



MAINZEAL GROUP LIQUIDATION

Liquidators' Six-Monthly Report to Creditors and Shareholders

Pursuant to Section 255 of the Companies Act 1993

Reporting Period: 28 August 2021 - 28 February 2022



1. Introduction

Brian Mayo-Smith and Andrew James Bethell (IP5), of BDO Auckland and Stephen John Tubbs, of BDO Christchurch, all Chartered Accountants (“the Liquidators”), were appointed joint and several liquidators of the below Companies on 28 February 2013 by special resolution of the shareholders in accordance with Section 241(2)(a) of the Companies Act 1993 (“the Act”) with approval of the High Court.

- Mainzeal Property and Construction Limited (“MPCL”)
 - Mainzeal Living Limited (“MLL”)
 - 200 Vic Limited
 - Mainzeal Group Limited
 - Building Futures Group Holdings Limited
 - Building Futures Group Limited
 - Mainzeal Residential Limited
 - Mainzeal Construction Limited
 - Mainzeal Limited
 - Mainzeal Construction SI Limited
 - MPC NZ Limited
 - RGRE Limited
- (together “the Companies”)

Stephen Tubbs retired as liquidator on 8 December 2016 prior to his retirement from BDO Christchurch. On 30 August 2021 and as a result of legislative changes, Brian Mayo-Smith retired as liquidator and BDO Auckland partner, Andrew McKay (IP40), was appointed replacement liquidator.

We attach as **Appendix 1** a Declaration of Independence, Relevant Relationships and Indemnities for the current liquidators.

The Liquidators were earlier appointed liquidators of King Facade Limited (“KFL”) on 12 February 2013 also by special resolution of the shareholders in accordance with Section 241(2)(a) of the Act.

In accordance with Section 255 of the Act we are obliged to report to all creditors and shareholders on the conduct of the liquidation during the preceding six-month period. We report on all the Companies and KFL together using 28 February 2013 as the liquidation commencement date.

This report should be read in conjunction with our previous reports for the Companies and KFL pursuant to Section 255(2)(c) of the Act.

2. Restrictions

This report is not intended for general circulation, nor is it to be reproduced or used for any purpose other than that outlined above without our written permission in each specific instance.

We do not assume any responsibility or liability for any losses occasioned to any party as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph.



We reserve the right (but will be under no obligation) to review this report and if we consider it necessary to revise the report in the light of any information existing at the date of this report which becomes known to us after that date.

3. Conduct of the liquidation within the reporting period

Litigation against MPCL's directors and KFL

As previously advised, MPCL's directors Richard Yan, Dame Jennifer Shipley and Messrs Gomm and Tilby (collectively, **the Directors**) were held jointly liable by the High Court for reckless trading and were ordered to pay \$36m - with Mr Yan being liable for \$18m alone and Dame Jennifer Shipley and Messrs Tilby and Gomm liable for \$6m each jointly with Mr Yan. Sir Paul Collins was found not liable.

Mr Yan and the other Directors appealed separately the High Court decision and MPCL and the liquidators cross-appealed. The appeals and cross-appeals were heard in the last week of July 2020 with the Court of Appeal releasing its decision in March 2021.

In its decision, the Court of Appeal held that the Directors were in breach of their duties under both ss135 and 136 of the Companies Act. However, the Court held that no compensation for breach of s 135 was recoverable from the Directors. The Directors were held liable under s136 for all obligations to principals, bond providers who have indemnified those principals and subcontractors in respect of the four significant construction contracts entered into by Mainzeal after 31 January 2011 and all obligations incurred by Mainzeal to creditors from 5 July 2012 onwards plus interest and costs. The Court of Appeal referred the matter back to the High Court to determine the quantum of the Directors' liability. The liquidators consider that the loss to creditors calculated in accordance with the Court of Appeal's judgment will likely result in a material increase in the Directors' liability.

As advised in our previous report, the Supreme Court granted leave for the Directors to appeal and for the liquidators to cross-appeal the Court of Appeal decision. Consequently, the quantum hearing in the High Court was adjourned pending the determination of the appeals. The appeals were heard by the Court between 7 and 11 March 2022. The Court reserved its judgment.

Receipts and payments

Attached as **Appendix 2** is a Statement of Receipts and Payments for the reporting period.

Creditor claims

Preferential creditors

Preferential creditors have been paid in full.

Unsecured Creditors

Of the approximately 1,400 claims totaling \$158.3m received from creditors of the Companies and KFL, a total of 1,390 claims have been admitted either in full or in part totaling \$111m.

Liquidation Committee

The liquidators have had recent email communication with the liquidation committee ("Committee") and intend to arrange a meeting to update the Committee once circumstances permit.

4. Further proposals for completing the liquidation

The Liquidators propose at this stage to take the following further actions:

- Collect any GST recoveries;
- Await the outcome of the Supreme Court decision;
- Respond to creditor queries;
- Comply with statutory obligations; and
- Distribute available funds (if any) to unsecured creditors.

The Liquidators will take further action as appropriate should additional information regarding the Companies' affairs come to the Liquidators' attention. Further actions will be subject to the availability of funding and an assessment of the benefits of pursuing recoveries.

Likely distribution to unsecured creditors

We expect that there will be some funds available for distribution to unsecured creditors. The quantum of any ultimate distribution to unsecured creditors will depend on the outcome of the appeals and cross-appeals.

Estimated Date of Completion

It is not practical to estimate the date of the completion of the liquidation at this stage. Our subsequent reports to creditors and shareholders will, when appropriate, advise of an estimated completion date.

5. Liquidators' Remuneration

Attached as **Appendix 3** is a breakdown of the Liquidators' fees for the reporting period.

6. Contact Information

If you require any further information, please direct enquiries to:

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PO Box 2219
Level 4 BDO Centre
4 Graham Street
Auckland 1140

Dated this 28th day of March 2022



Andrew Bethell
Liquidator

Appendix 1 - Declaration of Independence, Relevant Relationships and Indemnities

Note: As detailed in the report, on 30 August 2021 and as a result of legislative changes, Brian Mayo-Smith retired as liquidator and BDO Auckland partner, Andrew McKay (IP40), was appointed replacement liquidator.

The purpose of this document is to provide the required declaration for both the current liquidators.

Liquidators Declaration to Creditors

Independence

The liquidators declare that:

- they have undertaken a proper assessment of risks to Independence in accordance with the law, Code and applicable professional standards;
- they have determined that the assessment identified no real or potential risks to independence;
- they have evaluated the significance of any real or potential risk to Independence and taken such action as necessary to preserve their Independence; and
- In all cases, are not otherwise aware of any impediments to taking the Appointment.

Relationships

- The Liquidators were appointed by:
 - A special resolution of the Company's shareholders pursuant to section 241(2)(a) of the Companies Act 1993;
 - No advice was provided to the Company, its officers or their advisers prior to their appointment
- The Liquidators also declare that:
 - They have not provided any professional services directly to the Company or its known associates in the previous 2 years;
 - They have had no other relevant relationships other than the above with the Company or known associates in the previous 2 years;
 - There are no other relationships to declare.

Indemnities and Upfront Payments

The Liquidators declare that they have not received an indemnity from the shareholder.

Dated this 28th day of March 2022

Signed:



Andrew Bethell
Liquidator



Andrew McKay
Liquidator



Appendix 2 - Receipts and Payments

Receipts and Payments	
28 August 2021 to 28 February 2022	\$'000
Opening Balance	5,593
Receipts	
Net Interest	16
Net GST	1
Total Receipts	16
Payments	
Legal Fees	194
Liquidators' remuneration and disbursements	52
Records Storage	31
Administrative expenses	2
IT Hosting	2
Total Payments	281
Net Receipts/ payments	(264)
Funds on Hand	5,329



Appendix 3 - Liquidators' Remuneration

	Hourly Rate	Administration & Trading		Creditors		Investigation		Reporting		Total	
		Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost
Partners	\$ 580	5.33	3,259.17	1.50	907.50	58.42	33,637.09	1.67	1,008.33	66.92	38,812.09
Associate	\$ 396	4.80	1,897.50	2.20	869.00	1.40	560.00	3.50	1,382.50	11.90	4,709.00
Manager	\$ 413	1.25	512.50	0.00	0.00	10.25	4,242.50	0.00	0.00	11.50	4,755.00
Support Staff	\$ 216	16.73	3,622.66	0.00	0.00	0.00	0.00	0.00	0.00	16.73	3,622.66
Total		28.12	9,291.83	3.70	1,776.50	70.07	38,439.59	5.17	2,390.83	107.05	51,898.75