

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 4/04/2019 3:30:20 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: NSD2142/2018
File Title: AN APPLICATION BY NEIL ROBERT CUSSEN AND MATTHEW JAMES DONNELLY IN THEIR CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS OF BIG UN LIMITED (ADMINISTRATORS APPOINTED)
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 8/04/2019 4:25:47 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Affidavit

No. of 2019

Federal Court of Australia
District Registry: New South Wales
Division: General

IN THE MATTER OF BIG UN LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT)

ACN 106 399 311

**NEIL ROBERT CUSSEN AND MATTHEW JAMES DONNELLY IN THEIR CAPACITY AS
JOINT AND SEVERAL DEED ADMINISTRATORS OF BIG UN LIMITED (SUBJECT TO
DEED OF COMPANY ARRANGEMENT) ACN 106 399 311**

Plaintiffs

Affidavit of: Neil Robert Cussen
Address: Eclipse Tower, Level 19, 60 Station Street, Parramatta NSW 2150
Occupation: Registered liquidator
Date: 29 March 2019

Contents

Document number	Details	Paragraph	Page
1	Affidavit of Neil Robert Cussen sworn on 29 March 2019	1	1
2	Exhibit NRC-1	5	2
3	Exhibit NRC-2	80	22

I, **NEIL ROBERT CUSSEN**, of Eclipse Tower, Level 19, 60 Station Street, Parramatta NSW 2150, registered liquidator, say on oath:

1. I am the first named plaintiff. I am a partner of Deloitte Touche Tohmatsu (of which Deloitte Financial Advisory Pty Ltd is a wholly-owned subsidiary). I am a registered liquidator, and have been a registered liquidator since 9 June 1993.
2. Matthew James Donnelly ("**Mr Donnelly**") is also a partner of Deloitte Touche Tohmatsu and a registered liquidator.

Handwritten signature of Neil Robert Cussen in black ink.

Handwritten signature of Hogan Lovells in black ink.

3. I swear this affidavit in my capacity as joint and several deed administrator of Big Un Limited (Subject to Deed of Company Arrangement) ACN 106 399 311 ("**Company**").
4. All the facts and circumstances deposed to are within my own knowledge save as otherwise stated in this affidavit. Where I express an opinion in this affidavit, that opinion is based on over 30 years' experience as an insolvency practitioner.
5. Exhibited to me at the time of swearing this affidavit and marked "**NRC-1**" is a paginated bundle of documents to which I refer in this affidavit ("**Exhibit**").
6. I make this affidavit in support of the Plaintiffs' originating process ("**Application**") seeking, amongst other things, orders:
 - (a) that the Plaintiffs be granted leave to transfer 80% of the issued shares of the Company to WOW World Digital Media Pty Ltd ACN 629 978 570 ("**Proponent**") pursuant to section 444GA(1)(b) of the *Corporations Act 2001* (Cth) ("**Act**"); and
 - (b) for the Plaintiffs to give notice of this application substantially in the form of the draft notice ("**Proposed Notice**") appearing at pages 2 to 4 of the Exhibit to:
 - (i) all members of the Company;
 - (ii) all classes of creditors of the Company; and
 - (iii) the Australian Securities and Investments Commission ("**ASIC**").
7. On 24 August 2018, the Company by its board of directors resolved that Mr Donnelly and I be appointed joint and several voluntary administrators ("**Administrators**") of the Company pursuant to section 436A of the Act. We consented to that appointment on the same day. A copy of the appointment of voluntary administrators is at page 5 of the Exhibit.
8. On 20 December 2018, at a reconvened second meeting of creditors (in the circumstances deposed to in paragraphs 52 of this affidavit), the Company resolved, amongst other things, that the company execute a deed of company arrangement. A copy of the minutes of that meeting are at pages 6 to 18 of the Exhibit (excluding attachments). A copy of the deed of company arrangement executed by the Company, the Plaintiffs and the Proponents on 15 January 2019 ("**DOCA**") is at pages 19 to 95 of the Exhibit. Mr Donnelly and I were appointed as deed administrators ("**Deed Administrators**").
9. The Deed Administrators are authorised to make the Application pursuant to the DOCA.

The Company, Big Review TV Limited and the Big Un group



10. The Company was incorporated (under its former name, Republic Gold Limited) in Victoria on 22 September 2003. The Company listed on the Australian Securities Exchange ("**ASX**") in December 2014. At pages 96 to 150 of the Exhibit is a copy of a search of the records maintained by ASIC in respect of the Company dated 29 March 2019.
11. The Company is the holding company of several companies within the Big Un group ("**Group**"), including:
 - (a) Big Review TV Limited ACN 164 025 129 ("**BRTV**"). BRTV was the main trading subsidiary of the Company, and is in liquidation following the failure of a deed of company arrangement (as deposed to at paragraph 38 below); and
 - (b) Big IP Pty Limited ACN 606 274 364 ("**Big IP**"). My investigations indicate that Big IP is not trading, but holds some intellectual property rights that may be, or have been, used by the Group.
12. As the holding company of the Group, the Company was primarily responsible for raising capital to fund the operations of BRTV, its wholly-owned subsidiary. The Company was also responsible for preparation of financial reports for the Group on a consolidated basis and reporting to the ASX.
13. At pages 151 to 482 of the Exhibit are copies of the Company's annual reports and mid-year reports for:
 - (a) the year ended 30 June 2015 (at pages 151 to 234);
 - (b) the half year ended 31 December 2015 (at pages 235 to 260);
 - (c) the year ended 30 June 2016 (at pages 261 to 333);
 - (d) the half year ended 31 December 2016 (at pages 334 to 356);
 - (e) the year ended 30 June 2017 (at pages 357 to 448); and
 - (f) the half year ended 31 December 2017 (at pages 449 to 482),(together, the "**Financial Reports**").
14. Between 31 December 2014 and 9 August 2018, the Company loaned to BRTV funds totalling up to \$16,755,173.22 ("**Inter-company Loan**"). The amount of \$12,662,800.89 is currently outstanding (excluding any interest or costs) under the Inter-company Loan. At pages 483 to 484 of the Exhibit is a statement of the Inter-company Loan from the Company's accounting records.



15. On 1 July 2015, the Company invested the amount of \$6,241,280.00 in BRTV ("**Inter-company Investment**"). At page 485 of the Exhibit is a statement of the Inter-company Investment from the Company's accounting records. I am investigating the circumstances of the Inter-company Investment, and whether the Inter-company Investment is repayable by BRTV to the Company.
16. My investigations reveal that BRTV's operations included delivering subscription-based video marketing services to small-to-medium enterprises. The production of video content by BRTV enabled its customers to promote their business through BRTV's video review platform. Its main revenue generating activities consisted of:
- (a) producing video content and uploading this or storing it on BRTV's platform;
 - (b) licensing its video content through subscription fees;
 - (c) producing online TV shows; and
 - (d) selling content and advertising slots.

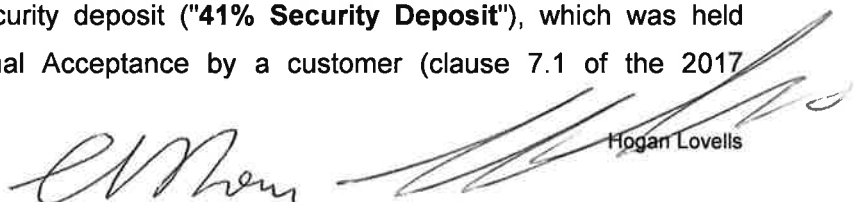
BRTV's Sponsorship Agreement with First Class Securities Pty Ltd

17. On or about 1 October 2015, BRTV entered into a sponsorship agreement with First Class Securities Pty Ltd ("**FCS**") and First Class Funds Management Pty Ltd ("**2015 Sponsorship Agreement**"), a copy of which is at pages 486 to 499 of the Exhibit.
18. On 9 August 2017, a new sponsorship agreement was entered into between BRTV, FCS and Transact Payments Pty Ltd ("**2017 Sponsorship Agreement**"), a copy of which is at pages 500 to 571 of the Exhibit.
19. I have reviewed the 2015 Sponsorship Agreement and the 2017 Sponsorship Agreement (together, the "**Sponsorship Agreements**"), together with the Company's commentary on the Sponsorship Agreements in its Financial Reports (in particular, in the half year report for the period to 31 December 2017 at pages 467 to 468 of the Exhibit). The Sponsorship Agreements were structured to operate in the following way:
- (a) (*offer*) – BRTV made an offer to a customer for the production and delivery of a promotional video for the customer's business ("**Offer**") (clause 1.1(a) of the 2015 Sponsorship Agreement; definition of "Customer" in clause 1.1.1 of the 2017 Sponsorship Agreement);
 - (b) (*preliminary acceptance*) – a customer would indicate its preliminary acceptance to the Offer ("**Preliminary Acceptance**") by signing an application agreement ("**Application Agreement**"), a copy of which is at page 572 of the Exhibit (clause



1.1(b) of the 2015 Sponsorship Agreement; clause 6.3(a) of the 2017 Sponsorship Agreement). The Application Agreement provided that, inter alia:

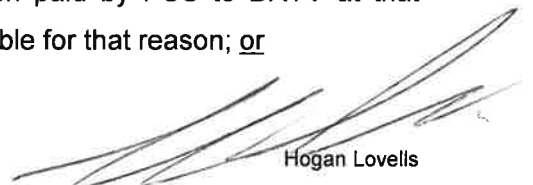
- (i) despite giving a Preliminary Acceptance, the customer was under no obligation to accept the video once it was produced (and did not incur any liability or suffer any consequence as a result of a failure to accept the end product); and
 - (ii) if the customer accepted the end product once the video was produced ("**Final Acceptance**"), the customer became liable to pay a monthly fee (which, at least in relation to the 2017 Sponsorship Agreement, was in the amount of \$1,000) ("**Monthly Fee**") for a period of up to twelve months.
- (c) (invoice) – following the customer's Preliminary Acceptance, BRTV raised an invoice to the customer in the amount of the Offer ("**Invoice**") (clause 1.1(d) of the 2015 Sponsorship Agreement; there is no express clause in the 2017 Sponsorship Agreement);
- (d) (approval) – following the customer's Preliminary Acceptance, BRTV would submit that customer to FCS for 'approval'. FCS had two business days to decide whether to approve the customer or not (a customer approved by FSC being an "**Approved Customer**") (clause 1.1(e) of the 2015 Sponsorship Agreement; clause 5.1 of the 2017 Sponsorship Agreement);
- (e) (request) – BRTV submitted a request to FCS to provide 'sponsorship' in respect of a number of Approved Customers ("**Request**") (clause 1.1(c) of the 2015 Sponsorship Agreement; clause 2.1(b) of the 2017 Sponsorship Agreement). Under clause 6.2 of the 2017 Sponsorship Agreement, a Request was required to be for a minimum amount of \$500,000 and was required to specify, inter alia, the names of the relevant Approved Customers for which funding was sought from FCS;
- (f) (sponsorship payment) – if a Request was accepted by FCS, FCS made a payment to BRTV in the amount of the Request on an date agreed between FCS and BRTV ("**Sponsorship Payment**") . The Sponsorship Agreements do not clearly define what comprises the Sponsorship Payments. However, the Sponsorship Agreements specify that, for each Approved Customer the subject of the Request:
- (i) 41% of the Invoice was paid by FCS into a bank account controlled by FCS as a security deposit ("**41% Security Deposit**"), which was held subject to Final Acceptance by a customer (clause 7.1 of the 2017



Hogan Lovells

- Sponsorship Agreement; there is no express clause in the 2015 Sponsorship Agreement);
- (ii) at the irrevocable direction of BRTV, FCS deducted a fee comprising 24% of the Invoice from the amount payable ("**24% FCS Fee**") (clause 7.2.2 of the 2017 Sponsorship Agreement; there is no express clause in the 2015 Sponsorship Agreement); and
 - (iii) FCS paid BRTV the balance (being an amount equal to 35% of the Invoice) ("**35% Balance**") (clause 7.2.1 of the 2017 Sponsorship Agreement; there is no express clause in the 2015 Sponsorship Agreement);
- (g) (assignment) – on payment of the Sponsorship Payment by FCS, BRTV assigned to FCS its rights in relation to the Invoice and its rights to collect payment of the Monthly Fee from those customers who would subsequently give Final Acceptance (clause 1.5 of the 2015 Sponsorship Agreement; clause 2.2(c) of the 2017 Sponsorship Agreement);
- (h) (Final Acceptance) – within two business days of Final Acceptance, FCS released the 41% Security Deposit to BRTV, subject to any adjustment if BRTV and the Approved Customer had agreed to an amount which was different to the Offer value at the time of Final Acceptance (clause 7.3 of the 2017 Sponsorship Agreement; there is no express clause in the 2015 Sponsorship Agreement); and
- (i) (no Final Acceptance) – if there was no Final Acceptance of the video (either because the customer did not accept the video, the video was not delivered within 120 days of Preliminary Acceptance or the customer was not approved as an Approved Customer), then either:
- (i) BRTV was required to pay to FCS the amount of any Sponsorship Payment paid by FCS to BRTV plus a cancellation fee in the amount of 24% of the Invoice ("**24% Cancellation Fee**"). Further to paragraph 19(f) of this affidavit, BRTV has to pay at least:
 - (1) the 35% Balance; and
 - (2) the 24% FCS Fee and/or 24% Cancellation Fee (to the extent that they are not the same thing).

The 41% Security Deposit had not been paid by FCS to BRTV at that stage, and does not appear to be repayable for that reason; or



Hogan Lovells

- (ii) alternatively, to avoid the liability to pay FCS, BRTV could assign to FCS another customer (that is, BRTV could replace the first customer for which there was no Final Acceptance) ("**Swapped-in Customer**") (clause 1.6(a) of the 2015 Sponsorship Agreement; clause 7.4(d) of the 2017 Sponsorship Agreement). The Swapped-in Customer must have given Preliminary Acceptance on a date prior to the date of Preliminary Acceptance of the first customer.

20. My investigations indicate that:

- (a) a number of customers who gave Preliminary Acceptance did not give Final Acceptance;
- (b) the records of the Company do not disclose whether BRTV exercised its right to assign any Swapped-in Customers to FCS;
- (c) the records of the Company do not disclose any payments of the amounts in paragraph 19(i)(i) from BRTV to FCS;
- (d) the amounts outstanding by BRTV to FCS under the Sponsorship Agreements were secured by a general security agreement over all of BRTV's assets and undertakings; and
- (e) according to the report to creditors prepared by the BRTV Administrators on 18 June 2018, a copy of which is at pages 573 to 641 of the Exhibit:
 - (i) the total amount outstanding to FCS as at 21 May 2018 (according to the directors of BRTV) was \$56,204,312. However, I have not received a break-down of how the debt was comprised having regard to the calculations in paragraph 19(i)(i) above; and
 - (ii) that entire debt was assigned by FCS to AS Capital Ventures Pty Limited ("**ASCV**") on 15 May 2018 – being six days before BRTV went into voluntary administration on 21 May 2018.

Investigation by ASX, delisting and shares in the Company

21. On 14 February 2018, ASX issued an "*aware letter*" (being a letter that ASX issues as a matter of course when it has concerns about whether an entity has disclosed market sensitive information at the time it should have under the ASX Listing Rules) to the Company regarding announcements the Company had made in respect of its shareholders, finances, and the interests of its directors, making enquiries as to those



Hogan Lovells

shareholdings and the Company's continuous disclosure obligations, a copy of which is at pages 642 to 649 of the Exhibit.

22. On 19 February 2018, trading in the shares of the Company was halted at the request of the Company. A copy of the ASX announcement dated 19 February 2018 is at page 650 to 651 of the Exhibit.
23. On 20 February 2018, the Company issued a response to the ASX aware letter dated 14 February 2018, a copy of which is at pages 652 to 677 of the Exhibit. In that response, the Company conceded that it breached ASX Listing Rules in failing to disclose to the market that the 2017 Sponsorship Agreement included an agreement to issue 3,020,303 shares in the Company to FCS.
24. On 21 February 2018, ASX announced that the securities of the Company would be suspended from trading immediately pending the release of the Company's response to ASX's enquiries. A copy of the ASX announcement dated 21 February 2018 is at pages 678 to 679 of the Exhibit.
25. On 22 February 2018, ASX issued a further aware letter to the Company regarding the Company's response to its letter of 14 February 2018 and requesting further clarification and further information relating to this response, a copy of which is at pages 680 to 682 of the Exhibit.
26. On 22 February 2018, the Company issued a response to the further ASX aware letter dated 22 February 2018, a copy of which is at pages 683 to 756 of the Exhibit.
27. On 23 February 2018, ASX announced that the Company's securities would continue to remain suspended pending further enquiries by ASX and ASIC. A copy of the ASX announcement dated 23 February 2018 is at page 757 of the Exhibit.
28. As at the date of my appointment as voluntary administrator of the Company on 24 August 2018, the Company's securities were listed on the ASX, but remained suspended from quotation. At pages 758 to 760 of the Exhibit is a copy of the letter sent to me by Ms Johanna O'Shea of ASX on 27 August 2018, together with an email from Ms O'Shea advising that the Company would be removed from ASX's official list with effect from close of trading on 28 August 2018.
29. The Company was removed from the official list maintained by ASX with effect from the close of trading on 28 August 2018. A copy of the market announcement made by ASX in this regard is at page 761 of the Exhibit.



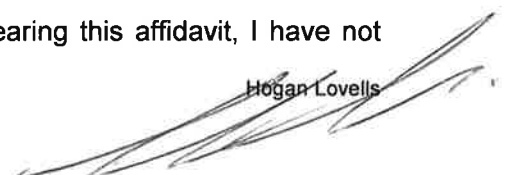
30. As at 24 August 2018, the Company had 165,744,844 ordinary shares on issue, held by 6,140 shareholders. The Company's share price had declined from a high of \$4.79 in November 2017 to \$2.22 when trading was suspended on 19 February 2018.
31. At pages 762 to 981 of the Exhibit is a true copy of the register of members of the Company. The register of members contains email addresses for approximately 32% of the members of the Company.

BRTV DOCA

32. On 21 May 2018, prior to the appointment of the Administrators to the Company, BRTV was placed into voluntary administration by the directors of BRTV pursuant to section 436A of the Act. Anthony Wayne Elkerton and Cameron Hamish Gray were appointed joint and several voluntary administrators of BRTV ("**BRTV Administrators**"). At pages 982 to 988 of the Exhibit is a copy of a search of the records maintained by ASIC in respect of BRTV dated 29 March 2019.
33. On 30 June 2018, BRTV executed a deed of company arrangement ("**BRTV DOCA**"), to which the Company is a party, a copy of which is at pages 989 to 1022 of the Exhibit, about which I depose further below.
34. On 24 August 2018 I received an email from Ms Amelia Kelly of DLA Piper, the former solicitors for BRTV, in which Ms Kelly provided me with a copy of the BRTV DOCA and, amongst other things, copies of the following documents:
 - (a) a rights and asset transfer agreement ("**RTA**") dated 30 June 2018 between the Company and ASCV, a copy of which is at pages 1023 to 1038 of the Exhibit;
 - (b) an IP asset sale agreement ("**IP Sale Agreement**") dated 30 June 2018 between BRTV, the BRTV Administrators and ASCV, a copy of which is at pages 1039 to 1052 of the Exhibit;
 - (c) a licence agreement ("**Licence Agreement**") dated 30 June 2018 between the Company, ASCV and the then Deed Administrators of BRTV, a copy of which is at pages 1053 to 1066 of the Exhibit,(together, "**ASCV Transaction Documents**").
35. I have reviewed the BRTV DOCA and the ASCV Transaction Documents and note as follows:
 - (a) the ASCV Transaction Documents were required to be executed and delivered simultaneously with the BRTV DOCA (page 998 of the Exhibit);



- (b) under the RTA, the Company sold and/or assigned a number of assets to ASCV, including certain "TIP Technology Rights", "Media Rights" and "Option Assets", the consideration for which was stated to be the entry into by ASCV of the Licence Agreement and the assumption by ASCV of the liabilities and obligations of the Company under the relevant assets being sold (page 1030 of the Exhibit);
 - (c) under the IP Sale Agreement, BRTV sold to ASCV certain "IP Assets", which included BRTV's "video content library" ("VCL"), for a purchase price of \$42m, which was to be set off against the secured debt owing by BRTV to ASCV (pages 1044 to 1046 of the Exhibit); and
 - (d) under the Licence Agreement, ASCV granted the Company and its Related Bodies Corporate (including BRTV) an exclusive, royalty-free, irrevocable, non-transferable, non-sub-licensable, perpetual licence ("Licence") to use (in Australia and for the permitted purpose of servicing Australian domiciled businesses and conducting and developing new business in Australia of the same/similar nature of BRTV only) the various assets transferred or assigned by the Company and BRTV to ASCV pursuant to the other ASCV Transaction Documents, including the VCL (page 1057 et seq of the Exhibit).
36. I also note that clause 5.4 of the Licence Agreement (page 1061 of the Exhibit) contemplates that it would be replaced by a new licence agreement with an "End Entity" in connection with a restructuring of ASCV's assets, and a transfer of the Assets to an End Entity to give effect to such restructuring. Pursuant to clause 5.4.4 of the Licence Agreement (page 1061 of the Exhibit), this includes an obligation on ASCV to ensure that the End Entity enters into a new licence agreement with the Company.
37. On 30 October 2018, the BRTV Administrators issued a report notifying creditors of BRTV of a breach of the BRTV DOCA, a copy of which is at pages 1067 to 1080 of the Exhibit.
38. On 7 November 2018, the creditors of BRTV resolved to terminate the BRTV DOCA and that BRTV should be wound up with the BRTV Administrators appointed as liquidators. At page 1081 of the Exhibit is an extract from ASIC's Insolvency Notices website in relation to BRTV.
39. I am not aware that the liquidation of BRTV has had any impact on the Licence Agreement. On 21 December 2018, I received a letter from ASCV, which attached a further licence agreement proposed to be entered into between the Company and Franki Global Inc, (Franki Global Inc. being the proposed "End Entity" referred to in the Licence Agreement), executed by Franki Global Inc, a copy of which is at pages 1082 to 1094 of the Exhibit. On 20 March 2019, I sent a letter to Franki Global Inc, a copy of which at pages 1095 to 1096 of the Exhibit. As at the date of swearing this affidavit, I have not



executed the new proposed licence agreement with Franki Global Inc. on behalf of the Company.

Progress of the voluntary administration up to the second meeting of creditors

40. Following the appointment of the administrators on 24 August 2018, the first meeting of creditors of the Company was held on 5 September 2018 pursuant to section 436E of the Act.
41. On 19 September 2018, I caused to be sent to creditors of the Company a notice pursuant to section 75-225 of the *Insolvency Practice Rules (Corporations) 2016* ("**Rules**"), convening the second meeting of creditors required by section 439A of the Act ("**Second Meeting**") on 27 September 2018.
42. The notice of the Second Meeting was accompanied by a report to creditors ("**Report**") in accordance with section 75-225(3) of the Rules, a copy of which is at pages 1097 to 1193 of the Exhibit. The notice of the Second Meeting appears at Annexure A of the Report, which is at pages 1149 to 1150 of the Exhibit.
43. In the Report:
- (a) I included a statement, in accordance with section 75-225(3)(b) of the Rules, setting out my opinion that it would be in the creditors' interests for the Company to be wound up;
 - (b) I included the following reasons for that opinion in accordance with section 75-225(3)(b)(iv) of the Rules:
 - (i) there was no proposal for a deed of company arrangement in respect of the Company as at the date of the Report; and
 - (ii) I considered that the Company is insolvent;
 - (c) I advised creditors that based on my investigations and analysis of the affairs of the Company as at the date of the Report, and the possibility that a proposal for a deed of company arrangement may be received, it may be in the best interests of creditors to adjourn the Second Meeting for up to 45 business days (as permitted by section 75-140(3) of the Rules) in order to allow me to:
 - (i) consider any proposal for a deed of company arrangement (if forthcoming);



Hogan Lovells

- (ii) undertake further investigations into potential voidable transactions, potential breaches of duty by the directors and/or potential claims the Company may have against third parties; and
- (iii) provide a supplemental report to creditors so that creditors may consider these matters in sufficient detail.

44. I presided at the Second Meeting as chairman. At the Second Meeting, the creditors of the Company resolved to adjourn the Second Meeting for up to 45 business days (that is, to a date not later than 30 November 2018). A copy of the minutes of the Second Meeting is at pages 6 to 18 of the Exhibit.

Background to deed of company arrangement

45. During the course of my appointment as an administrator of the Company, I received various communications from a group of shareholders of the Company that had expressed an interest in proposing a deed of company arrangement. Whilst I had not received a formal written proposal for a deed of company arrangement prior to convening the Second Meeting and issuing the Report, it was on the basis of the possibility that a proposal for a deed of company arrangement may be received that I suggested that creditors consider adjourning the Second Meeting for up to 45 business days in order to allow me to consider any proposal for a deed of company arrangement that may be forthcoming in that period. As referred to above, the adjourned Second Meeting was required to be re-convened by no later than 30 November 2018.

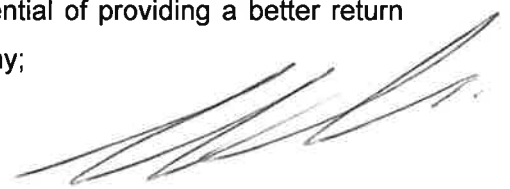
46. On 14 November 2018, I received a document on behalf of the Proponent entitled "outline of proposed deed of company arrangement" ("**Initial DOCA Proposal**"), a copy of which appears at pages 1194 to 1220 of the Exhibit.

47. I considered that the Initial DOCA Proposal gave rise to various matters which required further clarification, elaboration and negotiation before I would be in a position to provide a supplemental report to creditors in relation to the Initial DOCA Proposal and make a statement, in accordance with section 75-225(3)(b) of the Rules, as to whether it would be in the creditors' best interests for the Company to execute a deed of company arrangement contemplated by the Initial DOCA Proposal or for the Company to be placed into liquidation.

48. I considered that there was insufficient time from receipt of the Initial DOCA Proposal for those matters to be fully explored before I was otherwise required to reconvene the adjourned Second Meeting and provide my further report to creditors.



49. Accordingly, on 21 November 2018 I made an application in this Court for orders pursuant to section 447A of the Act and section 90-15 of the *Insolvency Practice Schedule (Corporations)* (being Schedule 2 of the Act) (in proceedings number NSD2142/2018) permitting the Second Meeting to be further adjourned. At pages 1221 to 1222 of the Exhibit is a copy of the orders of the Honourable Justice Jagot made on 21 November 2018, which ordered, amongst other things, that the Second Meeting may be adjourned to a date not later than 20 December 2018.
50. Following the orders made on 21 November 2018, I (with the assistance of my solicitors, Hogan Lovells) engaged in further discussions and negotiations with the Proponent (and its former solicitors, Pure Legal) in relation to the Initial DOCA Proposal.
51. As a result of those discussions, a revised version of the DOCA Proposal was provided to me on 12 December 2018 ("**Further DOCA Proposal**"), a copy of which is at pages 1223 to 1232 of the Exhibit.
52. On 13 December 2018, I caused to be despatched to creditors of the Company a notice pursuant to section 75-225 of the Rules, reconvening the Second Meeting on 20 December 2018 ("**Reconvened Second Meeting**"). The notice of meeting was accompanied by a supplemental report to creditors ("**Supplemental Report**") in accordance with section 75-225(3) of the Rules, a copy of which is at pages 1233 to 1328 of the Exhibit. The notice of meeting appears at Annexure D of the Report, which is at pages 1319 to 1320 of the Exhibit.
53. In the Supplemental Report:
- (a) I prepared an analysis of the likely proceeds from the realisation of the assets being applied to a dividend to be distributed to ordinary unsecured creditors and investors under a liquidation scenario and under the Further DOCA Proposal scenario, which for the reasons outlined below made certain assumptions in relation to the Company's available assets and liabilities;
 - (b) I included a statement, in accordance with section 75-225(3)(b) of the Rules, setting out my opinion that it would be in the creditors' interests for the Company to execute a deed of company arrangement; and
 - (c) I included, amongst others, the following reasons for that opinion in accordance with section 75-225(3)(b)(iv) of the Rules:
 - (i) the Further DOCA Proposal had the potential of providing a better return to creditors than liquidation of the Company;



- (ii) the various voidable transaction claims available to a liquidator of the Company and not available under a deed of company arrangement were uncertain, subject to further litigation which may be expensive and/or uncommercial to pursue, and may require litigation funding;
- (iii) the Further DOCA Proposal provided certainty of outcome in comparison with liquidation; and
- (iv) the various claims that may potentially be available to the Company against various third parties (including certain of its directors and former advisers) that I had identified in the course of my investigations would remain available to creditors under the Further DOCA Proposal.

54. I presided as chairman at the Reconvened Second Meeting. At the Reconvened Second Meeting:

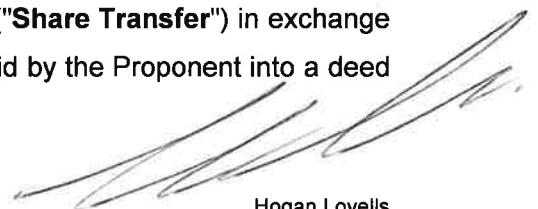
- (a) I tabled an amended draft of the Further DOCA Proposal, which incorporated various additional amendments following further discussions between Hogan Lovells and Pure Legal in the period between receipt of the Further DOCA Proposal on 12 December 2018 and the Reconvened Second Meeting on 20 December 2018;
- (b) I summarised the key terms of the Further DOCA Proposal (as further amended) for creditors and responded to various questions raised by creditors and the Proponent; and
- (c) the creditors of the Company resolved, amongst other things, that the Company execute a deed of company arrangement.

55. A copy of the minutes of the Reconvened Second Meeting is at pages 6 to 18 of the Exhibit.

56. On 15 January 2019, a deed of company arrangement giving effect to the Further DOCA Proposal ("**DOCA**") was executed by the Company, the Plaintiffs and the Proponent, a copy of which is at pages 19 to 95 of the Exhibit.

Key terms of the DOCA

57. The DOCA contemplates that the Proponent will acquire 80% of the issued share capital of the Company (subject to orders of this Court pursuant to section 444GA of the Act and ASIC waiving the requirements of section 606 of the Act) ("**Share Transfer**") in exchange for a sum of \$350,000 ("**Contribution Amount**") being paid by the Proponent into a deed fund ("**Deed Fund**") established under the DOCA.



58. The DOCA includes the following key provisions:

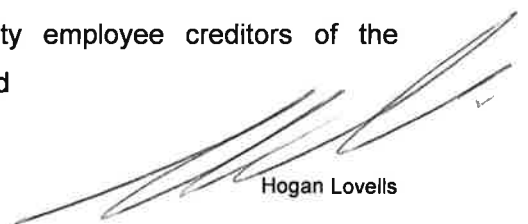
- (a) the Deed Administrators (who, prior to execution of the DOCA, were the Administrators) will act as deed administrators of the Company (clause 11 of the DOCA, page 41 of the Exhibit);
- (b) all creditors of the Company (including creditors who are members of the Company with a claim for a debt owed by the Company to the member in their capacity as a member, or any other claim that arises from buying, holding, selling or otherwise dealing in shares in the Company (that is, a *Sons of Gwalia* type claim) and are subordinated pursuant to section 563A of the Act ("**Subordinated Creditors**")) will be entitled to participate under the DOCA and the creditors' trust contemplated by the DOCA, with the exception of:
 - (i) certain specified individuals and corporations connected with the Proponent;
 - (ii) any secured creditors of the Company, in relation to the secured portion of their claim against the Company only; and
 - (iii) any party that has a claim in respect of which the Company is insured under a contract of insurance, subject to certain provisions of the DOCA being complied with,

(participating creditors being the "**Trust Creditors**");
- (c) implementation of the DOCA is conditional on the following (amongst other things):
 - (i) this Court making orders under section 444GA of the Act granting leave for the Share Transfer in the terms sought in the Application (clause 4.1(a) of the DOCA, page 32 of the Exhibit); and
 - (ii) ASIC granting such exemptions, modifications and/or declarations from Chapter 6 of the Act as are necessary to permit the Share Transfer to proceed without the approval of shareholders of the Company (clause 4.1(b) of the DOCA, page 32 of the Exhibit);
- (d) these conditions are to be satisfied by 31 March 2019, or such later date as agreed between the Plaintiffs and the Proponent, failing which the Plaintiffs will convene a meeting of creditors of the Company to determine the future of the Company (clause 4.7 of the DOCA, page 34 of the Exhibit). This has been extended to 31 May 2019;

- (e) the Deed Fund will be established, which will comprise the following amounts, property and assets (clause 8.1 of the DOCA, page 37 of the Exhibit):
- (i) the Contribution Amount (payable on implementation of the DOCA);
 - (ii) any refund of GST paid or payable to the Company by the Australian Taxation Office ("**GST Refund**"); and
 - (iii) any and all claims, causes of action and choses in action that the Company has or may have against any party, including (without limitation), its current or former directors or officers or its former professional advisers, and any such claims, causes of action and choses in action for which its former directors or officers are insured under a contract of insurance ("**Third Party Claims**"); and
- (f) on implementation of the DOCA, amongst other things:
- (i) the Proponent must pay the Contribution Amount to the Plaintiffs to hold in the Deed Fund (clause 9.1(a) of the DOCA, page 37 of the Exhibit);
 - (ii) a creditors' trust ("**Creditors' Trust**") will be established and the monies, property and assets forming the Deed Fund (after payment of the Administrators' and the Plaintiffs' remuneration, costs and expenses) will be transferred to the trust funds ("**Trust Funds**") established under the creditors' trust for the purposes of paying dividends to admitted creditors (and, in certain respects, shareholders of the Company) in accordance with the terms of the creditors' trust deed annexed to the DOCA ("**Creditors' Trust Deed**") (clauses 9.1(b) and (c) of the DOCA, page 38 of the Exhibit);
 - (iii) the Plaintiffs will affect the Share Transfer (clause 9.1(d) of the DOCA, page 39 of the Exhibit);
 - (iv) all claims held by Trust Creditors against the Company will be extinguished and released and will be converted to claims against the Trust Funds under the Creditors' Trust Deed (clauses 6.5 and 6.8 of the DOCA, pages 36 and 37 of the Exhibit respectively); and
 - (v) Sonia Thurston and Brandon Evertz will be removed as directors of the Company and Vaughan Parkinson will be appointed as directors of the Company (clause 9.1(e) of the DOCA, page 39 of the Exhibit).

59. The Creditors' Trust Deed to be entered into on implementation of the DOCA will contain the following key provisions:

- (a) I will act as trustee of the Creditors' Trust ("**Trustee**");
- (b) the Deed Fund transferred to the Trustee under clause 9.1 of the DOCA will comprise two separate Trust Funds, being:
 - (i) the "Creditors' Trust Deed Fund", which will be comprised of the Contribution Amount and the GST Refund (after payment of the Administrators' and the Plaintiffs' remuneration, costs and expenses) (clauses 2(a) and 4.1 of the Creditors' Trust Deed, pages 60 and 63 of the Exhibit respectively); and
 - (ii) the "Third Party Claims Fund", which will be comprised of the Third Party Claims (clauses 2(b) and 5.1 of the Creditors' Trust Deed, pages 60 and 64 of the Exhibit respectively);
- (c) the Creditors' Trust Deed Fund will be available to pay the following amounts in the following order (clause 4.3 of the Creditors' Trust Deed, page 63 of the Exhibit):
 - (i) first, any unpaid remuneration, costs and expenses of the Administrators or the Plaintiffs;
 - (ii) secondly, the Trustee's remuneration, costs and expenses;
 - (iii) thirdly, any amounts payable to priority employee creditors of the Company under section 556 of the Act; and
 - (iv) fourthly, to the Trust Creditors pro rata to their respective admitted claims (subject to section 563A of the Act); and
- (d) the Third Party Claims Fund will be available to pay the following amounts in the following order (clause 5.3 of the Creditors' Trust Deed, page 64 of the Exhibit):
 - (i) first, any unpaid remuneration, costs and expenses of the Administrators or the Plaintiffs;
 - (ii) secondly, the Trustee's remuneration, costs and expenses (including any costs incurred in getting in or realising any of the Third Party Claims);
 - (iii) thirdly, any amounts payable to priority employee creditors of the Company under section 556 of the Act; and



Hogan Lovells

- (iv) fourthly, to the Trust Creditors pro rata to their respective admitted claims (subject to section 563A of the Act); and
- (v) fifthly, until the Third Party Claims Fund is fully exhausted, to shareholders of the Company as at the date of the Administrators' appointment pro rata to their respective shareholdings at that time.

60. Importantly, the DOCA and Creditors' Trust Deed will preserve, as far as possible, the rights of shareholders as at the date of my appointment to benefit from the recovery of any Third Party Claims in the event that Trust Creditors receive 100 cents in the dollar, in the same way that any surplus funds would flow through to the shareholders in the event that the Company entered liquidation.

Assets of the Company

61. My investigations to date have revealed the following assets (including claims) which may be available for distribution to creditors of the Company.

GST Refund

62. The Company may be entitled to the GST Refund from the ATO. I have been liaising with the Company's former tax agents (BDO) and the ATO in order to understand the outstanding issues before the GST Refund can be confirmed, which relate to:
- (a) completion of a financial acquisition threshold test ("**FAT Test**") to determine whether the Company's expenditure on capital raising exceeds the relevant threshold for claiming a full GST credit on capital raising expenses;
 - (b) determination of whether certain transactions for which GST credits have been claimed may be classified as excluded transactions; and
 - (c) issues relating to the Company and BRTV being grouped for GST purposes effective from 1 January 2018 onwards.
63. According to the Company's books and records, the Company asserts an entitlement to a GST Refund in the amount of \$233,410, comprising:
- (a) an amount of \$151,876 for the March 2018 quarter;
 - (b) an amount of \$52,554 for the June 2018 quarter; and
 - (c) an amount of \$28,980 for the September 2018 quarter up to the date of my appointment as Administrator.



64. In paragraph 4.2.4 of the Supplemental Report (page 1245 of the Exhibit), I reported that, from my investigations as at the date of the Supplemental Report, I had identified that:

- (a) of the \$151,876 which the Company is claiming a refund for in the March 2018 quarter, the ATO may challenge or refuse part of the Company's refund claim in the amount of \$132,803 for the March 2018 quarter on the basis that certain capital raising expenses may exceed the FAT Test; and
- (b) the Company and BRTV were grouped for GST purposes effective from 1 January 2018 onwards, pursuant to which:
 - (i) the Company and BRTV lodged a single business activity statement ("**BAS**") as a group for the March 2018 quarter only in an amount of \$1,138,057, of which \$986,181 represented BRTV's component; and
 - (ii) the Company may be entitled to claim some or all of this amount as the representative member of the tax group (although there is no tax sharing agreement between the Company and BRTV, and this was subject to confirmation from the ATO).

65. Since issuing the Supplemental Report, I have continued to investigate the potential GST refund and correspond with the ATO, and on 7 March 2019 I met with representatives of the ATO. From my further investigations and following my meeting with representatives of the ATO, I have further identified that:

- (a) the ATO have challenged a number of invoices that have been claimed by the Company and/or BRTV (for example, because the supplier is not registered for GST or the Company/BRTV have not provided a copy of the underlying invoice);
- (b) in relation to the March 2018 quarter group BAS in the amount of \$1,138,057:
 - (i) the amount of \$151,103 relates to the Company (a decrease of \$773 from the figure set out in the Supplemental Report). Following the FAT Test, the Company is not entitled to \$67,979 of this refund based on my review of the relevant documents, and the ATO have advised me that they will reject a significant portion of the balance (on the basis of the invoices being challenged);
 - (ii) the amount of \$986,954 relates to BRTV (an increase of \$773 from the figure set out in the Supplemental Report). This figure comprises:
 - (1) \$142,619 which relates to the March 2018 quarter; and
 - (2) \$844,334 which relates to previous quarters, and

- (iii) the ATO's current position as advised to me is that the Company is entitled to a GST refund as per the March 2018 quarter BAS in the amount of \$22,993 (including both the Company and BRTV components);
 - (c) despite the Company and BRTV being grouped for GST purposes, the ATO has taken the view that the Company is not entitled to receive any GST refund claimed by BRTV for periods prior to 1 January 2018 (even if they were reported in the March 2018 quarter BAS – that is, the Company is not entitled to receive any part of the \$844,334 which relates to prior periods);
 - (d) the Company is likely entitled to a GST refund in the amount of \$69,476 for the June 2018 quarter and \$25,766 for the September 2018 quarter; and
 - (e) the Company may be entitled to the amount of \$4,527 for BRTV's June 2018 quarter (which occurred following the Company and BRTV being grouped for GST purposes).
66. Subject to the resolution of the issues referred to above, the GST Refund could be in the range of:
- (a) the lower amount of \$47,621, which comprises:
 - (i) \$34,738, being 50% of the Company's share of the June 2018 quarter (that is, 50% of \$69,476, being an estimated reduction having regard to invoices that I anticipate the ATO may reject);
 - (ii) \$12,833, being 50% of the September 2018 quarter for the Company (that is, 50% of \$25,766, being an estimated reduction having regard to invoices that I anticipate the ATO may reject); and
 - (iii) \$0 in relation to any refund claimed by BRTV; and
 - (b) the higher amount of \$122,762, which comprises:
 - (i) \$22,993 for the March 2018 quarter, on the assumption that the ATO does not make any further reductions or rejections;
 - (ii) \$69,476 for the Company's share of the June 2018 quarter;
 - (iii) \$25,766 for the September 2018 quarter; and
 - (iv) \$4,527 for BRTV's share of the June 2018 quarter.

67. I am continuing to liaise with the ATO in relation to these issues and the GST Refund.



68. The GST Refund, if any, will form part of the Deed Fund (and Creditors' Trust Deed Fund) available for distribution to Trust Creditors. In the event that the GST Refund has not been received by the time of implementation of the DOCA, provisions have been included in the DOCA and the Creditors' Trust Deed to ensure that the Trustees may continue to liaise with the ATO in relation to the GST Refund and that the GST Refund will ultimately be paid to the Trustee to hold in the relevant Trust Fund. I refer to clause 9.5 of the DOCA (see pages 40 to 41 of the Exhibit) and clause 3.3(m) of the Creditors' Trust Deed (see pages 61 to 62 of the Exhibit).

Interests in other companies

69. The Company owns 187,500 ordinary shares in Bellr Pty Limited (formerly Shoutback! Pty Limited) ("**Bellr**"), which it acquired for \$50,000 in January 2018. Bellr operates a promotions platform targeted at the hospitality industry to assist venues in the industry to interact with their customers through promotions and marketing.
70. I have previously been in negotiations with Bellr for a buy-back of the shares, and have reviewed financial information provided by Bellr to assess the reasonableness of any offer to buy-back the shares, but no transaction has proceeded. For the purposes of the Supplemental Report, I attributed:
- (a) a low value of \$20,000 to the shares based on an offer I received from Bellr to purchase the Company's shares in Bellr (a copy of which is at pages 1337 to 1349 of the Exhibit); and
 - (b) a high value of \$50,000, being the price paid by the Company for the issue of the shares.
71. The Company owns 37,500 ordinary shares in Realworld Advertising Pty Limited (formerly known as Site Tour Pty Ltd) ("**Realworld**"), which it acquired for \$150,000 in or about May 2015.
72. Realworld operates an advertising company named Site Tour. I have previously been in negotiations with Realworld for a buy-back of the shares, and have requested financial information of Realworld to assess the reasonableness of any offer to buy-back the shares, but no transaction has proceeded.
73. Copies of my correspondence with Realworld in this regard appears at pages 1350 to 1357 of the Exhibit, which includes the most recent correspondence sent by Mr Ribot of my office to Michael Scruby, a director of Realworld on 16 October 2018, to which I have not received a response. For the purposes of the Supplemental Report, I attributed a

value of \$150,000 to the shares, being the price paid by the Company for the issue of the shares.

74. The Company owns 49% of the issued share capital of Wayfarer Media Pty Limited ("**Wayfarer**"). Wayfarer is a production company which specialises in creative factual entertainment. I have requested a number of financial statements and documents from Wayfarer in order to assist me in valuing the shares. For the purposes of the Supplemental Report, I attributed a value of \$50,000 to the shares, being the price paid by the Company for the issue of the shares.
75. Under the DOCA, the Company's interests in Bellr, Realworld and Wayfarer ("**Share Interests**") will remain assets of the Company, and will not be included in the Deed Fund for distribution to creditors of the Company. Accordingly, I have not made any further investigations regarding the value or sale of the Share Interests.

Licence Agreement

76. The Company was granted the Licence by ASCV under the Licence Agreement.
77. Pursuant to the terms of the Licence Agreement, the Licence is non-transferrable and non-sub-licensable. Whilst I have not sought independent valuation advice in respect of the Licence, the fact that it may not be transferred or sub-licensed by the Company means that it is likely to be of very limited value as an asset in and of itself, and outside its use by the Company (and its Related Bodies Corporate) as a going concern.
78. Under the DOCA, the Licence must remain an asset of the Company, and will not be included in the Deed Fund for distribution to creditors of the Company. The effect of the arrangement envisaged under the DOCA is that the Company will continue to have the benefit of the assets the subject of the Licence Agreement in Australia going forward.

Third Party Claims

79. From investigations I have conducted to date as administrator and deed administrator of the Company, I have identified a number of potential claims that the Company may have against, among others, certain directors or officers of the Company and professional advisers of the Company.
80. Exhibited to me at the time of swearing this affidavit and marked "**Confidential Exhibit NRC-2**" is a privileged and confidential memorandum prepared by my solicitors, Hogan Lovells, in relation to those potential claims. This memorandum is subject to legal professional privilege, which I expressly do not waive, and will only be disclosed by me subject to confidentiality orders being obtained from the Court in relation to this exhibit.



Hogan Lovells

Potential liquidator claims

81. During the course of my appointment, I have identified various claims that may, with the benefit of further investigations and consideration, be available to a liquidator of the Company were the Company to be placed into liquidation.

82. Those potential claims include:

(a) recovery of payments made by the Company in the aggregate amount of \$621,761, which may be subject to challenge as unfair preferences pursuant to sections 588FA and 588FE(2) of the Act. These payments were made to three creditors of the Company in respect of legal and advisory services during the six months ending on the date of the appointment of the Administrators. The creditors are not related entities of the Company;

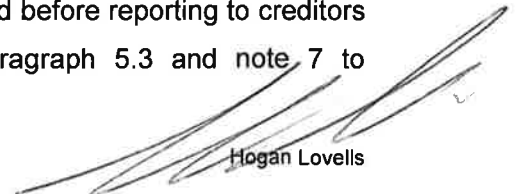
(b) recovery of payments made by the Company in the aggregate amount of \$669,045, which may be subject to challenge as uncommercial transactions pursuant to sections 588FB and 588FE(3) of the Act. These payments were made to six parties during the two years ending on the date of the appointment of the Administrators, which I have identified following the date of the Supplemental Report.

(c) recovery of payments in the aggregate amount of \$798,451, which may be subject to challenge as unreasonable director-related transactions pursuant to sections 588FDA and 588FE(6A) of the Act. These payments were made to three parties during the four years ending on the date of the appointment of the Administrators ;

(d) a claim against the directors of the Company in the amount of \$451,270 for insolvent trading pursuant to section 588G of the Act,

(together, "**Liquidator Claims**"), in each case assuming a date of insolvency of the Company of May 2018.

83. My assessment of the potential availability of the Liquidator Claims and the likely date of the Company's insolvency is based on my initial investigations only, and was made primarily for the purposes of complying with my duty to report to creditors on potential voidable transactions under section 75-225(3)(b)(vi) of the Rules in convening the Second Meeting. Those investigations have been limited to a review of documents provided by the Company's directors, officers, managers, employees, former solicitors, external accountants and auditors, and creditors, and were further limited by the relatively short period of time available for my investigations to be completed before reporting to creditors in accordance with my statutory duties (please see paragraph 5.3 and note 7 to



Hogan Lovells

paragraph 9.1 of the Supplemental Report, pages 1255 and 1268 of the Exhibit respectively).

84. The extent to which any of the Liquidator Claims may be pursued is ultimately subject to:
- (a) further investigations into the affairs of the Company, the relevant transactions that may form the subject of a Liquidator Claim, and the likely date of the Company's insolvency;
 - (b) a more detailed consideration of the merits of the potential Liquidator Claims;
 - (c) the date on which it is determined that the Company was or became insolvent;
 - (d) the prospects of recovery in the event that a successful Liquidator Claim was made, including having regard to the availability of any directors' and officers' insurance policies which may respond to the claim, and the relevant defendants' asset position; and
 - (e) the extent to which the creditors, or potentially a litigation funder, would be prepared to fund the liquidators to pursue the relevant Liquidator Claims.

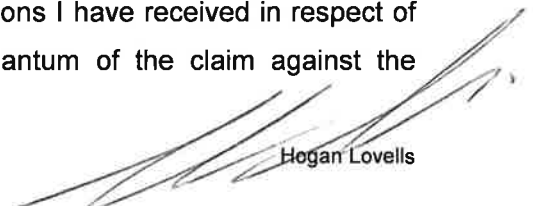
Creditors of the Company

Unsecured creditors

85. My investigations to date have revealed that the Company has various unsecured creditors, and potentially one priority employee creditor. I have not yet formally adjudicated any of the proofs of debt received from creditors of the Company.

Subordinated Creditors

86. During the course of my appointment, I have also been made aware that various shareholders of the Company have asserted claims against the Company (and its directors) arising from alleged breaches of the Act and/or misleading and deceptive conduct in connection with the Company's disclosures to the market. Exhibited at pages 1358 to 1360 is a letter received from Phi Finney McDonald, who act for a number of shareholders of the Company, in relation to these potential claims. I am advised by my solicitors, and I believe, that any such claims would be subordinated to all other claims against the Company pursuant to section 563A of the Act, and that the relevant shareholders would therefore be Subordinated Creditors.
87. I have not yet received any proofs of debt from any Subordinated Creditors in respect of their subordinated claims, and none of the communications I have received in respect of the asserted claims provide any indication of the quantum of the claim against the



Hogan Lovells

Company. I have not yet assessed any claims of Subordinated Creditors against the Company.

88. There is therefore significant uncertainty as regards the extent of any Subordinated Creditors of the Company, and the likely value of their claims (if any).

BRTV

89. As BRTV's holding company, there is a risk that the liquidators of BRTV may assert a claim against the Company pursuant to section 588V of the Act in respect of debts incurred by BRTV whilst BRTV was insolvent. The liquidators of BRTV may seek to pursue the Company pursuant to section 588W of the Act as a result.

90. The extent of any claim against the Company under section 588V is subject to:

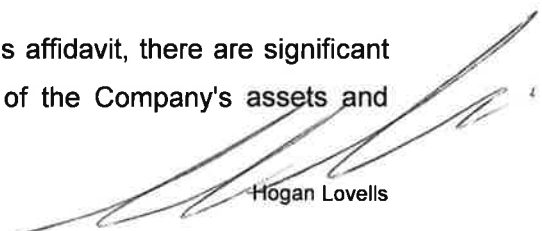
- (a) the date of insolvency of BRTV;
- (b) whether, as a matter of fact, the conditions for liability under subsections 588V(1)(c) and (d) are met;
- (c) whether the liquidator of BRTV is funded to pursue any claim against the Company under section 588V;
- (d) any rights of set-off that the Company may be entitled to assert against a claim by the liquidator of BRTV, including in relation to the Inter-company Loan and/or the Inter-company Investment.

91. On 4 December 2018, I received a letter from the liquidators of BRTV which advised that, inter alia, BRTV "*currently does not have a quantified claim in the administration of the [Company]. We reserve all rights to submit a claim at a future date*". I am not otherwise aware of the investigations undertaken to date or the position of the liquidators of BRTV in relation to any potential claim.

Summary of assets and liabilities and estimated return to creditors

92. For the purposes of considering whether or not the proposed transfer of shares would unfairly prejudice members of the Company, I have endeavoured to compare the impact on members of the DOCA and the share transfer as against the hypothetical situation of the Company entering liquidation. In particular, I have considered the value of the Company's assets and liabilities (including, to the extent possible, the claims the Company may have.

93. For the reasons deposed to in paragraphs 69 to 91 of this affidavit, there are significant difficulties in accurately estimating the aggregate value of the Company's assets and



Hogan Lovells

liabilities, and therefore whether the Company's value breaks in the debt or the equity, due in particular to the current uncertainty regarding:

- (a) the availability and value of any Third Party Claims or Liquidator Claims (including the availability and cost of funding such claims, and the ability of any defendants to pay any judgment debts obtained);
- (b) the existence of any Subordinated Creditors of the Company, and the claims that such Subordinated Creditors may have against the Company; and
- (c) the extent of any claim that BRTV may have against the Company.

94. In order to comply with my statutory duty to set out my opinion to creditors in accordance with section 75-225(3) of the Rules, I included in the Supplemental Report a comparative analysis of the estimated return to creditors (at page 1266 of the Exhibit) on the basis that:

- (a) the DOCA was executed and implemented; and
- (b) the Company entered liquidation.

95. I set out below a further copy of the comparative analysis included in the Supplemental Report, updated to reflect further information that has become available to me as at the date of swearing this affidavit.



Estimated Statement of Position (ESOP)	DOCA/Creditors Trust (Excl. GST)			Liquidation (Excl. GST)		
	Recovery estimate			Recovery estimate		
	Low \$	Medium \$	High \$	Low \$	Medium \$	High \$
Assets						
GST refund (from 1 January 2018 to date of appointment)	47,621	52,148	122,762	47,621	52,148	122,762
Shares in Shoutback!	-	-	-	20,000	30,000	50,000
Shares in Realworld Advertising	-	-	-	150,000	150,000	150,000
Shares in Wayfarer	-	-	-	50,000	50,000	50,000
Litigation of company claims	Significant	Significant	Significant	Significant	Significant	Significant
Funds held on trust for the Company by DLA Piper	-	-	-	-	-	-
DOCA Contributions	350,000	350,000	350,000	-	-	-
Indemnity (s444GA Application)	250,000	250,000	250,000	-	-	-
Total assets	647,621	652,148	722,762	267,621	282,148	372,762
Recoveries available to a liquidator						
Unfair preferences (\$621,761)	-	-	-	-	124,352	248,704
Uncommercial transactions (Nil)	-	-	-	-	-	-
Unreasonable director-related transactions (\$798,452)	-	-	-	-	159,690	319,381
Insolvent trading claims (\$451,270)	-	-	-	-	-	90,254
Total recoveries available to a liquidator (\$2,951,652)	-	-	-	-	284,043	658,339
Total funds available for distribution	647,621	652,148	722,762	267,621	566,191	1,031,101
Administrators' costs						
Administrators' fees for the period 24 August 2018 to 27 September 2018	(70,000)	(70,000)	(70,000)	(70,000)	(70,000)	(70,000)
Administrators' fees for the period 27 September 2018 to 8 December 2018	(297,962)	(297,962)	(297,962)	(297,962)	(297,962)	(297,962)
Administrators' current disbursements	(26,082)	(26,082)	(26,082)	(26,082)	(26,082)	(26,082)
Legal fees	(150,000)	(150,000)	(150,000)	(150,000)	(150,000)	(150,000)
Administrators' estimated prospective remuneration	(30,000)	(30,000)	(30,000)	(30,000)	(30,000)	(30,000)
Administrators' estimated prospective disbursements	(10,000)	(10,000)	(10,000)	(15,000)	(15,000)	(15,000)
Total Administrators' costs	(584,044)	(584,044)	(584,044)	(589,044)	(589,044)	(589,044)
Deed Administrators'/Trustees' costs						
Deed Administrators'/Trustees' prospective remuneration	(150,000)	(150,000)	(150,000)	-	-	-
Deed Administrators'/Trustees' prospective remuneration (s444GA Application)	(50,000)	(50,000)	(50,000)	-	-	-
Deed Administrators'/Trustees' prospective disbursements	(40,000)	(40,000)	(40,000)	-	-	-
Legal fees (general)	(50,000)	(50,000)	(50,000)	-	-	-
Third party costs associated with s444GA application	(200,000)	(200,000)	(200,000)	-	-	-
Total Deed Administrators'/Trustees' costs	(490,000)	(490,000)	(490,000)	-	-	-
Liquidators' costs						
Liquidators' prospective remuneration	-	-	-	(300,000)	(300,000)	(300,000)
Liquidators' prospective disbursements	-	-	-	(40,000)	(40,000)	(40,000)
Legal fees	-	-	-	(100,000)	(100,000)	(100,000)
Total Liquidators' costs	-	-	-	(440,000)	(440,000)	(440,000)
Total Administrators' and Liquidators' costs	(1,074,044)	(1,074,044)	(1,074,044)	(1,029,044)	(1,029,044)	(1,029,044)
Total funds available for priority employee claims	0.00	0.00	0.00	0.00	0.00	2,057
Priority employee claims						
Wages and superannuation	-	-	-	-	-	-
Leave of absence	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)
Redundancy	-	-	-	-	-	-
Total priority employee claims	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)
Estimated dividend to priority creditors (cents/\$)	0.00	0.00	0.00	0.00	0.00	100.00
Total funds available for unsecured creditors	0.00	0.00	0.00	0.00	0.00	557
Unsecured creditors - Scenario 1						
Trade creditors	2,544,836	2,544,836	2,544,836	2,544,836	2,669,188	2,793,540
Unsecured portion of the priority employee claims	1,329,929	1,329,929	1,329,929	1,329,929	1,329,929	1,329,929
Total unsecured creditors	3,874,765	3,874,765	3,874,765	3,874,765	3,999,117	4,123,469
Estimated dividend to unsecured creditors (cents/\$)	0.00	0.00	0.00	0.00	0.00	0.01
Unsecured creditors - Scenario 2						
Trade creditors	2,460,327	2,460,327	2,460,327	2,544,836	2,669,188	2,793,540
Unsecured portion of the priority employee claims	1,329,929	1,329,929	1,329,929	1,329,929	1,329,929	1,329,929
BRTV (contingent)	4,824,147	4,824,147	4,824,147	4,824,147	4,824,147	4,824,147
Total unsecured creditors	8,614,403	8,614,403	8,614,403	8,698,912	8,823,264	8,947,616
Estimated dividend to unsecured creditors (cents/\$)	0.00	0.00	0.00	0.00	0.00	0.01

96. The comparative analysis exercise has been necessarily limited by the issues referred to in paragraph 93 of this affidavit. However, in order to provide an analysis which could support my opinion under section 75-225(3)(b) of the Rules, and on the basis of the information available to me at the time of the Supplemental Report and the date of swearing this affidavit, I:

- (a) included a range of recoveries for the GST Refund in both the DOCA and liquidation scenario on a low, medium and high basis (the low and high outcomes

have been updated in the comparative analysis included in this affidavit to reflect the limits of the range of likely recoveries referred to in paragraph 65 of this affidavit);

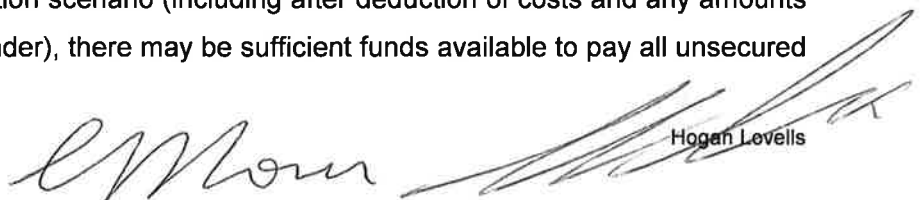
- (b) disregarded any value attributable to the Third Party Claims in both the DOCA and liquidation scenario; and
- (c) included a range of recoveries for the Liquidator Actions on a low, medium and high basis, being, respectively:
 - (i) 0%, 20% and 40% of the potential values of the claims referred to in paragraphs 82(a) and 82(c) of this affidavit; and
 - (ii) 0%, 0% and 20% of the potential value of the insolvent trading claim referred to in paragraph 82(d) of this affidavit, having regard to the financial position of the directors;
- (d) included alternative calculations for whether the BRTV contingent claim was included in or excluded from the unsecured creditor pool in both the DOCA and liquidation scenario; and
- (e) disregarded the claims of any Subordinated Creditors in both the DOCA and liquidation scenario.

97. The purpose of doing this was to represent the potential "best case" and "worst case" outcomes for creditors in both the DOCA and liquidation scenarios.

98. All of the calculations in the comparative analysis result in unsecured creditors of the Company receiving less than 100 cents in the dollar in both the DOCA and liquidation scenarios.

99. In particular, the "high" estimated outcome in the liquidation scenario (which assumes the maximum possible recovery of the GST Refund, a 40% recovery for voidable transactions and a 20% recovery for insolvent trading claims, and excludes the BRTV contingent claim and any Subordinated Creditors) is a dividend of 0.01 cents in the dollar for unsecured creditors. In other words, even in the event that a liquidator is able to make the maximum recovery realistically achievable in the circumstances (disregarding any recoveries of Third Party Claims), unsecured creditors of the Company will receive significantly less than 100 cents in the dollar.

100. It is at least possible that if very significant recoveries were made in respect of the Third Party Claims in a liquidation scenario (including after deduction of costs and any amounts payable to a litigation funder), there may be sufficient funds available to pay all unsecured



Hogan Lovells

creditors (including Subordinated Creditors) 100 cents in the dollar, with the result that there may then be surplus funds available to shareholders. However, given the uncertainty in relation to the Third Party Claims and the extent of any Subordinated Creditors, and on the basis of my analysis and investigations to date, it is my view that this outcome is very unlikely.

The alternatives

101. If the Application is approved and the ASIC Relief is granted, the DOCA will effectuate. In this scenario:
- (a) the Contribution Amount, the GST Refund and any recoveries from the Third Party Claims will be available for distribution to Trust Creditors, which as deposited to in this affidavit, will be unlikely to be sufficient to pay Trust Creditors in full;
 - (b) the Share Interests will remain assets of the Company and will not be available for distribution to creditors, and the Liquidation Claims will not be available;
 - (c) save in the unlikely event that the distributions referred to in paragraph (a) are sufficient to pay Trust Creditors 100 cents in the dollar, in my view the return to members is likely to be nil (that is, the same as if the Company was to enter liquidation);
 - (d) however, in the unlikely event that the distributions referred to in paragraph (a) are sufficient to pay Trust Creditors 100 cents in the dollar, any surplus recoveries from the Third Party Claims will be available for distribution to members, thereby preserving the position that would otherwise apply for members in respect of the Third Party Claims were the Company to enter liquidation; and
 - (e) members will retain 20% of their current shareholding in the Company, which will be able to continue as a going concern, which may provide some residual value for members in comparison with the position if the Company was to enter liquidation.
102. If the Application is refused or the ASIC Relief is not granted, the Deed Administrators will convene a meeting of creditors to determine the future of the Company. If this was to occur, I consider that the likelihood of me receiving a proposal for an alternative deed of company arrangement is low, because:
- (a) in the four months that I was appointed administrator of the Company, I received no proposals for a deed of company arrangement other than the Initial DOCA Proposal and the Further DOCA Proposal, and no parties other than the Proponent expressed any interest in proposing a deed of company arrangement;

- (b) the Proponent has proposed the DOCA in order to enable it to obtain control of the Company and its assets, and to continue the Company's business; and
- (c) in circumstances where the Licence, being the key asset of the Company required to enable it to continue in business, is non-transferrable, it is unlikely that the Proponent would be able to obtain that control other than pursuant to the DOCA (including, for example, by way of an asset purchase).

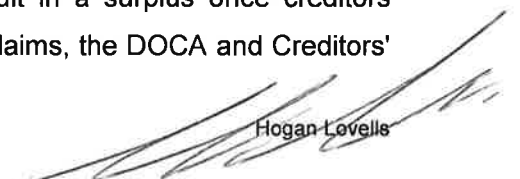
103. In those circumstances, in my view it is most likely that the Company would be placed into liquidation. In this scenario:

- (a) the Contribution Amount will not be available;
- (b) the GST Refund, the Third Party Claims, the Share Interests and the Liquidation Claims will be available for recovery by the liquidators and for distribution to creditors, which as deposed to in this affidavit, will be unlikely to be sufficient to pay creditors in full;
- (c) save in the unlikely event that the distributions referred to in paragraph (b) are sufficient to pay creditors 100 cents in the dollar, in my view the return to members is likely to be nil (that is, the same as under the DOCA); and
- (d) members will retain 100% of their current shareholding in the Company, but that shareholding will likely be worthless given the liquidation.

Deed Administrators' opinion

104. As a consequence of the above, I am of the opinion that members' interests will not be unfairly prejudiced by an order under section 444GA granting leave for the Plaintiffs to effect the Share Transfer, in particular because:

- (a) liquidation is the only realistic alternative if the Application is refused and the DOCA therefore fails to effectuate;
- (b) it is unlikely that there will be sufficient funds available to discharge unsecured creditor claims against the Company in full, irrespective of whether the DOCA effectuates or the Company is placed into liquidation;
- (c) it is therefore unlikely that there is any scenario where members of the Company will receive a return on their investment;
- (d) members are unlikely to receive any distribution in a liquidation, but if recoveries of the Third Party Claims were sufficient to result in a surplus once creditors receive 100 cents in the dollar in respect of their claims, the DOCA and Creditors'



Hogan Lovells

Trust Deed preserve the rights of members to receive a distribution of those surplus funds, and therefore members are no worse off under the DOCA than they would be under liquidation; and

- (e) members will retain 20% of their existing shareholding in the Company if the Share Transfer proceeds, which is potentially a better outcome for members than would be the case if they retained 100% of their shareholdings but the Company went into liquidation.

105. Further, in my opinion, the objects of Part 5.3A of the Act will be advanced if the Application is granted, because the Company's balance sheet will be restructured and it will be able to continue as a going concern. Members will continue to benefit from the restructured company in the future because they will retain 20% of their existing shareholding.

106. Accordingly, I am of the opinion that the Share Transfer will not unfairly prejudice the interests of members of the Company.

ASIC Relief

107. I am also informed by the solicitors for the Deed Administrators and I believe that:

- (a) section 444GA of the Act does not operate to the exclusion of Chapter 6 of the Act;
- (b) it would be unlawful for the Proponent to acquire more than 20 percent of the issued share capital of the Company without complying with Chapter 6 of the Act, unless one of the exceptions in section 611 of the Act applies;
- (c) none of the exceptions in section 611 of the Act apply; and
- (d) to proceed with the Share Transfer, the transaction would require a formal decision from ASIC to the effect that the Chapter 6 requirements do not apply to the Share Transfer ("**ASIC Relief**").

108. Under the DOCA, the Proponent is responsible for making the substantive application for the ASIC Relief. I am currently in discussions with the solicitors for the Proponent, together with its solicitors, to assist in the preparation of the application for ASIC Relief.

Attitude of members of the Company

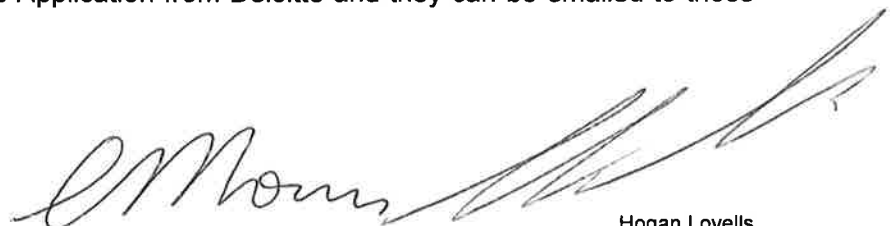
109. As contemplated by the Application, I intend to give notice of the Application to members of the Company, in order to ascertain their views and attitudes in relation to the

Application, and/or the means by which the shares may obtain some value or by which the Company may continue in existence.

Communications with members

110. At pages 2 to 4 of the Exhibit is the Proposed Notice, which I intend to provide to persons entitled to oppose the Application under section 444GA(2) of the Act, including:
- (a) members of the Company;
 - (b) creditors of the Company;
 - (c) ASIC; and
 - (d) any other interested person.
111. The Proposed Notice provides information to the members, creditors and ASIC about:
- (a) the background to the Application, including the effect of key steps under the DOCA and the need for Court approval for the Share Transfer;
 - (b) the effect of the Application on shareholders;
 - (c) steps to be taken if the recipient intends to oppose the Application;
 - (d) a recommendation to seek independent legal, financial and taxation advice before making a decision on whether to take any action in relation to the Application; and
 - (e) further information available to assist in deciding whether to appear at the Court hearing.
112. I seek orders that the Proposed Notice be:
- (a) sent by post to all members of the Company;
 - (b) sent by email to all persons entitled to oppose the Application for which an email address has been provided or otherwise known to the Plaintiffs;
 - (c) uploaded to the Deloitte website; and
 - (d) advertised for one day in a newspaper in general circulation in Australia.
113. Interested parties may request copies of the Proposed Notice, the Report, the Supplemental Report and the Application from Deloitte and they can be emailed to those parties.

Supplementary affidavit



114. As contemplated by the draft orders, I intend to swear a supplementary affidavit ("**Supplementary Affidavit**") deposing to the circulation of the Proposed Notice and any communications received from interested parties in relation to the Application. In the Supplementary Affidavit, I intend to summarise the views and attitudes of those parties in relation to the Application, the means by which the shares may obtain some value or by which the Company can continue in existence.

115. In order for the Court to have regard to the attitude of interested parties, I have sought orders for the listing of a further hearing to determine the Application.

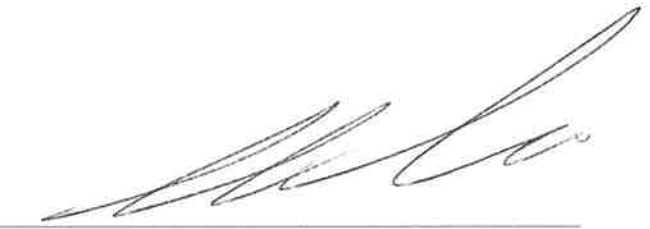
Basis for orders sought

116. I do not believe that members of the Company will be unfairly prejudiced if orders are made in the terms sought.

117. By reason of the matters referred to in this affidavit, I respectfully request that this Honourable Court make orders in terms of the draft orders.

Sworn by the deponent
at Sydney
in New South Wales
on 29 March 2019
Before me:

)
)
)
)
)



Signature of deponent



Signature of witness

Name of witness: Christopher John Moses
Qualification of witness: Australian legal practitioner