



**AB Kambala Finances Pty Limited (In Liquidation)
ACN 114 715 285
("the Company")**

Statutory Report to Creditors

Section 70-40 of the *Insolvency Practice Schedule (Corporations) 2016* [IPS-C]

DATE OF APPOINTMENT

30 June 2019

EXTERNAL ADMINISTRATORS

Andrew McCabe and Chris MacDonnell

CONTACT

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Wexted Advisors
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1. Executive summary

We refer to our Initial Report to Creditors dated 12 July 2019 in which we advised of our appointment as Joint and Several Liquidators of AB Kambala Finances Pty Limited (In Liquidation) (“the Company”) on 30 June 2019 and your rights as a creditor in the Liquidation.

This report is mandatory under section 70-40 of the Insolvency Practice Rules (Corporations) 2016 (Cth) (“Rules”). The purpose of the report is to:

- Provide creditors with an update on the progress of the Liquidation; and
- Advise creditors of the likelihood of a dividend being paid in the Liquidation

Our Initial Report to Creditors included a Declaration of Independence, Relevant Relationships and Indemnities (“DIRRI”) signed by us as Joint and Several Liquidators of the Company. There have no changes to the position of this DIRRI.

2. Update on the progress of the Liquidation

Statutory Information

| | |
|--------------------------------|---|
| Company Name: | AB Kambala Finances Pty Limited |
| Trading Name: | N/A |
| Director: | Andrew John Binetter |
| Secretary: | Andrew John Binetter |
| Date of Incorporation: | 10 June 2005 |
| Registered Office: | Unit 1, 63 New South Head Road, Vaucluse, NSW, 2030 |
| Principal Place of Business: | Unit 1, 63 New South Head Road, Vaucluse, NSW, 2030 |
| Registered Security Interests: | N/A |

Nature of the Business of the Company

We understand the Company was part of the corporate structure that formerly housed the Nudie group. We are advised the Company ceased trading in or around 2015

Assets Identified & Comparison to Report on Company Activities and Property (“ROCAP”)

Mr Andrew Binetter provided our office with a completed statutory Australian Securities and Investments Commission (“ASIC”) form 507 ROCAP on 20 July 2019. We have provided comments in regard to the ROCAP where applicable in this report.

Below is a summary of the assets and liabilities of the Company based upon information in the ROCAP and/or information that we have uncovered in the initial review. These figures are subject to change dependent on further books and records being made available to us.

| Description | Note | ROCAP (\$) | Estimated Realisable Value (\$) |
|---|------|---------------------|---------------------------------|
| ASSETS | | | |
| <u>Tangible Assets</u> | | | |
| Interest in Land | 1 | - | - |
| Sundry Debtors | 2 | 5,094,911.86 | - |
| Cash on Hand | 3 | - | - |
| Cash at Bank | 4 | - | - |
| Inventory | 5 | - | - |
| Plant and Equipment / Motor Vehicles | 6 | - | - |
| Other Assets | 7 | - | - |
| Total Tangible Assets | | 5,094,911.86 | - |
| <u>Potential Additional Realisations</u> | | | |
| Voidable Transactions | 8 | - | Unknown |
| Insolvent Trading Claim | 9 | - | Unknown |
| Total Assets | | 5,094,911.86 | - |
| <u>Less: Professional Fees</u> | | | |
| Liquidators Remuneration | | - | 14,000.00 |
| Liquidators Expenses | | - | 1,000.00 |
| Total payments | | - | 15,000.00 |
| LIABILITIES | | | |
| <u>Non-Priority Creditors</u> | | | |
| Unsecured Creditors | 10 | 5,112,161.86 | 5,112,161.86 |
| Total Non-Priority Creditors | | 5,112,161.86 | 5,112,161.86 |
| Return to Non-Priority/ Unsecured Creditors (c/\$) | | - | Unknown |

Notes

1. Interest in Land

Mr Binetter disclosed in his completed ROCAP that the Company did not own any property.

We have conducted a title search in New South Wales in the Company's name. The title search did not identify any titles registered in the Company's name.

2. Sundry Debtors

Mr Binetter disclosed in his completed ROCAP that the Company is owed an amount of \$5.1M from AB Kambala Holdings Pty Limited ("Holdings") in the form of an Intercompany Loan.

We note we were also appointed Joint and Several Liquidators of Holdings on 30 June 2019. Our preliminary analysis of Holdings financial position has determined it is unlikely that recoveries will be sufficient to repay the Company's loan.

3. Cash on Hand

Mr Binetter disclosed in his completed ROCAP that the Company did not have any cash on hand. We have not identified any cash on hand at the date of our appointment.

4. Cash at Bank

Mr Binetter disclosed in his completed ROCAP that the Company did not have any bank accounts.

We wrote to all major financial institutions in Australia as part of our investigations. We note no bank accounts in the Company's name have been identified to date.

5. Inventory

Mr Binetter disclosed in his completed ROCAP that the Company did not own any inventory. Our investigations to date have not identified any stock owned by the Company.

6. Plant and Equipment/ Motor Vehicles

Mr Binetter disclosed in his completed ROCAP that the Company did not own plant and equipment. Our investigations to date have not identified any plant and equipment owned by the Company.

Mr Binetter disclosed in his completed ROCAP that the Company did not own any motor vehicles. We wrote to the Roads and Maritime Services ("RMS") requesting a search of vehicles in the Company's name. We are still waiting on a response from the RMS as at the date of this Report.

7. Other Assets

Mr Binetter disclosed in his completed ROCAP that the Company did not own any other assets. Our investigations to date have not identified any other assets owned by the Company.

8. Voidable Transactions

The preliminary results of our investigations into voidable transactions are set out in section 3 of this report.

9. Insolvent Trading

Details regarding our investigations into insolvent trading are set out in section 3 of this report.

10. Unsecured Creditors

A listing of unsecured creditors provided by the Director upon our appointment is shown below. We have not received any further claims from creditors at this stage.

| Name | Related Party | Address | Estimated (\$) |
|--|---------------|---|---------------------|
| Andrew Binetter | Yes | Information Withheld | 3,750.00 |
| Australian Securities and Investments Commission | No | GPO Box 9827, Brisbane QLD 4001 | Unknown |
| BinSam Finances Pty Ltd | Yes | PO Box 132, Rose Bay NSW 2029 | 3,531,911.86 |
| Ligon 237 Pty Limited | Yes | Unit 1, 63 New South Head Road, Vaucluse, NSW, 2030 | 1,563,000.00 |
| Suzanne Binetter | Yes | PO Box 132, Rose Bay NSW 2029 | 4,500.00 |
| Shield Holdings Pty Ltd | Yes | Unit 1, 63 New South Head Road, Vaucluse, NSW, 2030 | 9,000.00 |
| | | Total | 5,112,161.86 |

Secured Creditors

A creditor must have their interest validly registered against the Company on the national Personal Property Securities Register (PPSR) to enforce any security interest over the Company's assets (for example: unpaid stock under a retention of title clause).

If the security interest has not been properly registered or registered in time, the relevant asset will not be available to the creditor but instead vest in the Company.

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

If any creditors are aware of a security interest registered against the Company, please contact Patrick Skippen of our office on (02) 9210 1700 or by email pskippen@wexted.com

Priority Creditors

Pursuant to Section 556 of the *Corporations Act 2001* ("Act"), employee entitlements have a priority over other unsecured creditors. Mr Binetter did not disclose any outstanding employee entitlements in his completed ROCAP.

The Australian Taxation Office will lodge a claim on behalf of employees for any outstanding superannuation (if applicable), including the relevant superannuation guarantee and interest charges. In this regard, We note that the Director has not disclosed any outstanding superannuation owed to employees.

Employee Entitlements and the Fair Entitlements Guarantee (FEG)

We are not aware of any outstanding employee entitlements.

In the event there are any employee claims it is expected that insufficient funds will be recovered to enable a full distribution to employees, the federal government's Fair Entitlements Guarantee (FEG) scheme may be of assistance to those employees.

The FEG scheme assists employees with outstanding entitlements that become due because of employers becoming insolvent.

The scheme provides assistance with regard to the following employee entitlements:

- up to a maximum of 13 weeks unpaid wages for the period prior to the appointment of the Liquidator;
- unpaid annual leave;
- unpaid long service leave;
- up to a maximum of 5 weeks unpaid payment in lieu of notice; and
- up to a maximum of 4 weeks unpaid redundancy entitlement for each completed year of service.

If employees need to contact the FEG department, the details are below

Web site: www.ag.gov.au/industrial-relations/fair-entitlements-guarantee/Pages/default.aspx
E-mail: feg@jobs.gov.au
Phone: 1300 135 040

In the event that it is established that there are outstanding employee entitlements our office will be liaising with the FEG department to enable that distribution to be made to employees. In the interim, employees should contact us with details of their outstanding entitlements (if applicable).

3. Investigations

Part of our role is conducting investigations into various matters and to advise creditors on whether there would be amounts recovered for insolvent trading and preferential payments.

We are also required to examine possible offences and report our findings to ASIC. To date, no report has been issued to ASIC.

At this stage, we have not finalised our investigations into voidable transactions and potential insolvent trading. Further, we have not found any offences committed by the officers of the Company.

Adequacy of books 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 transactions to which the records pertain.

On 5 July 2019 we requested all books and records of the Company in Mr Binetter's possession. On 21 July 2019, Mr Binetter advised no records were available due to a number of re-locations (domestic and international), a fire (2004) and flooding (2016) that has resulted in records being lost or destroyed from 2004. As mentioned earlier in this Report, we are advised the Company ceased trading in or around 2015.

On 3 September 2019 we issued a Section 530B notice to Mr Binetter requesting all books and records of the Company be delivered within five business days to our office. No books and records were received from Mr Binetter within this timeframe. Finally, on 16 September 2019, we wrote to ASIC requesting their assistance in obtaining all books and records of the Company. We are currently liaising with ASIC in this regard.

In conclusion our preliminary assessment in the absence of any books and records being provided to our office is that the Company did not maintain adequate records to comply with its obligation under section 286 of the Act.

Report under section 533 of the Act

A report under section 533 of the Act may be submitted to ASIC. Although the contents of the report are confidential, we can confirm that it will address, amongst other things, any suspected breaches of the Act and

other offences by the director. We will assist ASIC should it decide to undertake further investigations in response to our report.

Solvency Examination

Section 95A of the Act states that a company is solvent if, and only if, it can pay its debts as and when they fall due.

At this stage, we have not been able to determine the solvency position of the Company as we have not been provided with the books and records of the Company.

To form a more conclusive opinion on the timing and cause(s) of the Company's insolvency, it would be necessary to undertake the following investigations:

- Obtain as much evidence as possible in relation to the Company's financial position and performance as well as other qualitative indicators of insolvency, such as recovery action by creditors and arrears of taxation and other statutory liabilities. This would require me to source further books and records;
- Performing an analysis of the Company's financial position and performance to identify the point at which the Company could no longer pay its liabilities as and when they fell due for payment, as part of which it may be necessary to reconstruct and/or prepare financial accounts for the Company; and
- Assessing the probative value of, and drawing conclusions from, any qualitative indicators of insolvency.

Alternatively, we note that the potential failure to maintain proper books and records in accordance with section 286 of the Act (as discussed above) may provide a rebuttable presumption of insolvency. A Liquidator can rely upon this presumption in, amongst other things, an application for compensation for insolvent trading. If the presumption is available, then the Company could be presumed to have been insolvent from the time it failed to retain sufficient books and records (up to a period of 7 years prior to the Liquidation). We consider that it would be prudent to obtain legal advice to ascertain whether the rebuttable presumption is in fact available in the Liquidation.

Insolvent Trading – Section 588G of the Act

Pursuant to section 588G of the Act, a director has a positive duty to prevent a company from incurring debts when there are reasonable grounds for suspecting that the company will be unable to pay its debts as and when they fall due (i.e. it is insolvent).

Section 588M of the Act provides that a Liquidator is entitled to recover compensation from a director equal to the loss or damage suffered by the Company as a result of a breach of section 588G.

The following investigations are required to determine whether there is a claim against the Director for insolvent trading and, if there is, whether there is any merit in pursuing the claim:

- We need to conclusively determine when the Company first became insolvent, or in the alternate, we would need to confirm that the presumption of insolvency is available in this liquidation due to deficiencies in the books and records. As outlined in the section headed "Solvency Examination", further investigations are required to form a view on these matters;
- It is necessary to quantify the unpaid debts of the Company which were incurred after the Company became insolvent (or was presumed to have been insolvent), which would determine the value of the claim for insolvent trading. We cannot complete this task until a conclusion has been reached on the Company's insolvency;
- To justify the considerable cost of pursuing an insolvent trading claim against the Director (which is completely separate from any action which ASIC can take for the offence of insolvent trading), We must be satisfied that the Director has the financial capacity to satisfy a claim; and

- Lastly, we need to have regard to the possibility that, even if we have an insolvent trading claim against the Director, he may be entitled to invoke the defences in section 588H. This issue has yet to be considered.

Voidable Transactions

The main type of voidable transactions are:

- Preferential payments (section 588FA of the Act);
- Uncommercial transactions (section 588FB of the Act); and
- Unreasonable director-related transactions (section 588FDA of the Act).

We have not identified any of these types of transactions to date due to no books and records of the Company being provided by Mr Binetter.

We will provide creditors with a further update on due course once our investigations have been completed.

Further inquiries relating to the winding up that may need to be undertaken

The following activities need to be undertaken:

- Secure all books and records of the Company
- Complete our investigations into the Company's affairs
- Commence any recovery actions that may be available with respect to further investigations surrounding both insolvent trading claims and unfair preferences
- Complete the s533(1) report to ASIC and await their response regarding potential funding for investigations particularly assistance in obtaining all books and records of the Company
- If required, we will issue a further report to creditors on the results of the investigations

If creditors have a particular matter, they believe should be investigated please contact Patrick Skippen of our office on (02) 9210 1711 or via email at pskippen@wexted.com

4. Likelihood of a dividend

At this stage of the Liquidation, there will be no dividend to creditors unless recoveries can be made from a preference or insolvent trading claim against the Director. We will provide creditors with a further update once we have completed our investigations.

5. Liquidators Remuneration and Disbursements

We note the following resolutions were approved by creditors via a proposal without meeting which formed part of our initial notice to creditors dated 12 July 2019:

- 1) *"That the remuneration of the Joint and Several Liquidators for the period from 30 June 2019 to 9 July 2019, calculated on hours spent by Joint and Several Liquidators and their partners and their staff, at the hourly rates detailed in the schedule of rates forming part of the Initial Remuneration Notice provided to creditors, be approved in the amount of \$4,781.75 (inclusive of GST), and that the Joint and Several Liquidators can draw the remuneration"*
- 2) *"That the remuneration of the Joint and Several Liquidators for the period from 10 July 2019 to the finalisation of the liquidation, calculated on hours spent by the Joint and Several Liquidators, their partners and their staff, at the hourly rates detailed in the schedule of rates forming part of the Initial Remuneration Notice provided to creditors, be approved in the amount of \$9,218.25 (inclusive of GST), and that the Joint and Several Liquidators can draw the remuneration on a monthly basis or as required."*

- 3) "That the internal disbursements of the Joint and Several Liquidators for the period from 30 June 2019 to the finalisation of the liquidation, calculated utilising the rates of charge detailed in the Initial Remuneration Notice provided to creditors, be approved in the amount of \$1,000.00 (inclusive of GST), and that the Joint and Several Liquidators can draw the internal disbursements on a monthly basis or as required."

No resolutions are being put to creditors as part of this report. Further resolutions may be put to creditors in the future.

6. Next steps in the Liquidation

We will proceed with the Liquidation, including:

- Obtain books and records of the Company;
- Complete our investigations into the Company's affairs;
- Commence recovery actions in respect of voidable transactions and insolvent trading (subject to the provision of books and records and funding from creditors);
- Complete our reporting to ASIC and request the Company to be deregistered;
- If required, we will issue a further report to creditors on the results of our investigations

We expect to finalise the Liquidation within 6 months of the date of this report.

7. Receipts and Payments in the Liquidation

| | Net (\$) | GST (\$) | Gross(\$) |
|---------------------------------|---------------|----------|---------------|
| Receipts | | | |
| Contribution to Costs | 15,000 | 0 | 15,000 |
| Total Receipts (inc GST) | 15,000 | 0 | 15,000 |
| Total Payments (inc GST) | - | - | - |
| Balance in Hand | | | 15,000 |

8. Enquiries

Should you have any enquiries please contact Patrick Skippen of this office on (02) 9210 1700 or by email at pskippen@wexted.com

DATED this 30th day of September 2019

AB Kambala Finances Pty Limited (In Liquidation)



Andrew McCabe
Joint and Several Liquidator



Chris MacDonnell
Joint and Several Liquidator

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Joint and Several Liquidators of AB Kambala Finances Pty Limited (In Liquidation)

1. This is to state that the company was, on 30 June 2019 ⁽¹⁾ and still is, justly and truly indebted to⁽²⁾ (full name):

.....
(‘Creditor’)

.....
of (full address)

for \$.....dollars and.....cents.

Particulars of the debt are:

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

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

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

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

- I am **not** a related creditor of the Company ⁽⁵⁾
- I am a related creditor of the Company ⁽⁵⁾
relationship: _____

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

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

DATED this day of 201_

Signature of Signatory.....

NAME IN BLOCK LETTERS

Occupation

Address

See Directions overleaf for the completion of this form

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

Proof of Debt Form Directions

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

Annexures

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