

15 December 2017

Tonk Bros. Pty Ltd (In Liquidation)
ACN 004 594 147 (the “Company”)

Statutory Report to Creditors

1. Introduction

At a meeting of creditors held on 21 June 2017, creditors of the Company resolved to place the Company into liquidation and to appoint Mr Ross Blakeley and I as Joint and Several Liquidators (“**Liquidators**”) of the Company pursuant to Section 446A of the Corporations Act 2001 (“**Act**”).

This report is mandatory under Section 70-40 of the *Insolvency Practice Rules (Corporations) 2016 (Cth)* (“**Rules**”).

The purpose of this report is to provide creditors with an update on the progress of the liquidation and advise of the likelihood of a dividend being paid to creditors. It is to be read in conjunction with the previous reports provided to creditors of the Company.

2. Background Information

2.1 Appointment of Voluntary Administrators

The Company’s directors placed the Company into voluntary administration on 16 May 2017. Messrs David Ross and Gaurav Mishra of Hall Chadwick were appointed Voluntary Administrators of the Company. Mr Blakeley and I replaced Messrs Ross and Mishra as Voluntary Administrators on 26 May 2017.

2.2 Sale of Company’s Business Assets

Based on information provided by the directors of the Company and their advisors de Jonge Read, the Company’s business assets appear to have been sold to a related entity, Manton Manor Holdings Pty Ltd, on 31 December 2016.

Manton Manor Holdings Pty Ltd is a related entity of the Company by way of common directors.

The Directors and de Jonge Read have advised the Liquidators that the Company ceased trading the date the sale agreement was entered into with Manton Manor.

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The Schedule to the Sale Agreement indicates that the purchase price for the Company's business assets was calculated as follows:

| Details | (\$) |
|----------------------------|-------------------|
| Equipment and stock | 286,517.50 |
| Goodwill | 37,500.00 |
| Less Employee Entitlements | (166,336.33) |
| Total | 157,681.17 |

The sale price of the Company's business assets (equipment and stock) was based on a valuation dated 18 October 2016 provided by Slattery Auctions.

Slattery Auctions valued the Company's business assets on a Market Value In-Situ ("MVIS") and Auction Realisable ("AR") values at \$410,250 and \$190,785 respectively.

The Administrators note that the purchase price of \$286,518 is the exact midpoint between the MVIS and ARV values.

According to the valuation, the value of stock on MVIS and AR values at 18 October 2016 was \$77,000 and \$38,000 respectively. According to the Company's management accounts, discussions with the Company's management and correspondence from de Jonge Read to the Company in September 2016, the Company may have held stock, at the date of sale, valued in excess of what it was ultimately sold to Manton Manor for.

Based on the above, it appears Manton Manor acquired the Company's business assets at an undervalue, that may give rise to a claim(s) pursuant to Section 588FB and/or Section 588FDA of the Act. Further information regarding the Liquidators' potential claims are detailed at section 4.4 of this report.

The Liquidators also note that the Company did not advertise its business assets for sale or conduct a stocktake as at 31 December 2016 to adjust the purchase price for stock held. Based on their investigations to date, the Liquidators also note the following:

- (i) the sale proceeds were not paid by Manton Manor until 17 March 2017;
- (ii) no evidence was provided by the Directors, as requested, that indicates the employees of the Company were formally transferred to Manton Manor at the time of the sale;
- (iii) leases for the various locations where the Company formerly operated from were not assigned to Manton Manor until the weeks prior to the appointment of the Voluntary Administrators on 16 May 2017;
- (iv) Manton Manor continued to utilise the Company's bank account for a period of time following entering into possession of the Company's business.

Thus, the Directors may have breached their statutory duties pursuant to Section 180 of the Act by failing to take the necessary due care and diligence when realising the Company's business assets.

2.3 Sale of the Company's Real Property

The Company was the former proprietor of 224 Barker Street, Castlemaine, Victoria.

The Property was sold for \$1.46 million (excluding GST) on 29 August 2016. Settlement of the sale occurred on 27 November 2016. Based on the Liquidators' investigations to date, the purchaser is an unrelated entity.

On the date of sale, the Company entered into a lease with the purchaser of the Property.

The majority of the net sale proceeds (approximately \$1.1 million) was paid to the Commonwealth Bank of Australia Limited, pursuant to its first ranking mortgage.

2.4 Reasons for the Company's failure

The Liquidators' investigations indicate that the failure of the Company is attributed to the following factors:

- (i) The Company entered into a buying and marketing agreement with Mitre 10 Australia Pty Ltd ("**Mitre 10**") in 2015. The Company subsequently terminated the agreement which came at a significant cost;
- (ii) Ongoing trading losses, partially as a result of a decline in sales and increase in occupancy costs;
- (iii) A general lack of controls and accurate financial reporting; and
- (iv) Inadequate working capital.

3. Financial Position Summary

Provided in the table below is a summary of the assets and liabilities of the Company based upon information disclosed in the Directors' Report as to Affairs and the Liquidators' investigations to date. These amounts may change as further information becomes available:

Summary of Assets and Liabilities

| Details | Notes | RATA (\$) | Liquidator's Estimate (\$) |
|---|-------|--------------------|----------------------------------|
| Assets | | | |
| Cash at Bank | | 0 | 3,189 |
| Debtors | (i) | 19,122 | 2,257 |
| Total Assets | | 19,122 | 5,446 |
| Liabilities | | | |
| Priority Creditors | (ii) | (64,613) | (78,540) |
| Secured Creditors | (iii) | (343,659) | Nil |
| Unsecured Creditors | (iv) | (1,024,212) | (1,450,661) |
| Total Liabilities | | (1,432,484) | (1,529,201) |
| Estimated Net Surplus/(Deficiency) | | (1,413,362) | (1,523,755) |

Notes:

(i) The directors disclosed in their RATA that the Company had outstanding book debts of \$19,122. The Liquidators have forwarded a number of demands to the debtors and have collected \$2,257.

(ii) The amount owing to priority creditors relates to outstanding superannuation contributions.

If any employee believes they are owed outstanding entitlements by the Company other than unpaid superannuation contributions, they are requested to contact the Liquidators' office as soon as possible.

(iii) The RATA did not disclose the creditor(s) who are secured by debenture of circular security interests over assets in the amount of \$343,659.

(iv) Liquidators' estimate based on claims received to date.

As noted above a significant shortfall exists of approximately \$1,523,755.

4. Investigations

Part of the Liquidators' role is to examine possible offences of the Act committed by the Directors and/or the Company and report our findings to the Australian Securities and Investments Commission ("ASIC").

The Liquidators are also required to conduct investigations into various matters including potential claims for insolvent trading and voidable transactions.

The results of our investigations to date are outlined below.

4.1 Adequacy of book and records

Section 286 of the Act requires a company to keep written financial records that correctly record and explain its transactions, financial position and performance, to enable true and fair financial statements to be prepared and audited. Financial records must be kept for seven years after the completion of the transaction to which the records pertain.

To date, the Liquidators have been provided with limited amounts of soft copy books and records of the Company. Mr Jason Mills, a Director of the Company, has advised that the Company's financial information may not be accurate, particularly in relation to the value of the Company's stock held.

Based on the records received to date, the Company did not maintain adequate written records to comply with its obligations under Section 286 of the Act.

4.2 Report pursuant to Section 533 of the Act

On 11 September 2017, a report pursuant to Section 533 of the Act was submitted to ASIC, detailing any suspected breaches of the Act and other possible offences committed by the Directors of the Company.

ASIC subsequently requested that the Liquidators submit a supplementary report pursuant to Section 533(2) of the Act. The Liquidators are currently preparing this report and will lodge it with ASIC shortly.

4.3 Insolvent Trading - Section 588G of the Act

Pursuant to Section 588G of the Act, a director of a company has a duty to prevent a company from incurring debts whilst it is insolvent. Should a company incur such debts, a liquidator is entitled, pursuant to Section 588M of the Act, to commence proceedings against a current or former director to recover damages equivalent to the amount of the debts incurred during their directorship which remain unpaid by the company.

In the context of the Company, an insolvent trading claim requires consideration of the following issues:

- (i) what debts were incurred whilst the Company was insolvent remain unpaid;
- (ii) does the Director have available defences pursuant to Section 588H of the Act; and
- (iii) does the Director have assets or are they impecunious.

The Liquidators have undertaken investigations into the Company's likely date of insolvency. These investigations indicate that the Company was potentially insolvent from as early as December 2015. Accordingly, the Liquidators' believe it is likely that the Directors have breached Section 588G of the Act.

The Liquidators are currently considering a claim against the Directors pursuant to Section 588M of the Act.

As noted in the Liquidators' Update to Creditors dated 7 July 2017, to further assist in quantifying any potential insolvent trading claim against the Directors, creditors are requested (if not done so already) to complete and submit a Formal Proof of Debt or Claim form (enclosed), including any documentary evidence to support your claim against the Company.

This will also enable the Liquidators to expedite any potential adjudication process and distributions of funds should funds become available for distribution to creditors.

4.4 Uncommercial transaction and/or Unreasonable director-related transaction – Sections 588FB and Section 588FDA of the Act

Payments to related parties may be recoverable for the benefit of creditors pursuant to Section 588FB of the Act as uncommercial transactions or pursuant to Section 588FDA of the Act as unreasonable director-related transactions.

A transaction of a company may be recovered pursuant to these sections of the Act, 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:

- (i) the benefits (if any) to the company of entering into the transaction; and
- (ii) the detriment to the company of entering into the transaction; and
- (iii) the respective benefits to other parties to the transaction of entering into it; and
- (iv) any other relevant matter.

As detailed above, the Liquidators' investigations have identified that the sale of the Company's business assets to Manton Manor may fulfil the requirements of Section 588FB and/or Section 588FDA of the Act.

The Liquidators' investigations are continuing with regard to a potential claim against Manton Manor in respect of the above.

4.5 Preferential Payments – Section 588FA of the Act

Transactions (including a payment of money) between, the Company and an unsecured creditor six (6) months prior to the relation back day may constitute an unfair preference payment if the company was insolvent at the time of the transaction and it is likely that the recipient (i.e. the creditor) received a greater repayment than they would have if the Company's affairs were wound up.

In this case, the relation back day is the date of the Former Administrators appointment on 16 May 2017, with the relation back period being 16 November 2016 to 16 May 2017.

The Liquidators' investigations have identified that in the six months prior to the appointment of the Former Administrators, payments totalling approximately \$101,000 were identified as potentially unfair preference payments.

The Liquidators have issued demands to two creditors and are currently considering their responses.

If any creditors can provide further evidence regarding the Liquidators' investigations please contact this office as soon as possible.

In order to advance further investigations which may progress to taking certain recovery actions, the Liquidators may consider undertaking public examinations of relevant parties. However, the liquidation is currently without funds to undertake public examinations.

If any creditor is willing to provide funds, they are requested to put their proposal in writing to the Liquidators.

Any creditor who advances funds may, subject to Section 564 of the Act, receive a priority over the creditors of the Company, for the amount of that advance, if a successful recovery is obtained and a distribution is available.

Creditors shall be updated of our investigations and actions in due course.

5. Receipts and Payments

Attached at **Appendix A** are details of all receipts and payments in the liquidation to date.

6. Likelihood of a dividend

The likelihood of a dividend will be dependent upon the success of the recovery actions outlined in sections 4.3 to 4.5 of this report.

In the event that sufficient realisations or recoveries are made to enable a dividend to creditors, the Liquidators will provide a formal notice requesting creditors to submit a formal proof of debt to participate in the dividend.

7. Voluntary Administrators and Liquidators Fees and Disbursements

At the meeting of creditors held on 21 June 2017, creditors resolved to approve the Voluntary Administrators' fees in the amount of \$70,947 plus GST and disbursements.

The Liquidators' fees and disbursements incurred from appointment to 17 November 2017 total \$83,981.40 plus GST.

The Liquidators also received approval from creditors at the Second Meeting of Creditors on 21 June 2017 for their fees up to an interim maximum amount of \$50,000 plus GST. To date, the Voluntary Administrators and Liquidators are yet to draw any remuneration in respect of work undertaken to date.

8. Way Forward

The Liquidators will continue their investigations into the recovery actions detailed in section 4 of this report. Should sufficient realisations be made in the liquidation to pay a dividend, creditors will be notified accordingly.

Should creditors request the Liquidators hold a meeting of creditors, the request for a meeting must comply with the guidelines set out in the enclosed information sheet. I will then attend to holding a meeting of creditors.

9. 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”).

Should you have any queries, please contact the Liquidators office on (03) 9604 0600.

Yours faithfully



Paul Allen
Liquidator

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Appendix A: Receipts and Payments Summary

| Receipts and Payments to 13 December 2017 | |
|--|-------------------|
| Account | Total (\$) |
| Receipts | |
| Transfer from Pre-appointment Bank Account | 3,189.38 |
| Pre-appointment Debtors | 2,256.86 |
| Total Receipts | 5,446.24 |
| Payments | |
| Printing and Postage Costs | (925.80) |
| Total Payments | (925.80) |
| Cash at Bank | 4,520.44 |