (c) termination of the DCA;
 - (d) receipt of the creditors' trust fund by the trustee; and
 - (e) distribution to creditors/beneficiaries.
- 2.11 The explanation of implications should include the nature of the legal relationship of the creditors to the company after each event (and specifically, when they would cease to be creditors), and what will happen if any of these events, or their timing, does not eventuate as anticipated.

Return to creditors

- 2.12 Administrators should provide information about the anticipated return to creditors/beneficiaries under the DCA proposal including:
- (a) the anticipated date(s) when the trust fund will be received by the trustee and from which sources;
 - (b) the anticipated value of the total trust fund and of the portion that would be available for distribution to beneficiaries, with an explanation of any difference in those values;

Note: See also paragraph 1.22(c) of this guide.

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- (c) the anticipated date(s) for distribution by the trustee to the beneficiaries;
- (d) the anticipated rate(s) of distribution by the trustee;
- (e) risks to creditors/beneficiaries associated with any delay in receipt of the trust fund by the trustee, or in distribution by the trustee to the beneficiaries; and
- (f) the potential return to creditors if the DCA proposal did not involve a creditors' trust.

Note: We consider that the information in this paragraph should be linked to information provided about remuneration, expenses, taxation etc so that creditors are able to identify and weigh up the additional overall costs involved because of the creditors' trust and any potential increase in the distribution to them, against the likelihood of, and any delay in, receiving that distribution.

Trustee particulars

2.13 Administrators should provide information about the proposed trustee, including:

- (a) why that trustee is proposed and is considered appropriate, with details of their qualifications, skills and relevant experience to perform the duties and functions they will have as trustee of the creditors' trust;
- (b) whether the DCA proposal requires the trustee (and any replacement trustee) of the creditors' trust to be the deed administrator or other person registered by ASIC under Part 9.2 as a liquidator;
- (c) whether ASIC or any other government regulator will have supervisory powers over conduct by the proposed trustee in that capacity, and if so, the nature of those powers;

Note: Administrators should note our view that ASIC and the CALDB have certain supervisory powers under Part 9.2 over conduct by the trustee where the DCA and trust deed provide that the trustee is a registered liquidator.

- (d) whether the proposed trustee would have any potential conflict of interests when acting as trustee and if so, the nature of the conflict and how it would be managed; and
- (e) whether the proposed trustee has civil liability insurance (including professional indemnity and fidelity) that will cover conduct by them in their capacity as trustee of the proposed trust, and the nature and aggregate value of any such insurance.

Note: See also paragraphs 1.22(d) and 2.14 of this guide.

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2.14 If the proposed trustee is a registered liquidator, administrators should note that:

- (a) where the registered liquidator has provided a performance bond as security for the purposes of s1284, that bond will not cover conduct by the registered liquidator in the capacity of trustee of a creditors' trust. The registered liquidator would need insurance covering conduct as a trustee; and
- (b) where the registered liquidator is relying on insurance to satisfy s1284 under Policy Statement 33 *Security deposits* [PS 33], it will be necessary to confirm whether that policy covers conduct by the registered liquidator in the capacity of trustee. If not, additional insurance would be needed.

Remuneration and expenses

2.15 Administrators should provide details of the remuneration and anticipated expenses of the deed administrator and proposed trustee, and a comparison of the remuneration process for the deed administrator and the trustee.

2.16 The information should cover:

- (a) how and when the deed administrator and trustee would be paid and at what rates;
- (b) the effect of the fees and expenses of each of the deed administrator and trustee on the anticipated distribution to beneficiaries of the trust (see also paragraph 2.12 of this guide). This includes identifying any additional fees and expenses involved because of the use of a creditors' trust (such as through duplication of activity); and
- (c) the rights that beneficiaries would have to approve and/or challenge fees charged by the trustee (including what law and courts would decide those rights), compared with the rights they would have as creditors of a company subject to a DCA.

Note: See also paragraph 1.22(e) of this guide.

Indemnities

2.17 Administrators should provide the details and implications for creditors/beneficiaries of any indemnity for fees or liabilities that has been (or will be) provided to the deed administrator or trustee, including the relationship between the indemnifier, the company, the deed administrator and the trustee. This includes any indemnity or lien in favour of the deed administrator or trustee over the assets of the company or over the trust fund under the proposed terms of the DCA or trust deed.

Powers

2.18 Administrators should explain the differences between the powers of a deed administrator under the Act and the powers the trustee would have under the proposed trust deed and the relevant State or Territory Trustee Act.

2.19 This includes identification of any likely deficiencies in the powers of the trustee to perform the functions envisaged under the proposed trust deed, and which may lead to applications to court (and associated costs) by the trustee that would not be necessary for a deed administrator.

Claims

2.20 Administrators should explain how creditors' claims against the company will be dealt with under the DCA proposal and in what priority. This includes whether the value of those claims will be determined by the deed administrator or by the trustee. If by the trustee, there should be an explanation of what the process of determination will be and confirmation that the trustee will have unrestricted and free access to all the books and records of the company necessary to determine claims.

2.21 If unsecured creditors' priorities (as beneficiaries of the trust) will not follow the priorities set out in s556, the nature of and reasons for the divergence from s556 should be explained. If the claims adjudication processes by the trustee and the associated rights of beneficiaries would differ from the processes and rights under the Act for creditors' claims, the differences and their implications for beneficiaries should also be explained.

Note: See also paragraph 1.22(c) of this guide.

Other creditor/beneficiary differences

2.22 Administrators should provide a comparison of the protections and rights that creditors would have under the Act as creditors of a company subject to a DCA, and the protections and rights they would have as beneficiaries of the proposed trust.

2.23 In relation to creditors, we expect this comparison to include explanation of the ability of a creditor to:

- (a) challenge decisions, actions or omissions by a deed administrator, including decisions about the value of their claim against the company;
- (b) be informed (including through reports to creditors, meetings of creditors, and lodgement of statements of receipts and payments with ASIC, where these are required) about the progress of the external administration;

- (c) require a deed administrator to call a meeting of creditors to put a resolution to vary or terminate a DCA;
- (d) apply to the court for the DCA to be varied, terminated or avoided; and
- (e) complain to ASIC about conduct by the deed administrator.

2.24 In relation to beneficiaries of the proposed trust, we expect this comparison to include explanation of:

- (a) the law that would govern interpretation of the trust deed and the trustee's powers and duties;
- (b) how beneficiaries, individually and collectively, would be able to monitor and enforce compliance by the trustee, the company and any relevant third parties with the terms of the DCA, the trust deed and any 'implementation deed' or other document setting out obligations connected with the creditors' trust. This includes the rights that beneficiaries would have (and against whom) if any part of the trust fund is not paid to the trustee in accordance with the proposed DCA, trust deed or other aspect of the arrangements;
- (c) the rights that a beneficiary would have to challenge decisions, actions or omissions by the trustee, including decisions about the value of their entitlement to a distribution out of the trust fund;
- (d) how, when and by whom the terms of the trust deed could be varied, including the rights that a beneficiary would have to call, or require the trustee to call, a meeting of beneficiaries to vary or terminate the trust deed; and
- (e) how, and to which supervisory body, a beneficiary could complain about decisions or other conduct by the trustee.

GEERS

2.25 Administrators should disclose the effect (if any) for employee creditors of becoming a beneficiary of a creditors' trust on their rights under the General Employee Entitlements and Redundancy Scheme (GEERS), or on the Commonwealth Government's rights of subrogation under GEERS.

Compliance opinion

2.26 Administrators should state:

- (a) the inquiries they have made about the capability (including financial capability) of the company and any relevant third party to comply with their obligations under the DCA proposal;
- (b) the information they have received in response to those inquiries; and

REGULATORY GUIDE 82: External administration: DCAs involving a creditors' trust

- (c) based on this information, their opinion on whether the company (and any relevant third party) is capable of complying and is likely to comply with its obligations to the trustee, if the DCA proposal is approved by creditors.

Note: See also paragraph 1.22(b) of this guide.

Solvency statement

2.27 Administrators should state the basis on which they have formed the opinion that the company will be solvent at the date of effectuation of the DCA, if the DCA is wholly effectuated on the terms proposed.

Note: An administrator who has not formed or cannot form this opinion should re-evaluate the proposal. See paragraph 1.14 of this guide.

Taxation etc (company and trust)

2.28 Administrators should provide details of the taxation (including capital gains tax), stamp duty and other financial implications for the company and for the trust of:

- (a) establishing the trust;

Note: Administrators are reminded that trusts are entities that are subject to Australian Business Number (ABN) registration requirements and to Australian income tax legislation.

- (b) transferring to the trust the company's liabilities to its creditors and, where applicable, other property of the company;
- (c) where applicable, realising trust assets; and
- (d) distributing trust assets to the beneficiaries.

This should include explanation of how these costs will impact on the anticipated return to creditors/beneficiaries (see also paragraph 2.12 of this guide).

Taxation (creditor/beneficiary)

2.29 Administrators should provide a statement in general terms about the potential taxation implications for a creditor of receiving distributions (in their capacity as beneficiary) from a trust rather than payment from the company in their capacity as creditors, with a statement advising creditors to seek professional advice about their individual taxation circumstances.

Other

2.30 Administrators should provide information about any other material aspects or implications of the particular DCA proposal, such as:

REGULATORY GUIDE 82: External administration: DCAs involving a creditors' trust

- (a) whether an Australian financial services (AFS) licence or authorisation would be needed by the trustee and if so, the financial and other implications for creditors/beneficiaries;

Note: Administrators should note that the automatic AFS licensing exemptions available to external administrators under s911A(2)(f) may not apply to registered liquidators acting as trustees of a creditors' trust.

- (b) if the DCA proposal involves preservation of the corporate shell, any independent opinion about the estimated value of the corporate shell;
- (c) if the DCA proposal involves a proposed equity raising and reorganisation of the company's share capital, information about what this would involve (including costs and the implications of those costs for the return to creditors/beneficiaries), and the implications of relevant fundraising or takeover laws.

Key terms

In this guide, these terms have the following meanings:

- ABN** Has the same meaning as in s9
Act Corporations Act 2001 (Cth), including regulations made for the purposes of the Act
- administrator** Has the same meaning as in s9
- Note: It therefore includes deed administrators and voluntary administrators
- AFS licence** An Australian financial services licence under Part 7.6
- ASIC** Australian Securities and Investments Commission
- ASX** Australian Stock Exchange Ltd
- CALDB** Companies Auditors and Liquidators Disciplinary Board
- DCA** A deed of company arrangement
- DCA proposal** A proposed DCA or proposed variation of a DCA
- deed administrator** An administrator of a DCA
- GEERS** The General Employee Entitlements and Redundancy Scheme
- Part 9.2 (for example)** A part of the Act (in this example, numbered 9.2)
- reg 9.2.01 (for example)** A regulation in the *Corporations Regulations 2001* (in this example, numbered 9.2.01)
- registered liquidator** A person registered by ASIC under s1282(2)
- s1282 (for example)** A section of the Act (in this example, numbered 1282)
- voluntary administrator** An administrator of a company but not of a DCA

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ANNEXURE E

ALLIED BRANDS LIMITED (ADMINISTRATORS APPOINTED)

ESTIMATED OUTCOME POSITION

	Notes	TRIDENT CAPITAL P/L DOCA		DIRECTORS DOCA		LIQUIDATION	
		Optimistic	Pessimistic	Optimistic	Pessimistic	Optimistic	Pessimistic
Contribution under DOCA	12.1	800,000	800,000	\$ 345,000	\$ 175,000	\$ n/a	\$ n/a
Floating Assets	12.2	30,000	30,000	30,000	+ Geers amount	not known	30,000
Fixed Assets	12.3	3,000	2,035	3,000	30,000	3,000	2,035
Preferences	12.4	n/a	n/a	n/a	n/a	270,000	nil
Uncommercial Transactions	12.4	n/a	n/a	n/a	n/a	nil likely	nil
Insolvent Trading	12.4	n/a	n/a	n/a	n/a	not known	nil
Director-related transactions	12.4	n/a	n/a	n/a	n/a	nil likely	nil
Total Funds Available		833,000	832,035	378,000	207,035	273,000	32,035
Administrators' Fees	12.5	134,515	134,515	134,515	134,515	134,515	134,515
Deed Administrators' Fees	12.5	60,000	60,000	80,000	80,000	n/a	n/a
Liquidators' Fees	12.5	n/a	n/a	n/a	n/a	120,000	120,000
Petitioning Creditor Costs	12.6	10,000	10,000	10,000	10,000	10,000	10,000
Estimated Outlays	12.7	40,000	60,000	40,000	60,000	not known	10,000
Total Estimated Fees & Outlays		244,515	264,515	264,515	284,515	not known	264,515
Available Funds for Priority Creditors		588,485	567,520	170,000	Geers amount (~ \$16,000)	not known	nil
Employee Entitlements	12.8	100,000	800,000	100,000	nil	not known	n/a
Available Funds for Unsecured Creditors		488,485	nil	70,000	nil	not known	nil
Ordinary Unsecured Creditors	12.9	10,000,000	17,780,000	10,000,000			
Dividend to Unsecured Creditors (cents/\$)		4.88 cents	nil	0.7 cents	nil	not known	nil
Timing		February 2012	n/a	February 2012	n/a	not known	n/a

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ANNEXURE F

ALLIED BRANDS LIMITED (ADMINISTRATORS APPOINTED)

ACN: 108 958 274

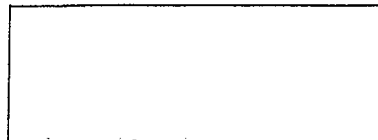
ABN: 20 108 958 274

SUMMARY OF FINANCIAL STATEMENTS

Profit & Loss Statement Year Ended	30 Jun 2008		30 Jun 2009		31 Dec 2009	30 Jun 2010
	Consolidated	Company	Consolidated	Company	Consolidated	Consolidated
Income	40,860,878	4,381,223	54,222,238	4,520,370	31,494,366	58,055,457
Expenses	(33,550,753)	(3,266,393)	(50,269,434)	(4,166,913)	(28,493,217)	(100,716,437)
Profit / (Loss) Before Income Tax	7,310,125	1,114,830	3,952,804	353,457	3,001,149	(42,660,980)
Income Tax Expense	(1,604,782)	280,954	(1,008,477)	(151,525)	(1,111,139)	7,273,185
Net Profit / (Loss)	5,705,343	1,395,784	2,944,327	201,932	1,890,010	(35,387,795)

Balance Sheet As At	30 Jun 2008		30 Jun 2009		31 Dec 2009	30 Jun 2010
	Consolidated	Company	Consolidated	Company	Consolidated	Consolidated
Assets						
Current Assets	16,763,161	2,146,317	26,491,747	3,131,403	28,650,513	21,716,327
Non-Current Assets	30,987,613	30,392,644	42,965,062	40,420,082	46,591,421	24,956,193
Total Assets	47,750,774	32,538,961	69,456,809	43,551,485	75,241,934	46,672,720
Liabilities						
Current Liabilities	12,646,686	6,176,171	16,219,079	4,066,554	25,985,859	38,043,063
Non-Current Liabilities	14,091,168	10,996,262	17,921,438	12,557,426	7,336,415	3,914,401
Total Liabilities	26,737,854	17,172,433	34,140,517	16,623,980	33,322,274	41,957,464
Net Assets	21,012,920	15,366,528	35,316,292	26,927,505	41,919,660	4,715,256
Total Equity	21,012,920	15,366,528	35,316,292	26,927,505	41,919,660	4,715,256

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Report as to affairs

Related forms:

507A Statement verifying report under s475(1)

911 Verification or certification of a document

If there is insufficient space in any section of the form, you may photocopy the relevant page(s) and submit as part of this lodgement

Company details

Company name

Allied Brands Ltd

ACN/ABN

108 958 274

Lodgement details

Who should ASIC contact if there is a query about this form?

Firm/organisation

KordaMentha Qld

Contact name/position description

Lachlan McIntosh - Partner

ASIC registered agent number (if applicable)

Telephone number

07 3225 4901

Postal address or DX address

GPO Box 3127

Brisbane

QLD

4001

1 Annexure

For the purposes of the statement in Form 507A only.

*Strike out whichever is inapplicable

This is the annexure of pages marked "A" referred to in the Statement verifying report signed by me/us* and dated as follows.

Date of the Statement verifying report

07/04/11
[D] [D] [M] [M] [Y]

Each signatory must complete and sign a copy of Form 507A Statement verifying report under s475(1) to be lodged with Form 507

Name

Lachlan Stuart McIntosh

Signature

Name

Signature

Name

Signature

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3 Assets and liabilities

Date specified under the relevant section as the date of report (see Directions)

07, 04, 11
 [D] [D] [M] [M] [Y] [Y]

3.1 Assets not specifically charged	Valuation (for each entry show whether cost or net book amount) \$	Estimated Realisable Values \$
(a) interest in land as detailed in schedule A	0.00	0.00
(b) sundry debtors as detailed in schedule B	6,836,335.00	6,836,335.00
(c) cash on hand	0.00	0.00
(d) cash at bank	(31,306.00)	(31,306.00)
(e) stock as detailed in annexed inventory	0.00	0.00
(f) work in progress as detailed in annexed inventory	0.00	0.00
(g) plant and equipment as detailed in inventory	162,286.00	162,286.00
(h) other assets as detailed in schedule C	12,272,364.00	12,272,364.00
Sub Total	19,239,679.00	19,239,679.00

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3 Continued... Assets and liabilities

	Valuation (for each entry show whether cost or net book amount) \$	Estimated Realisable Values \$
3.2 Assets subject to specific charges, as specified in schedule D	0.00	0.00
Less amounts owing as detailed in schedule D	0.00	0.00
Total Assets	0.00	0.00
Total Estimated Realisable Values	0.00	0.00
3.3 Less payable in advance of secured creditor(s)	97,403.00	97,403.00
Amounts owing for tax instalment deductions and prescribed payments tax	0.00	0.00
Amounts owing for employee entitlements as detailed in schedule E	97,403.00	97,403.00
3.4 Less amounts owing and secured by debenture or floating charge over assets	0.00	0.00
3.5 Less preferential claims ranking behind secured creditors as detailed in schedule F	10,642,000.00	10,642,000.00
3.6 Balances owing to partly secured creditors as detailed in schedule G	140,108.00	140,108.00
Total Claims (\$)		
Security Held (\$)		
3.7 Creditors (unsecured) as detailed in schedule H	2,002,485.00	2,002,485.00
Amount claimed (\$)		
3.8 Contingent assets Estimated to produce as detailed in schedule I (\$)	0.00	0.00
3.9 Contingent liabilities Estimated to rank as detailed in schedule J (\$0.00)		
<input type="checkbox"/> Estimated deficiency or		
<input type="checkbox"/> Estimated surplus		
<input type="checkbox"/> Subject to costs of administration or		
<input type="checkbox"/> Subject to costs of liquidation		
Share capital \$		
Issued \$		
Paid Up \$		

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FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Administrators of **Allied Brands Limited (Administrators Appointed)**

1. This is to state that the company was at **27 October 2010** and still is justly and truly indebted to
(1)
of
in the sum of dollars and cents.
ABN of Creditor:
- Particulars of the debt are:

Date	Consideration (2)	Amount		Remarks (3)
		\$	¢	

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: **(4)**

Date	Drawer	Acceptor	Amount		Due Date
			\$	¢	

- *3. 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.
- *3. I am the creditor's agent duly authorised in writing to make this statement in writing. 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.

DATED this day 2011.

Signature: Name:

- * Do not complete if this proof is made by the creditor personally.
- Insert full name 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.
 - State how the debt arose, for example "goods sold to company between the dates of"
 - Include details of vouchers substantiating payment.
 - 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.

Office Use Only			
File No.		Accepted	\$
Processed By:		Rejected	\$ Date Sent :
Date Processed		Under Consideration	\$
		Rejection Appealed	No / Yes / N/A

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APPOINTMENT OF PROXY

(1) *I/*We
of
a creditor of **Allied Brands Limited (Administrators Appointed)**
appoint (2)
as *my/*our *general/*special proxy to vote at the meeting of creditors to be held at **2:30 pm on 19 April 2011** or at any adjournment of that meeting, and to vote: (3)

*1. generally as he/she determines on *my/*our behalf

OR

*2. generally as he/she determines on *my/*our behalf and specifically in accordance with the following special instructions:
(tick the applicable alternatives below)

With regard to the following:

	FOR	AGAINST	ABSTAIN
That the company execute a Deed of Company Arrangement proposed by Trident Capital Pty Ltd			
That the company execute a Deed of Company Arrangement proposed by the directors			
Administrators to be appointed Deed Administrators			
That the company be wound up / placed into liquidation			
That the voluntary administration should end			
Remuneration of the Administrators as per the remuneration report dated 11 April 2011			
Remuneration of the Deed Administrators as per the remuneration report dated 11 April 2011			
Remuneration of the Liquidators as per the remuneration report dated 11 April 2011			

DATED this day of 2011.

Signature:

* Cross out whichever is inapplicable.

- (1) If a firm, strike out "I" and set out the full name of the firm.
- (2) Insert the name, address and description of the person appointed.
- (3) If a special proxy add the words "to vote for" or the words "to vote against" and specify the particular resolution.

Return to:

- Vincents Chartered Accountants (Attention: Peter Dinoris) - PO Box 13004 George Street Qld 4003

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