

9 November 2016

UPDATE CIRCULAR TO CREDITORS & EMPLOYEES

Gordon Smith Marketing Pty. Ltd. ACN 003 840 168
Rodney Clark Pty Ltd ACN 088 072 244
Rodney Clark Retail Pty Ltd ACN 138 806 256
(All in Liquidation) ('the Companies')

Dear Creditor

Please see below an update on the administration of the Companies under the following headings.

Second Meeting of Creditors

As creditors are aware a Second Meeting of creditors was held pursuant to Section 439A of the Corporations Act ('the Act') on 20 September 2016.

At that meeting creditors resolved to execute a Deed of Company Arrangement ('DCA') based on the DCA proposed by the Companies' director Mr Gordon Smith.

As outlined in the 439A report to creditors dated 8 September 2016, the assets available to creditors were to be the proceeds from the sale of the business to Brands For Us Pty Ltd (the 'Purchaser') under the Asset Sale Agreement (\$750,000) and the deed fund consisting of contributions from the director totalling \$1.7 million under his DCA proposal, which included the \$750,000 proceeds from the sale of shares in Palm Beach Brands (a company not under my control, which is owned by the director and holds trade marks used by the Companies) pursuant to a Share Sale Agreement with the Purchaser.

At the meeting of the Companies' creditors held on 20 September 2016, the majority by number and value of the Companies' creditors approved the DCA proposal, triggering a 15 business day period during which a deed of company arrangement instrument was to be executed to give effect to the DCA proposal (the 'DOCA').

For a number of reasons, a DOCA was not able to be executed to give effect to the DCA proposal within the 15 business day period provided for DOCA execution under the Act. In particular:

- a dispute arose in respect of certain aspects of the Asset Sale Agreement and the Share Sale Agreement which created doubt regarding the prospects of those agreements being completed;
- an issue arose in respect of the terms of Mr Smith's DCA proposal which raised questions regarding the equality of treatment of creditors under a DOCA; and

- I formed the view that I was not in a position to expend further costs and expenses in respect of a DOCA unless and until those matters were resolved.

Prior to the expiry of the 15 business day statutory period, attempts were made to resolve the above issues in discussions between the Purchaser, Mr Smith and myself on behalf of the Companies. Those discussions were not able to be concluded within the statutory period. Accordingly, I was unable to execute the DOCA in the required statutory time and the Companies were placed in liquidation automatically by operation of law on 12 October 2016, with myself appointed as liquidator.

As things stand the Companies remain in the liquidation procedure pending resolution of the arrangements outlined below. Accordingly, I send this circular to creditors in my capacity as liquidator of the Companies. The Companies remain trading as going concerns and under licence to the Purchaser pending resolution of the matters outlined below.

Revised Sale of Business

In my capacity as liquidator of the Companies, I continued discussions with the Purchaser and Mr Smith, with a view to resolving the situation and endeavouring to preserve the prospects of a recapitalisation and sale of the Companies to improve returns to the Companies' creditors.

After negotiations, the Purchaser, Mr Smith and myself on behalf of the Companies have reached conditional terms of settlement which are outlined below.

A deed of settlement was recently executed by Mr Smith and the Purchaser to reflect the revised terms which can be summarised as follows:

1. Reduction in Purchase price

Asset Sale Agreement – No change to the purchase price of \$750,000
Share Sale Agreement – Reduction in purchase price from \$750,000 to \$350,000

2. Payment terms

The purchase price under both the Asset Sale Agreement and the Share Sale Agreement is payable either, and at the option of the Purchaser:

- (a) by 1 February 2017 in the amount of \$1,100,000; or
- (b) in monthly instalments over a period of 18 months with interest payable at 10% on amounts unpaid from January 2017 (a total amount of \$1,184,446.52).

3. Transaction Security

I have obtained security for the payment of the aggregate purchase price by way of a general security agreement from the Purchaser and its related entities over all their assets and a personal guarantee from each director of the Purchaser (the 'Transaction Security').

4. Conditions precedent to the revised sale of business

The conditions precedent to the revised terms of the Asset Sale Agreement and Share Sale Agreement taking effect are:

- (a) executed counterparts of the Transaction Security being provided by the Purchaser by 4 November 2016 – this has been satisfied; and
- (b) Court directions or other orders to the effect that the liquidation of the Companies is terminated and a second meeting of creditors of the Companies be convened to vote on a revised DCA proposal from Mr Smith; and
- (c) on or before 30 November 2016, a DCA is executed to give effect to a revised DCA proposal from Mr Smith.

All other terms of the Asset Sale Agreement remain the same, in particular the assumption of employees and their entitlements by the Purchaser.

Assuming the above condition precedents are met, completion of the Asset Sale and Share Sale Agreement is likely to take place by the middle of December 2016.

Way Forward

Given the director is now receiving less under the Share Sale Agreement, this has impacted the amount he has available to propose in his revised DCA for creditors. On 2 November 2016, and as part of the settlement terms outlined above, Mr Smith provided a revised DCA proposal to me. This revised DCA proposal provides that Mr Smith will make aggregate contributions of \$1,450,000 to a deed fund which would be available for distribution to creditors of the Companies (excluding related party creditors) on a pooled basis. This is \$250,000 less than the initial DCA proposal, however given the purchase price under the Share Sale Agreement is reduced by \$400,000 under the deed of settlement, this revised DCA proposal represents a net increase of personal contributions by Mr Smith of \$150,000.

I remain of the view that the settlement arrangement outlined above, and in particular the completion of the Asset Sale Agreement on the above terms, is strongly in the best interests of the Companies' creditors. In particular, the purchase consideration has been preserved, is now secured against the Purchaser's assets and by personal guarantees from the Purchaser's directors, and under the business transfer arrangements the Purchaser continues to assume the entitlements of the Companies' employees and certain of the Companies' trade creditors.

The Act provides a process for companies to pass from the liquidation procedure into administration and then into deed of company arrangement along the lines provided in the settlement terms outlined above.

In terms of next steps, I propose to consult with the Committee of Creditors and the Australian Securities and Investments Commission.

I will then make an application to court to seek to implement the settlement terms. As part of those arrangements, I will seek leave of the court to be appointed administrator of the Companies and to convene a further meeting of creditors to enable creditors to vote on the revised DCA proposal outlined above. In advance of that meeting, I would propose to issue a further report to the Companies' creditors which outlines in further detail the matters outlined in this circular, the revised DCA proposal and the estimated returns to the Companies' creditors under a DOCA and under liquidation.

In the interim, should you have any questions in relation to the above please contact me directly on 0408 317 984.

Yours Faithfully

A handwritten signature in blue ink, appearing to read 'Andrew Schwarz', with a long horizontal flourish extending to the right.

Andrew Schwarz
Liquidator of the Companies