



## **MAINZEAL GROUP LIQUIDATION**

### **Liquidators' Six-Monthly Report to Creditors and Shareholders**

Pursuant to Section 255 of the Companies Act 1993

Reporting Period: 28 August 2023 to 28 February 2024

## 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”)

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.

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.

There have been no changes to the Declaration of Independence, Relevant Relationships and Indemnities set out in our previous report.

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.

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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 advised in our last report, the Supreme Court released its judgment in relation to the directors' appeal and Liquidators' cross appeal on Friday 25 August 2023.

The Supreme Court dismissed the appeals by the directors and in part allowed the cross appeal of the Liquidators. The Supreme Court ordered the directors to contribute to the assets of the Companies \$39.8m together with interest at the prescribed rates for the period from 28 February 2013 to the date of the Judgment. With interest, the judgment sum exceeds \$60m.

Dame Shipley and Messrs Tilby and Gomm were held liable for \$6.6m each plus interest and Mr Yan was held liable for the full judgment sum. Initial calculations indicated that Dame Shipley and Messrs Tilby and Gomm would be liable for a further \$3.4m each in respect of the interest component, making their individual liability of approximately \$10m each.

In addition, the directors were ordered to pay costs of \$65,000 plus disbursements.

#### **Recovery Action**

The Liquidators have:

- recovered insurance funds payable pursuant to the Directors' and Officers' insurance policy.
- made demand on the directors to make payment of the judgment sum including interest and costs; and
- initiated bankruptcy action against one of the directors who has failed to meet the Liquidators' demands for payment of the judgment sums; and
- obtained release of the bank bond provided/put up as security for costs.

To date, the Liquidators have settled with three of the defendant directors (Dame Shipley, Messrs Gomm and Tilby). As noted above, the Liquidators in conjunction with their legal advisers, have commenced bankruptcy proceedings against the fourth director (Mr Yan) regarding recovery of the outstanding judgment sums.

#### **Distribution**

Litigation costs have been settled in the reporting period. The Liquidators have made considerable efforts to contact all admitted unsecured creditors and in November 2023, a first interim distribution of 6 cents in the dollar was paid to all those admitted unsecured creditors who have provided their bank account details.

A further tranche of the first interim distribution was paid in December 2023 and another first interim distribution tranche was paid in late February 2024. There are still a substantial number of creditors who have not provided bank details or updated contact details.

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To date funds totalling \$5.141m has been paid to admitted creditors and the balance of \$1.548m is held on trust for those admitted creditors who have yet to provide their bank account details.

No admitted creditor will be excluded from the distributions if they have not provided the requested bank account and contact information, however, no payments can be made to those creditors who have not provided the requested bank account details.

### **Receipts and payments**

Attached as **Appendix 1** is a Statement of Receipts and Payments for the reporting period.

### **Creditor claims**

#### **Preferential creditors**

Preferential creditors have been paid in full.

#### **Unsecured Creditors**

As a consequence of the publicity surrounding the Supreme Court judgment, a number of creditors who had not previously claimed, have come forward. The updated creditor position confirms 1,408 creditor claims totaling \$159,022,990.01 have been received of which claims totaling \$111,445,380.72 have been admitted with the balance being rejected or reduced.

There are also three new claims totaling \$363,592.23 which are currently being assessed.

## **4. Further proposals for completing the liquidation**

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

- Pursue recovery of the judgment sum awarded by the Supreme Court;
- Respond to creditor queries;
- Comply with statutory obligations; and
- Distribute available funds 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.

### **-Future distributions to unsecured creditors**

We expect that there will be further funds available for another distribution to unsecured creditors and the Liquidators anticipate making a second interim distribution of 4 cents in the dollar by the end of April 2024. This will take total distributions to 10 cents in the dollar.

### **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 2** is a breakdown of the Liquidators' fees for the reporting period.

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## 6. Contact Information

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

Adrienne Stone ([adrienne.stone@bdo.co.nz](mailto:adrienne.stone@bdo.co.nz))  
BDO Auckland  
PO Box 2219  
Level 4 BDO Centre  
4 Graham Street  
Auckland 1140

Dated this 22<sup>nd</sup> day of March 2024.

A handwritten signature in black ink, appearing to read 'A. McKay'.

Andrew McKay  
Liquidator

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## Appendix 1 - Receipts and Payments

Receipts and Payments	
28 August 2023 to 28 February 2024	
	\$'000
<b>Opening Balance</b>	<b>5,803</b>
<b>Receipts</b>	
Funds Received (Litigation)	23,834
Surplus from Receivers	168
Net Interest	242
Other Income	36
<b>Total Receipts</b>	<b>24,280</b>
<b>Payments</b>	
Payment to Litigation Funder	12,454
Distribution to Unsecured Creditors	4,889
Distribution to Preferential Creditors	38
Legal Fees	271
Liquidators' Remuneration	166
Contractors & Consultants	38
Records Storage	41
Administrative Expenses	18
IT Hosting	8
Net GST	1
<b>Total Payments</b>	<b>17,925</b>
<b>Net Receipts/ (Payments)</b>	<b>6,355</b>
<b>Funds on Hand</b>	<b>12,158</b>

Please note that of the \$12.158m funds on hand, approximately \$1.548m is held for the first interim distribution to creditors who have not yet provided their bank account details.



## Appendix 2 - Liquidators' Remuneration

	Administration & Trading			Creditors		Investigation		Reporting		Total	
	Hourly Rate	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost
Partners	\$ 698	3.75	2,625.00	8.00	5,568.44	126.75	88,465.31	1.00	700.00	139.50	97,358.75
Associate	\$ 443	4.50	2,203.02	40.70	17,612.04	1.00	554.00	4.30	2,006.00	50.50	22,375.06
Senior Manager	\$ 562	7.00	3,932.15	37.00	20,768.73	3.50	1,995.00	2.00	1,140.00	49.50	27,835.88
Manager	\$ 466	0.00	0.00	0.20	89.76	1.00	470.00	0.00	0.00	1.20	559.76
Senior Analyst	\$ 320	0.00	0.00	0.40	128.00	3.50	1,120.00	0.00	0.00	3.90	1,248.00
Support Staff	\$ 248	64.25	15,930.05	4.50	1,125.00	0.00	0.00	0.00	0.00	68.75	17,055.05
<b>Total</b>		<b>79.50</b>	<b>24,690.22</b>	<b>90.80</b>	<b>45,291.97</b>	<b>135.75</b>	<b>92,604.31</b>	<b>7.30</b>	<b>3,846.00</b>	<b>313.35</b>	<b>166,432.50</b>

### Detail of Work Completed

Administration & Trading	Attend to general administration, accounts payable, and record maintenance
Creditors	Attend to creditors queries, update creditors' contact details and distribution related matters
Investigation	Attend to litigation, recovery of settlement funds and GST on settlement funds related matters
Reporting	Attend to statutory reporting