

30 January 2018

D.M Garden Creations Pty Ltd (In Liquidation) ACN 158 123 150 ("Company")

Initial Information for Creditors

The purpose of this document is to provide you with information about the liquidation of the Company and your rights as a creditor.

Notification of appointment

I was appointed Liquidator of the Company on 16 January 2018 pursuant to a winding up order by the Australian Securities and Investments Commission ("ASIC") pursuant to Section 489EA(2) of the Corporations Act 2001 (Cth) ("Act").

A copy of my Declaration of Independence, Relevant Relationships and Indemnities ("**DIRRI**") is attached at Appendix A. The DIRRI assists you to understand any relevant relationships that I have, and any indemnities or upfront payments that have been provided to me. I have considered each relationship and it is my opinion that none of the relationships disclosed in the DIRRI result in a conflict of interest or duty or affect my independence.

What is a Creditors' Voluntary Liquidation?

A creditors' voluntary liquidation is a liquidation usually initiated by the Company in circumstances where it insolvent, as it is unable to pay all of its creditors as they fall due. In this circumstance, ASIC has ordered the winding up of the Company pursuant to Section 489EA(2) of the Act.

According to the Company's records, you may be a creditor of the Company.

Information regarding the liquidation process is contained in the information sheet included at Appendix B called "*Insolvency information for directors, employees, creditors and shareholders*".

What happens to your debt?

All creditors of the Company are now creditors in the liquidation. As a creditor, you have certain rights, although your debt will now be dealt with in the liquidation.

In the event that there are monies to be distributed to creditors in the future, you will need to submit a formal proof of debt form, which is attached at Appendix C. A proof of debt is also used for voting purposes at any meetings of creditors.

If you have leased the company property, have a retention of title claim or hold a Personal Property Security in relation to the Company, please contact my office as soon as possible.

FTI Consulting (Australia) Pty Limited

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Your rights as a creditor

Information regarding your rights as a creditor is provided in the information sheet included at Appendix D.

I wish to draw to your attention the special right to request a meeting in the first 20 business days of a creditor's voluntary liquidation. If I receive a request for a meeting from at least 5% of known creditors that are not a related entity of the Company, I am required to hold a meeting, as long as the request is reasonable. The details of whether a request is reasonable or not is included in the information sheet at Appendix D.

Summary of the Company's affairs

As at the date of the Liquidator's appointment the Company had no current director.

The Liquidator is yet to receive a Report as to Affairs ("**RATA**") or a Summary of the Company's Affairs from the most current former director, Mr Adam Garfi ("**Former Director**").

The Liquidator has contacted the Former Director who has asserted the Company has no assets. The creditors identified in the liquidation to date are included in Appendix E for your information.

Further details of the Company's affairs will be provided to creditors in future correspondence.

Listing of creditors

I have attached at Appendix E a list of creditors, including their address and the estimated amounts of their claims, shown in the records of the Company. Any creditors related to the Company are identified. I am required to provide this information to creditors under law.

Update on liquidation to date

The Company was placed into liquidation by ASIC pursuant to Section 489EA(2) of the Act. ASIC initiated the winding up on the basis the Company had been 'abandoned' and former employees had outstanding employee entitlements owing to them.

According to the records held at ASIC, as at the date of the Liquidator's appointment the Company had no current directors.

The Liquidator's office contacted the most recent Former Director, Mr Adam Garfi, in relation to the Company's former activities and the reasons for the Company's failure. The Former Director has advised the following:

- i. The Company previously operated a concrete garden ornaments business from the premises located at 19 Industry Park Drive, Brooklyn VIC 3012;
- ii. The Former Director took over the business around 2012 from a family friend, Dino Moresco;
- iii. The Company had a turnover of approximately \$300,000 per annum and employed two full time and one part time employee; and



iv. The Company ceased trading approximately two years ago as the Former Director was unable to operate the Company profitably.

Following the closure of the Company's business, the Former Director entered bankruptcy on 10 June 2016 as a result of personal debts owed by him from trading the business.

What happens next?

I will proceed with the liquidation, including:

- recovering and selling any available property;
- investigating the Company's affairs; and
- reporting to the corporate regulator, ASIC.

If I receive a request for a meeting that complies with the guidelines set out in the creditor rights information sheet, I will hold a meeting of creditors.

I will write to you within three months of my appointment advising whether a dividend is likely and update you on the progress of my investigations.

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

Costs of the liquidation

I have been provided with an indemnity from ASIC in the amount of \$8,800 including GST for my remuneration and disbursements. Creditors are not required to approve this remuneration prior to being drawn.

Should the Liquidator incur remuneration and disbursements above the indemnity amount provided by ASIC, I may seek approval of my additional remuneration and disbursements from creditors by providing a detailed remuneration report to creditors.

Where can you get more information?

The Australian Restructuring Insolvency and Turnaround Association ("**ARITA**") provides information to assist creditors with understanding liquidations and insolvency.

This information is available from ARITA's website at arita.com.au/creditors.

ASIC also provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at asic.gov.au (search for "insolvency information sheets").

Statutory notices and advertisements about the Company will be published on ASIC's Published Notices website at www.insolvencynotices.asic.gov.au.



Please contact Ms Isabel Schoen on (03) 9604 0600 or Isabel.schoen@fticonsulting.com, if you have any queries in relation to the enclosed documents, or the liquidation generally.

Yours faithfully

for Blaketon

Ross Blakeley Liquidator

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LIST OF APPENDICES

No	Appendix	Description
1	Appendix A	Declaration of Independence, Relevant Relationships and Indemnities (DIRRI).
2	Appendix B	ASIC information sheet called "Insolvency information for directors, employees,
		creditors and shareholders".
3	Appendix C	Form 535 – Formal Proof of Debt or Claim form.
4	Appendix D	ARITA information sheet called "Creditor rights in liquidations".
5	Appendix E	List of creditors of the Company.
6	Appendix F	The Liquidators' Initial Remuneration Notice.

Appendices

Declaration of Independence, Relevant Relationships, and Indemnities ("DIRRI")

D.M Garden Creations Pty Ltd (In Liquidation) ACN 158 123 150 ("Company")

This document requires the Practitioner 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 Practitioner.

This declaration is made with respect to myself, my fellow Senior Managing Directors and FTI Consulting (Australia) Pty Ltd ("FTI Consulting" or "Firm") and associated entities.

A. Independence

I, Ross Blakeley of FTI Consulting have undertaken a proper assessment of the risks to my independence prior to accepting the appointment as Liquidator of the Company in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to my independence. I am not aware of any reasons that would prevent me from accepting this appointment.

B. Declaration of Relationships

i. Circumstances of Appointment

On 5 December 2017, the Australian Securities and Investments Commission ("ASIC"), approached me seeking my consent to act as Liquidator of the Company pursuant to Section 489EA of the Corporations Act 2001 ("Act").

It is part of the normal process that a consent to act by a registered liquidator(s) is provided prior to ASIC initiating a winding up of the Company.

I have received no remuneration for time incurred in conducting conflict checks, providing a consent to act and communicating with ASIC.

The referral from ASIC is part of a Deed of Standing Offer for Liquidator Panel entered into between ASIC and I. The referral from ASIC does not affect my independence for the following reasons:

- Practitioners need to be approached prior to consenting to a potential appointment to enable conflict checks to be conducted and the provision of a formal consent to act. It is not considered that such actions result in a conflict or represent an impediment to accepting the appointment;
- (b) The nature of the very limited pre-appointment involvement is such that it would not be subject to review and challenge during the course of my appointment;
- (c) No interaction with the Company Director, any security interest holder, or other creditors (save for the petitioning creditor's lawyer) is likely to occur prior to the appointment; and
- (d) The limited pre-appointment involvement will not influence my ability to be able to fully comply with the statutory and fiduciary obligations associated with my appointment as Liquidator of the Company in an objective and impartial manner.

ii. Relevant Relationships (excluding Professional Services to the Insolvent)

Neither I, nor any other Senior Managing Director of FTI Consulting or staff of FTI Consulting have had within the preceding 24 months, any relationship with the Company, an associate of the Company, a former insolvency practitioner appointed to the Company, or any person or entity that has security over the whole, or substantially the whole of the Company's property.

iii. Prior Professional Services to the Insolvent

Neither I, nor any other Senior Managing Director of FTI Consulting or associate of FTI Consulting have provided any professional services to the Company in the previous 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 24 months with the Company, an associate of the Company, a former insolvency practitioner appointed to the Company or any person or entity that has security over the whole or substantially the whole of the Company's property that should be disclosed.

C. Indemnities and Up-Front Payments

Pursuant to the Deed of Standing Offer for Liquidator, ASIC will provide an indemnity for the Liquidators remuneration and disbursements in the amount of \$8,800 (including GST).

I have not received any other indemnities or up-front payments in respect of my remuneration or disbursements.

Ross Blakeley 6 December 2017

NOTE:

- 1. If circumstances change, or new information is identified, we are required under the Corporations Act and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication as well as table a copy of any replacement declaration at the next meeting of the Insolvent's creditors.
- 2. Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.

Insolvency information for directors, employees, creditors and shareholders | ASIC - Australian Securities and Investments Commission



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- > Regulatory resources
- > Insolvency
- > Insolvency information for directors, employees, creditors and shareholders

Insolvency information for directors, employees, creditors and shareholders

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

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

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

List of information sheets

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

Where can I get more information?

Further information is available from the <u>ARITA website</u>. The ARITA website also contains the <u>ARITA Code of Professional Practice for</u> <u>Insolvency Practitioners</u>.

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

Last updated: 01/09/2017 10:57

FORM 535

Corporations Act (2001)

Regulation 5.6.49(2)

D.M GARDEN CREATIONS PTY LTD (IN LIQUIDATION) ACN 158 123 150 ("COMPANY")

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Liquidators of D.M Garden Creations Pty Ltd (In Liquidation)

1. This is to state that the company was on 16 January 2018, and still is, justly and truly indebted to:

_____ABN______(full name, ABN and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor) for dollars and cents.

Date	Consideration (state how the Debt arose)	Amount (exc GST) \$ c	Amount GST Only \$ c	Remarks (include details of voucher substantiating payment)

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: *(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).*

Date	Drawer	Acceptor	Amount \$ c	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.

I am the creditor's agent 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.

4. Substantiation of the Debt

Please enclose evidence to substantiate the debt owed.

Signature:	Dated:	
Name:		
Address:		



Creditor Rights in Liquidations

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



Right to request a meeting

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

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

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

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

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

Right to request information

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

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

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

Requests must be reasonable.

They are not reasonable if:

Both meetings and information:

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

Meeting requests only:

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

Information requests only:

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

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

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

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Right to give directions to liquidator

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

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

An individual creditor cannot provide a direction to a liquidator.

Right to appoint a reviewing liquidator

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

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

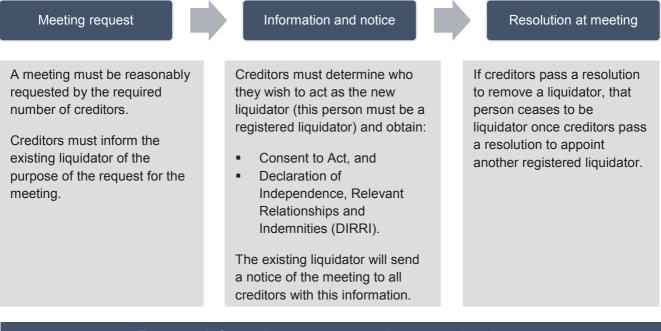
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

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

Right to replace liquidator

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

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



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

Version: July 2017

12112 (LIQ) - INFO - CREDITOR RIGHTS INFORMATION SHEET V1_0.DOCX

D.M GARDEN CREATIONS ACN 158 123 150

SCHEDULE OF CREDITORS

PRIORITY CREDITORS

Name	Address	Amount (\$)
Chelsea Patterson	Address withheld	\$15,551.47
Tony Mantini	Address withheld	\$13,532.05
Medhani Atsabaha	Address withheld	\$27,883.74
Total		\$56,967.25

UNSECURED CREDITORS

Name	Address	Amount (\$)
Independent Cement	750 Lorimer St, Port Melbourne VIC 3207	\$4,847.75
Chemical Technologies	80 Lipton Dr, Thomastown VIC 3074	Unknown
Railroad Transport	1 Cawley Rd, Yarraville VIC 3013	\$919.09
MTX Couriers	59 Lakewood Blvd, Braeside VIC 3195	\$557.96
Northline Transport	65 Strezlecki Ave, Sunshine West VIC 3020	\$1,514.18
South West Freight	Lot 1, Graham Road, Mt Gambier SA 5290	\$109.54
David Etheridge	Unknown	\$2,015.06
Optus	PO Box 280, Collins St West, Melbourne VIC 3000	Unknown
Commander	Level 10, 452 Flinders Street, Melbourne VIC 3000	Unknown
City West Water	1 McNab Ave, Footscray VIC 3011	Unknown
DMGO Investments	19 Industry Park Dr, Brooklyn VIC 3012	\$50,000.00
Total		\$59,963.58

INITIAL ADVICE TO CREDITORS – BASIS OF APPOINTEES' REMUNERATION

REMUNERATION METHODS

There are four basic methods that can be used to calculate the remuneration charged by an insolvency practitioner. They are:

Time based / hourly rates

This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.

Fixed fee

The total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration. Sometimes a practitioner will finalise an administration for a fixed fee.

Percentage

The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.

Contingency

The practitioner's fee is structured to be contingent on a particular outcome being achieved.

METHOD PROPOSED

We propose that our remuneration is calculated on a time basis. We believe this method is appropriate as it ensures that only the actual work performed is charged for. There are also various tasks required to be completed which do not involve the realisation of assets, such as reporting to ASIC, undertaking investigations, corresponding with creditors and answering their queries, and completing other statutory tasks required by law.

ESTIMATE OF REMUNERATION FOR THE ADMINISTRATION

We estimate our remuneration for undertaking the administration will be approximately \$8,800 (inclusive of GST), subject to the following variables which may have a significant effect on this estimate and that we are unable to determine until the administration has commenced:

• The full scope and extent of necessary work (from experience, unforeseen matters typically arise and may require us to perform additional work beyond that currently anticipated).

I received an indemnity to contribute to the estimated costs from the Australian Securities and Investments Commission in the amount of \$8,800 (inclusive of GST). This has been disclosed in my declaration of relevant relationships and indemnities.

Approved remuneration may exceed the amount of this indemnity and can be paid from the assets of the administration after approval by creditors or the Court.

EXPLANATION OF HOURLY RATES

The rates for our remuneration calculation are attached together with a general guide showing the qualifications and experience of staff that will be engaged in the administration and the role they take in the administration. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.

DISBURSEMENTS

Disbursements are divided into three types:

- Externally provided professional services these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- Externally provided non-professional costs such as travel, accommodation and search fees these are recovered at cost.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs.

I am not required to seek creditor approval for disbursements paid to third parties, but must account to creditors. However, I must be satisfied that these disbursements are appropriate, justified and reasonable.

I am required to obtain creditors' consent for the payment of internal disbursements not charged at cost, prior to these disbursements being paid from the administration. These disbursements typically include photocopying, printing and facsimile costs.

Details of the basis of recovering internal disbursements in this administration are provided below. Full details of any actual costs incurred will be provided with future reporting.

Nature of Disbursement	Rate (excluding GST)
Advertising and search fees	At cost
Couriers and deliveries	At cost
Postage	At cost
Printing and photocopying	\$0.50 (b/w); \$1.00 (colour) per page
Facsimile	\$1.50 (local); \$4.50 (international) per page
Staff travel – mileage	Cents per km method (per ATO rates)
Other staff travel/out of pockets	At cost
Storage of records (including boxes)	At cost

FTI Consulting Standard Rates effective 1 March 2017 (excluding GST)				
Typical classification	\$/hour	General guide to classifications		
Senior Managing Director	625	Registered/Official Liquidator and/or Trustee, with specialist skills and extensive experience in all forms of insolvency administrations. Alternatively, has proven leadership experience in business or industry, bringing specialist expertise and knowledge to the administration.		
Managing Director	580	Specialist skills brought to the administration. Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee. May also be a Registered/Official Liquidator and/or Trustee. Alternatively, has extensive leadership/senior management experience in business or industry.		
Senior Director	570	Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee, where required. May also be a Registered/Official Liquidator and/or Trustee or have experience sufficient to support an application to become registered. Alternatively, has significant senior management experience in business or industry, with specialist skills and/or qualifications.		
Director	510	Significant experience across all types of administrations. Strong technical and commercial skills. Has primary conduct of small to large administrations, controlling a team of professionals. Answerable to the appointee, but otherwise responsible for all aspects of the administration. Alternatively, has significant senior management experience in business or industry, with specialist skills and/or qualifications.		
Senior Consultant 2	440	Typically an ARITA professional member. Well developed technical and commercial skills. Has experience in complex matters and has conduct of small to medium administrations, supervising a small team of professionals. Assists planning and control of medium to larger administrations.		
Senior Consultant 1	380	Assists with the planning and control of small to medium administrations. May have the conduct of minor administrations. Can supervise staff. Has experience performing more difficult tasks on larger administrations.		
Consultant 2	360	Typically CAANZ qualified (or similar). Required to control the tasks on small administrations and is responsible for assisting with tasks on medium to large administrations.		
Consultant 1	315	Qualified accountant with several years experience. Required to assist with day-to-day tasks under the supervision of senior staff.		
Associate 2	280	Typically a qualified accountant. Required to assist with day-to-day tasks under the supervision of senior staff.		
Associate 1	260	Typically a university undergraduate or graduate. Required to assist with day-to-day tasks under the supervision of senior staff.		
Junior Associate	185	Undergraduate in the latter stage of their university degree.		
Administration 2	185	Well developed administrative skills with significant experience supporting professional staff, including superior knowledge of software packages, personal assistance work and/or office management. May also have appropriate bookkeeping or similar skills.		
Junior Accountant	155	Undergraduate in the early stage of their university degree.		
Administration 1	155	Has appropriate skills and experience to support professional staff in an administrative capacity.		

The FTI Consulting Standard Rates above apply to the Corporate Finance & Restructuring practice and are subject to review at 1 January each year.