



Deed Administrators' report

A.C.N. 059 457 279 Limited
(Subject to Deed of Company
Arrangement) formerly
known as Migme Ltd
ACN 059 457 279
(the Company)

11 September 2019

*Strictly Private and
Confidential*

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Glossary

Abbreviations	Definitions
Act	Corporations Act 2001 (Cth)
Achiko	Achiko Limited
Administrators	Simon Theobald and Melissa Humann of PricewaterhouseCoopers as joint and several Administrators
Administrators' Report	Report to creditors dated 27 July 2018
APAAP	All present and after-acquired property, a term associated with security interests under the PPSA
ARITA	Australian Restructuring Insolvency and Turnaround Association. ARITA was formerly the Insolvency Practitioners Association of Australia.
ASA	Odysseus Asset Sale Agreement dated 7 September 2018
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange
ATO	Australian Taxation Office
AWST	Australian Western Standard Time
Celtic	Incumbent Deed Proponent, being Celtic Capital Pty Ltd
Celtic DOCA	Existing Deed of Company Arrangement entered into on 24 August 2018 with Celtic
Code	ARITA Code of Professional Practice
COI	Committee of Inspection
Company	A.C.N. 059 457 279 Limited (Subject to a Deed of Company Arrangement) formerly known as Migme Limited
Deed/DOCA	Deed of Company Arrangement
Deed Administrators	Simon Theobald and Melissa Humann of PricewaterhouseCoopers as joint and several Deed Administrators
DIRRI	Declaration of Independence, Relevant Relationships and Indemnities, pursuant to s436DA of the Act and Code.
FEG	Fair Entitlements Guarantee, a scheme administered by the DE to provide assistance to employees owed outstanding employee entitlements following the insolvency/bankruptcy of an employer
FY	Financial Year (e.g. the financial year 1 July 2018 to 30 June 2019 would be expressed as FY18)
HY	Half Year (e.g. the half financial year 1 July 2018 to 31 December 2018 would be expressed as HY18)
k	Thousand
M	Million
Odysseus	Odysseus Investment Group Limited (being the purchaser of certain assets of the Company and its subsidiaries)
PMSI	Personal Money Security Interest as defined in the PPSA
PPSA	Personal Property Security Act 2009 (Cth)

PPSR	Personal Property Securities Register – a register set up under the PPSA for the registration of security interests
ROCAP	Report on Company’s Affairs and Property provided by Company directors on appointment (formerly known as the Report As To Affairs or RATA)
Report	This report, prepared pursuant to Insolvency Practice Rule 75-225 of the Act about the business, property, affairs and financial circumstances of the Company
s	Section of the Act
Variation Meeting	Meeting held pursuant to Division 75 of the IPR where creditors determine the future of the Company scheduled for Friday, 27 September 2019 at 10:30 AM AWST
Wilson	Wilson International Capital Limited (Alternate Deed Proponent)
Wilson DOCA	Substitute Deed of Company Arrangement proposal received from Wilson, to be voted on at the upcoming Variation Meeting of creditors to be held on 27 September 2019
YTD	Year to date, a period starting from the beginning of the current financial year and continuing up to a defined date (e.g. monthly management accounts from 1 July 2018 to 31 January 2019 would be expressed as ‘YTD January 2019’)

1. *Disclaimer*

In reviewing this Report, creditors should note:

- This Report is based upon our activities to date. Any additional material issues that are identified subsequent to issuing this Report may be the subject of a further written report and/or tabled at the Variation Meeting.
- The contents of this Report are based on information obtained from the Company's books and records, financial systems, representations from the directors, creditors and our own enquiries and investigations.
- The statements and opinions given in this Report are given in good faith and in the belief that such statements and opinions are not false or misleading. Except where otherwise stated, we reserve the right to alter any conclusions reached on the basis of any amended or additional information which may be provided to us between the date of this Report and the date of the Variation Meeting.
- In considering the options available to creditors and formulating our recommendation, the Deed Administrators' have necessarily made forecasts of asset realisations and total creditor claims. These forecasts and estimates may change as asset realisations progress and claims are received from creditors. While the forecasts and estimates are based on the Deed Administrators' best assessment in the circumstances, creditors should note that the eventual outcome for creditors may differ from that estimated in this Report.
- Neither the Deed Administrators', PricewaterhouseCoopers nor any member or employee of the firm is responsible in any way whatsoever to any person in respect of any errors in this Report arising from incorrect information provided to us.
- The Deed Administrators' do not assume or accept any responsibility for any liability or loss sustained by any creditor or any other party as a result of the circulation, publication, reproduction or any use of the information presented in this Report.
- This Report is not for general circulation, publication, reproduction or any use other than to assist creditors in evaluating their position as creditors of the Company and must not be disclosed without the prior approval of the Deed Administrators'.
- Creditors should consider seeking their own independent legal advice as to their rights and the options available to them at the Variation Meeting.

2. Executive Summary

2.1 Appointment background

Simon Theobald and Melissa Humann were appointed joint and several Deed Administrators of the Company on execution of the Celtic DOCA on 24 August 2018, following a resolution of creditors under s444A of the Act.

2.2 Report's purpose

The purpose of this Report is to provide an update on the Deed Administration to date, as well as our opinion on the two options available to creditors in deciding the future of the Company.

2.3 Administrators' recommendation

We recommend it is in the creditors' interests that the Company vary the terms of the Celtic DOCA on the terms set out in the Wilson DOCA proposal.

2.4 Variation Meeting of creditors

The Variation Meeting of creditors (**Variation Meeting**) will be held on:

Date: Friday, 27 September 2018
Registration: 10:20 am
Meeting time: 10:30 am AWST
Location: PwC
Level 15, 125 St Georges Terrace
Perth WA 6000

To register attendance and be entitled to vote at the Variation Meeting, creditors must complete and submit the following forms attached at **Appendix** and **Appendix B**:

- Form 532 - Appointment of Proxy
- Form 535 - Proof of Debt form.

Forms must be submitted by no later than 4:00 pm AWST on Thursday, 26 September 2019 to this office or by email to jo.muir@pwc.com.

2.5 Deed of Company Arrangement

Following Celtic's notification that they would not be proceeding to completion of the Celtic DOCA, we sought suitable alternative deed proposals for the Company which resulted in us receiving a DOCA proposal from Wilson. Given the absence of any other suitable proposals, we have assessed that the Wilson DOCA offers the best and only opportunity for a return for the Company's creditors from the sale of the listed shell of the Company.

The key features of the Wilson DOCA are:

- \$700k cash contribution by Wilson (**Proponent Payment**), which is intended to be made available to the Company's creditors in the Creditors' Trust (after repayment of costs, including the FY20 ASX annual listing fees)
- share consolidation on a 24 to 1 basis
- capital raising via both public and private placements of ordinary shares at \$0.02 per share. These funds are not intended to be available to the Company's creditors, but to recapitalise the Company.

We provide a more detailed overview of the key features of the Wilson DOCA at **Section 4**.

2.6 Estimated return to creditors

We estimate creditors' returns under the Wilson DOCA and liquidation scenarios will be:

Creditor type	Wilson DOCA	Liquidation
	Cents in the dollar	Cents in the dollar
Secured creditors	100	Nil
Employees	N/A	N/A
Unsecured creditors		
Trade creditors	13	Nil
Note holders	13	Nil
s Guaranteed debts	13	Nil
Related parties	13	Nil

2.7 Administrators' overview

2.7.1 Conduct of administration

Details of the work performed since our appointment are provided at **Section 3.2**.

The key tasks to date include:

- undertaking our investigations into the Company's activities leading up to our appointment, reviewing the Company's financial information and any potential recovery actions, and completing statutory investigative reporting to ASIC
- progressing completion of the ASA for the Company's assets and shareholdings to Odysseus¹ in return for US\$300k and shares in Achiko
- executing and progressing the Celtic DOCA
- seeking alternate DOCA proposals to recapitalise the Company
- responding to general queries and update requests from creditors and shareholders
- attending to statutory and tax reporting obligations
- preparing this Report to creditors for the Variation Meeting.

2.7.2 Odysseus Asset Sale

Since our last correspondence with creditors, the Odysseus ASA for the sale of the Company's shareholdings in its subsidiaries has progressed significantly.

In early July 2019, we received correspondence from lawyers acting for the Odysseus advising that Achiko was completing the final steps to proceed to listing on the Swiss Stock Exchange (**SIX**). Since that time, we have completed a significant volume of documentation to meet the identification requirements for SIX, and to prepare for the transfer of shares in Achiko to the Deed Administrators, to be held in for the benefit of creditors in the Creditors' Trust.

Our most recent correspondence with Achiko advised that:

- listing is anticipated to occur by the end of September 2019
- payment of the first tranche of 'closing' payments under the ASA (US\$100k) is likely within 30 days of listing.

¹ Purchasing party was amended from Amiko Limited to Odsyessus before execution of the ASA on 7 September 2019

From our preliminary investigations into the Achiko listing information, we are hopeful that the 2,990,676 ordinary shares to be issued to the Company on listing will materially increase the return to unsecured creditors of the Company above the forecast of 13c in the dollar referred to at **Section 2.6** above. However, until the listing process is complete and trading restrictions are lifted, we are unable to estimate with any certainty the realisable value of the shares and resulting returns to creditors. We have therefore conservatively adopted a \$nil ERV in respect of the shares consistent with our previous report to creditors.

2.8 Remuneration

The Deed Administrators' unreviewed work in progress (**WIP**) time for the period 2 August 2018 to 30 August 2019 totals \$131,718.50 (exclusive of GST). Remuneration for this period of \$50,042.50 (exclusive of GST) was previously approved at the Second Meeting of creditors held 3 August 2018.

The additional time costs incurred predominately relate to:

- time costs progressing the Celtic DOCA
- costs associated following Celtic's advice that they will not proceed with the Celtic DOCA, including marketing and procuring alternative DOCA proposals, review and correspondence on potential DOCA proposals with numerous potential deed proponents, liaising with ASX and maintaining the Company's ASX-listed status and creditor reporting and meeting costs for alternative DOCA proposals
- work on progressing the Odysseus ASA to completion
- general administrative tasks.

We will write to creditors seeking approval of our remuneration for the additional work conducted in the Deed Administration, and estimated work necessary to completion, within the next three months after completion of the next set of significant milestones. When we write to you regarding remuneration approval, we will provide you with detailed information on the key activities we have undertaken or plan to undertake, the cost of those key activities, and the effect of approving the fees on the estimated return to creditors.

We note that, as at the date of our report, we have not yet been paid any remuneration in respect of the Administration and Deed Administration.

3. Introduction

3.1 Report's purpose

The Deed Administrators' investigations into the Company's business, property, affairs and financial circumstances were reported to creditors in the Administrators' Report. This Report seeks to provide:

- an update on the Deed Administrators' activities to date and developments regarding the Celtic DOCA
- the options available to creditors, being that the:
 - the Deed Administrators vary the terms of the Celtic DOCA on the terms set out in the Wilson DOCA proposal; or
 - the Company be wound up (i.e. placed into liquidation)
- the Deed Administrator's opinion on these options available to creditors.

3.2 Summary of Deed Administrators' activities to date

3.2.1 Pursuing completion of Celtic DOCA

Following the drafting and execution of the Celtic DOCA on 24 August 2018, significant steps were taken between the Deed Administrators and Celtic to progress the DOCA to effectuation, including:

- collation of Company documentation for reporting and meeting requirements
- correspondence with the ASX regarding the recapitalisation requirements and process
- drafting the notice of meeting for shareholder approval of the recapitalisation proposal required under the Celtic DOCA, and correspondence with the ASX on same
- replacement of existing Company directors
- extensions and variations to the DOCA and effectuation date to allow for sufficient time to effect completion of the DOCA
- general correspondence and meetings between the Deed Administrators and Celtic regarding queries and attendances towards effectuation.

In February 2019, Celtic first advised our lawyers of their concerns that they may not be able to effectuate the DOCA, predominately due to their inability to find a suitable asset / business to vend into the listed shell, and concerns regarding the timing available to complete the recapitalisation process.

Celtic mutually agreed that the Deed Administrators could seek alternative proponents for the listed shell of the Company whilst Celtic also sought replacement proponents.

At this time, the ASX had tabled a potential rule change to their long term suspended entity policy, whereby entities that had been continuously suspended for longer than two years would be immediately delisted (effective 1 July 2019). This would affect the Company, as it has been suspended since February 2017. However in April 2019, the ASX announced they would be extending the implementation of this rule change to February 2020, allowing additional time to complete effectuation of existing DOCAs.

The uncertainty around ASX's policy reduced the market interest in the recapitalisation of listed entities, making the recapitalisation of the Company more difficult to complete.

Further details regarding work undertaken to procure alternative replacement deed proponents, including details on the Wilson DOCA and other proposals received, are provided as **Section 4**.

3.2.2 General administrative tasks

Since our appointment as Deed Administrators, we have:

- attended to general correspondence with Company stakeholders including creditors, shareholders, directors and Deed Proponents
- liaised with the Deed Administrators' appointed lawyers regarding various matters including general stakeholder queries, ASX requirements, the sale and DOCA process and other legal queries
- prepared and lodged ASIC statutory forms and documents

- attended to administrative and bookkeeping tasks
- prepared and lodged post-appointment Business Activity Statements and seen to other ATO statutory reporting
- discussed, planned and reviewed the status of the deed administration as necessary.

3.2.3 Investigations

We outlined our preliminary investigations into the Company and its pre-appointment activities in the Administrators' Report.

Subsequently, we finalized our investigations and lodged our statutory investigations with ASIC in August 2019. ASIC requested a further supplementary report be lodged, which we completed and lodged in September 2019.

We received written confirmation from ASIC in December 2018 that after considering our statutory reports, they had decided not to pursue any further action at this time.

Whilst the nature and detail of our investigations remains confidential, based on the information available to us, we did not determine any recovery actions suitable for commercial pursuit in a liquidation scenario.

3.2.4 Change of Company name

As part of the completion of the ASA, the Company was required to change its name to A.C.N 059 457 279 Limited (Subject to a Deed of Company Arrangement).

This change of name of the Company was recently confirmed by ASIC, and we are currently lodging the name change documentation with the ASX.

3.3 Purpose of the Variation Meeting

The Variation Meeting will:

- address the contents of this Report
- respond to questions from creditors
- determine the Company's future by resolving one of the two available options
- should creditors desire, the formation of a Committee of Inspection (COI).

The Deed Administrators will remain as Deed Administrators, or become the Liquidators, unless creditors resolve to replace them.

The options available to creditors and the Deed Administrators' opinion on each option are set out in detail in **Section 4**.

Based on the Wilson DOCA proposal set out in this Report, we recommend that the Company vary the terms of the Celtic DOCA on the terms set out in the Wilson DOCA proposal.

3.4 Variation Meeting details

The Variation Meeting will be held on Friday, 27 September 2019 at 10:30 am AWST. Formal notification Form 529 – Notice of Meeting of Creditors is attached at **Appendix C**.

3.4.1 Meeting registration

To register attendance and be entitled to vote at the Variation Meeting, creditors must complete and submit the following forms attached at **Appendix B and Appendix B**:

Registration forms	Information
Form 532 - Appointment of Proxy	A new proxy form is required to be completed for each creditors' meeting (ie previous meeting proxy forms are invalid for the Variation Meeting).

If a corporate creditor wants to be represented at the Variation Meeting, it must appoint an individual to act on its behalf by providing an executed proxy form.

Individuals may choose to appoint a representative to vote on their behalf by executing a proxy form. If an individual is attending in person as their own creditor, a proxy form is not required.

This form is required to be completed to entitle a creditor to vote at the Variation Meeting. Documents to support the amount claimed (e.g. unpaid invoices) must also be provided.

Form 535 - Proof of Debt or Claim Form

There is no requirement to resubmit a proof of debt form if previously provided unless the amount claimed has changed.

Please take care when completing the form to ensure the correct party is named as the creditor. As an example, this may include XYZ Pty Ltd as trustee for the ABC Family Superannuation Fund.

Only creditors of the Company are entitled to vote at the Variation Meeting. Creditors are encouraged to arrive as early as possible after the registration time to enable the orderly registration of attendees so that the meeting can commence on time.

3.5 Further information

To assist creditors and shareholders to understand the DOCA process, ASIC has released a package of insolvency information sheets endorsed by ARITA. Enclosed at **Appendix F** is ARITA's creditor information sheet: Offences, recoverable transactions and insolvent trading.

Enclosed at **Appendix D** is ASIC's publication Insolvency information for directors, employees, creditors and shareholders, which provides an index of all the information sheets that are available. You can download these information sheets from:

www.asic.gov.au

www.arita.com.au

4. Deed of Company Arrangement (DOCA)

4.1 Deed general information

A Deed or DOCA is a binding agreement between a company and its creditors setting out how a company's affairs will be dealt with. It aims to maximise the chances of the company, or as much as possible of its business continuing to exist, or providing a better return to creditors than would be achieved by winding up the company.

If creditors decide to vote for a Deed:

- the Administrators/Deed Administrators must sign/execute the Deed within 15 business days of the meeting at which the Deed was resolved to proceed with, otherwise the Company automatically proceeds into liquidation. The Court can allow longer time if required.
- unsecured creditors will be bound by the Deed, even if they vote against it
- secured creditors who vote in favour will be bound by the Deed
- the Court can bind any creditor to the Deed.

Creditors can vote for the Company to execute a Deed at the Second Meeting even if it differs from those proposed in this Report.

4.2 Analysis of Proposals

4.2.1 Process to seek alternative deed proposals

We undertook a lengthy process to attempt to find alternative deed proposals for the Company, commencing in March 2019. This included:

- correspondence with previously interested parties regarding current interest in the recapitalisation of the Company
- contacting other professional services firms (such as lawyers and accountants) known to have contact with potentially interested parties regarding any clients with potential interest
- liaising with Celtic as to their knowledge of additional interested parties.

From this process, we identified three parties who held interest in the listed shell (details of their DOCA proposals are provided at **Section 4.2.2**). We engaged in considerable correspondence with Party 2 over a number of months, however the terms of their offer were considerably lower than those received from Wilson.

One of the key considerations during this process was ensuring that any interested party was willing to pay the FY20 ASX annual listing fees of \$27,500 inc GST due by 28 August 2019 as failure to make this payment would have caused the Company to be automatically delisted.

Aside from the other superior terms of the Wilson DOCA proposal (i.e. proposed creditor contribution, favourable shareholder consolidation ratio etc), Wilson was the only proponent capable/willing to remit payment of the annual listing fees within the timing required.

From our initial correspondence, we managed to successfully negotiate the Wilson proponent payment to \$700k from their starting offer of \$600k.

4.2.2 Proposals received

The key terms of the three DOCA proposals (post notification by Celtic of the limited likelihood to complete the Celtic DOCA) we received are summarised below:

Condition	Wilson DOCA (preferred proposal)	Party 1	Party 2
Final proposed creditor contribution	\$700,000	\$145,000 (cash) 2.5% shares in the recapitalised entity	\$250,000 (cash) One option for every 10 shares held (on a post consolidation basis)
Require capital raising?	Yes (for working capital for the Company)	Yes	Yes
Other material terms	<ul style="list-style-type: none"> - Share consolidation on an approximately 24:1 basis, plus a new placement of 250,800,000 shares - Total number of shares on acquisition: 264,000,000 shares - Existing shareholder consolidation percentage: 5.0% - Wilson to prepare and bear costs for DOCA/creditor trust deeds, financial reports and shareholder meetings - ASX annual listing fee to be deducted from proponent payment on effectuation - Subject to approval by ASX, shareholders and creditors 	<ul style="list-style-type: none"> - Share consolidation undefined - Total number of shares on acquisition: undefined - Existing shareholder consolidation percentage: undefined - Proponent to prepare DOCA/creditor trust deeds and dealings with ASX/ASIC and will pay for costs associated with ASX submissions - Subject to approval by ASX, shareholders and creditors 	<ul style="list-style-type: none"> - Share consolidation on a 1,000:1 basis, plus a new placement of 100 million shares - Total number of shares on acquisition: 100,316,153 shares + 11,945 options - Existing shareholder consolidation percentage: 0.32% - Syndicate to prepare and bear costs for DOCA/creditor trust deeds, financial reports and shareholder meetings, up to a maximum of \$5,000 - Subject to approval by ASX, shareholders and creditors

We have withheld the names of the other interested parties as this information is confidential.

4.2.2 Administrators' opinion on the Wilson DOCA

Based on the Deed proposals presented as at the date of this Report, we recommend that the Company vary the terms of the Celtic DOCA on the terms set out in the Wilson DOCA proposal and execute the Wilson DOCA.

4.2.3 Estimated return to creditors

We estimate creditors' returns under the Wilson DOCA proposal will be:

Creditor type	Cents in the dollar	Distribution timing
Secured creditors	100	4 to 6 months
Employees	N/A	N/A
Unsecured creditors		
Trade creditors	13	4 to 6 months
Note holders	13	4 to 6 months
Guaranteed debts	13	4 to 6 months
Related entities	13	4 to 6 months

Section 5 details our calculation of estimated creditors' returns under the Wilson DOCA, with a comparison to the estimated returns under the other options available. We note that the above estimate conservatively assumes a \$nil return from the listing of the Odysseus ASA. We are hopeful that completion of the Odysseus ASA will result in a materially higher return to unsecured creditors.

4.3 Deed general information

The Wilson DOCA has not yet been drafted, and will be prepared following creditors voting on the Company's future at the Variation Meeting. However, the terms of the Wilson DOCA will provide that creditors retain all rights with respect to any variation, termination or avoidance of the Deed pursuant to Part 5.3A Division 11 of the Act (including the ability to convene a meeting of creditors to consider a proposed variation or termination of the Deed, and to apply to the Court for an order that the Deed be varied or terminated). This provides a mechanism whereby creditors can ensure the Deed Administrators' compliance with the terms of the Wilson DOCA.

If, under certain circumstances, ASIC were to apply to the Court for an order that the Deed be varied or terminated, creditors may also wish to notify ASIC of any complaints regarding the conduct of the Deed Administrators.

Notwithstanding that, the Deed Administrators' are not required to report to creditors (except as required by law) and have an absolute discretion to report to creditors at such times as they consider appropriate on matters the Deed Administrators consider ought to be brought to the attention of creditors. Further, the Deed Administrators would be required to lodge accounts with ASIC pursuant to the relevant provisions of the Act.

Decisions as to the admissibility and value of creditors' claims against the Company (and therefore, any entitlement to any distribution from the creditors' trust) will be made by the trustees in accordance with the provisions of the respective creditors' trust deed.

4.4 Creditors' Trusts

4.4.1 Creditors' Trusts general information

A creditors' trust in a Deed is a mechanism used to accelerate a company's exit from external administration. Normally, a Deed is terminated when:

- the terms under which it was established have been effectuated and completed (normally resulting in a distribution to creditors)
- it cannot be completed as expected, and the company is placed into liquidation if an alternative Deed cannot be found.

When a Deed terminates, the company will cease to be externally administered and its directors will re-gain full control. The company will no longer be required to use the notification 'subject to deed of company arrangement' on its public documents as would otherwise be required by s450E(2) of the Act.

Deed proponents commonly require a creditors' trust to be established in order to complete the recapitalisation of a corporate entity, as ASX listing requirements provide that a company cannot be reinstated on the ASX if it is under external administration.

The establishment of a creditors' trust is for the purpose of transferring remaining assets and liabilities of the company into a new vehicle to facilitate the prompt termination of the Deed.

4.4.2 Creditors' Trust operation

If a creditors' trust entity is created (i.e. the A.C.N. 059 457 279 Limited Creditors Trust, 'Trust'), the Company's obligations to the creditors bound by the respective Deed will be compromised and transferred to the Trust. At that point, those creditors become beneficiaries of the Trust and creditors' rights against the Company are extinguished.

The Trustees' (ie the Deed Administrators) become solely responsible to the beneficiaries for:

- determining how much each creditor is entitled to receive from the Trust
- making any distributions to those former creditors (now beneficiaries) of the Company.

To this end, adjudication of claims and distributions to creditors/beneficiaries will occur as if the Trust was a company in creditors' voluntary liquidation (i.e. the Trustees' will follow the same rules as would apply to a liquidator).

If the Wilson DOCA is approved, and to the extent not already in the Deed Administrators possession, Wilson will be required to facilitate access to any books and records it holds necessary for the Trustees to determine the claims.

The costs and remuneration of the appointed Trustees in administering the Trust will rank ahead of creditor claims, as would be the case in a liquidation scenario.

4.4.3 Powers of Deed Administrators and Trustees

The powers of the Deed Administrators under the proposed Deeds will be governed by the Act. The powers of the Trustees under the proposed Trust Deed will be governed by the relevant State Trustees Act.

4.4.4 Appointment of Trustees

The Wilson DOCA will stipulate that the Deed Administrators (as registered liquidators) will be both the Deed Administrators of the Company, and Trustees of the Trust. Registered liquidators have the requisite skill and experience to act in this capacity. They are experienced in the adjudication of creditor claims and making distributions.

If appointed as Trustees of the Trust, the Deed Administrators are of the view that they would not have a conflict of interest in this role. We draw your attention to ASIC's view that it has supervisory powers under Part 9.2 of the Act over the conduct of a trustee where the Deed and Trust Deed provide that the trustee is a registered liquidator.

4.4.5 Risks of a creditors' trust

There are different and additional risks for affected creditors where a Deed proposal involves a creditors' trust. The key additional risks in this case are:

- creditors may agree to the Deed proposal without being fully aware of the implications of what is intended, particularly given the complexity of the legal and documentary arrangements needed to support the use of a creditors' trust under the Deed
- non-uniformity of the State and Territory Acts governing trusts and trustees
- differences in the ways trustees and registered liquidators are regulated and supervised, particularly by ASIC and the Courts
- potential difficulties for ASIC and affected creditors (as beneficiaries of the trust) in monitoring and enforcing proper conduct by the trustee
- legal uncertainties and other issues for ASIC, creditors bound by the DOCA or other persons in challenging a DOCA that has already terminated.

4.4.6 Risk mitigation

The risks can be mitigated by incorporating terms into the Deed and Trust Deed, for example:

- creditors' rights against the Company will only be extinguished once the respective Deed Fund has been paid into the relevant Trust and the Deed Administrators certify that the Deed has been fully effectuated. The Deed will not be concluded or effectuated before the Proponent Payment is paid into the Trust
- the priority provisions for the payment of dividends to creditors are to mirror those followed by liquidators as outlined in the Act
- the provisions for calling and dealing with proofs of debt from creditors bound by the Deed/Trust will follow those contained in the Act. Accordingly, in our view, the proposed distribution arrangements do not disadvantage any creditor/beneficiary when comparing their respective positions under a liquidation scenario.

4.4.7 Termination and variation of the Creditors' Trust Deed

The creditors' trust deed, once drafted, will usually provide for the termination of the trust under certain conditions, such as:

- complete distribution of the trust fund has been made in accordance with the terms of the creditors' trust deed
- the DOCA is terminated by resolution of creditors
- if the Court so orders.

The trustees may vary the creditors' trust deed in the following circumstances:

- the trustees may vary the provisions by a supplemental deed and with the consent of the majority in value and number of creditors
- the trustees may convene a meeting of creditors to consider a resolution to vary or terminate the creditors' trust deed if the DOCA is terminated or the trustees determine it is no longer practical or desirable for the trust to continue
- the trust will terminate if a Court so orders or the creditors pass a resolution terminating the trust at a duly convened meeting.

4.4.8 Moratorium

A moratorium upon actions against the Company, as outlined in s44E of the Act, applies during the period of any Deed entered into by the Deed Administrators'.

Additionally, the creditors' trust deed, once drafted, will likely stipulate that creditors shall not take action or steps to enforce their rights to recover any of their entitlements whilst the trustees remain the trustees of the trust on the terms of the creditors' trust deed.

4.5 Other matters for consideration in a DOCA scenario

Creditors should be aware of the following additional points when deciding whether to accept the proposed Wilson DOCA instead of placing the Company into liquidation:

4.5.1 Recoveries from liquidator investigative powers

Once executed, the Deed binds all of the Company's creditors in respect of claims arising on or prior to the date the Deed is expressed to take effect. This includes unsecured creditors who may have voted against the Deed. The Deed also binds the Company, its officers, its members and the Deed Administrators.

If the proposed Deed is accepted by creditors, creditors will forgo any voidable transaction recoveries (being insolvent trading, unfair preference, uncommercial transactions and unfair loans). These recoveries would only be available to the Company's liquidators (should the Company be placed into liquidation) and, as such, will not be available if the proposed Deed is accepted.

We have detailed our initial findings in respect of these potential recoveries in **Sections 3.2.3** and **5** of this Report.

A liquidator would need to complete additional statutory investigations to determine if any recoveries are available, including those which may not have been identified by the Deed Administrators to date. We note that if the Deed fails and the Company is wound up, our ability to seek recovery of voidable transactions is retained.

A Deed does not prevent a secured creditor from realising or otherwise dealing with its security, nor does it affect the rights of an owner or lessor of property, unless either the Deed states otherwise in relation to persons who voted in favour of the Deed resolution or if the Court makes an order to the contrary.

Creditors should also be aware that any funds to be contributed pursuant to the terms of the Deed will not be available if the Company is placed into liquidation.

4.5.2 Moratorium

Subject to section 444D of the Act, creditors bound by a Deed cannot:

- make an application for an order to wind up the Company
- proceed with an application in connection with the winding up of the Company made before the Deed became binding on the creditors
- begin or continue any proceeding against the Company or in relation to any of its property (except with leave of the Court)
- exercise any right of set-off or cross-claim against the Company
- begin or continue with any enforcement process in relation to the Company's property (except with leave of the Court)
- commence or proceed in arbitration against the Company or in which the Company is a party.

4.5.3 Taxation

Company and Trust

Whilst there may be taxation and stamp duty implications for the Company and the creditors' trust if a Deed is approved, the Deed Administrators' are not presently able to provide details of these implications (including any impact on the anticipated return to creditors/beneficiaries). The Deed Administrators' recommend that creditors obtain independent advice prior to voting at the Variation Meeting if these implications are of concern.

Creditor and Beneficiary

We draw to creditors' attention the fact there may be potential taxation implications for a creditor in receiving distributions as a beneficiary of a trust rather than in their capacity as a creditor of the Company.

In broad terms, the distribution of funds under a Deed (or in a liquidation scenario) is simply a payment in respect of a debt. Conversely, a distribution of money under a creditors' trust does not have the same character but involves the payment of amounts either on capital or revenue account, thereby creating potential income and capital gains tax consequences.

We are not in a position to offer specific advice to creditors in respect of any taxation implications. Accordingly, we recommend that you seek independent taxation advice on your individual circumstance prior to voting at the Variation Meeting.

5. Estimated return to creditors

Detailed below is a comparison of the estimated returns to creditors under the Wilson DOCA and liquidation scenarios.

Based on the assumptions detailed in the notes below, the liquidation scenario provides for no estimated return to creditors, compared to the Wilson DOCA scenario of 13 cents in the dollar:

	Wilson DOCA	Liquidation
Recapitalisation of listed shell	700,000	Nil
Odyseus proposal (cash)	440,460	440,460
Odyseus proposal (shares)	Unknown	Unknown
Voidable transaction claims	N/A	Nil
Insolvent trading claims	N/A	Nil
Other claims	N/A	Nil
Total assets	1,140,460	440,460
<i>Less:</i>		
Administrators' costs	153,828	153,828
Deed Administrators' costs- WIP as at 30/8/19	131,719	131,719
Deed Administrators' costs - 31/8/19 to conclusion	100,000	N/A
Liquidators' costs	N/A	50,020
Legal fees and other costs	172,158	147,158
Total assets less costs	582,756	(42,264)
Secured creditor claims	36,570	36,570
Priority employee claims	Nil	Nil
Surplus / (Shortfall) to unsecured creditors	546,186	Nil
Unsecured creditor claims:		
Trade creditors	1,119,922	1,119,922
Note holders	2,699,510	2,699,510
Guaranteed debts	348,132	348,132
Related entities	58,333	58,333
Return to other creditors from circulating assets (cents in the dollar)	0.13	Nil
Distribution Timing	4-6 months	N/A

Notes

- We have carried the Odyseus ASA cash payments of USD \$300k at the approximate exchange rate as at 5 September 2019 (i.e. AUD \$440k), without taking into account any transactional costs.
- We have included the value of the proposed shares in Achiko as 'unknown' as this value remains uncertain. We understand that these shares may hold considerable value if Achiko successfully lists on the SIX.
- We have attributed a nil estimated realisable value to voidable transactions and insolvent trading claims, given our investigations did not uncover any claims worthy of commercial pursuit. Additionally, if a liquidator was to be appointed and did identify claims they deemed worthy of commercial pursuit, the

liquidator would likely require funding by a creditor or shareholder in order to progress any identified claim.

- Administrators' costs and Liquidators' costs are per the previous Remuneration Approval Report contained within the Administrators' Report.
- Deed Administrator's costs include the costs incurred to 30/08/2019, as well as an estimate of costs to the conclusion of the DOCA and Creditors' Trust.
- Legal fees and other costs incurred to date, and estimates going forward for both scenarios.
- We have requested an updated Secured Creditor claim value, however the value in the table is carried at the most recent known value as at the date of this Report. If the Secured Creditor's claim has increased since the date of the last provided value (approximately August 2018), this may reduce the return to unsecured creditors (if/when an updated claim is received from the Secured Creditor and reviewed by the Deed Administrators).

6. Administrators' recommendation

Based on the Wilson DOCA proposal set out in this Report, we recommend that the Company vary the terms of the Celtic DOCA on the terms set out in the Wilson DOCA proposal.

Our opinion of each option available to creditors is discussed below.

6.1 Liquidation

We are of the opinion that it is not in the best interest of creditors that the Company be wound up.

Per the Administrators' Report and as further outline in this Report, our view is it is unlikely there are commercially recoverable actions available to the liquidators should they be appointed over the Company.

Whilst further investigation would be required by a liquidator in order to reach a definite conclusion on the issue of insolvent trading, our investigations thus far do not lead us to believe an insolvent trading claim would be successful or commercially practical to pursue. Creditors should note that insolvent trading claims are difficult and costly to undertake, and even if successful, may not generate an additional return for creditors.

A liquidator (if appointed) would be in a position to conduct detailed investigations into the circumstances leading up to the appointment of Administrators, however would require funding by a creditor or shareholder in order to progress any identified claim.

We estimate a nil return to creditors in the liquidation scenario (subject to any value capable of being obtained from shareholdings in Achiko should it successfully list). However, we note that the value expected to be realised from the Achiko shares is the same as under the Wilson DOCA, i.e. the amount available from the Achiko shares is expected to be the same under the Wilson DOCA or liquidation

6.2 Deed

We refer to the Wilson DOCA discussed in **Section 4** and included in **Appendix G**.

We are of the opinion that it is in the creditors' interests that the Company vary the terms of the Celtic DOCA on the terms set out in the Wilson DOCA proposal.

We are of the view that the return to creditors under the Wilson DOCA will provide a materially better outcome for creditors than a winding up (estimated at 13 cents in the dollar for unsecured creditors compared to nil return in a liquidation).

7. Enquiries

Should you have any enquiries, please contact Jo Muir on (08) 9238 3778 or by email at jo.muir@pwc.com.

DATED this 11th day of September 2019



Simon Theobald and Melissa Humann

Deed Administrators

Appendix A

**FORM 532
APPOINTMENT OF PROXY**

**A.C.N. 059 457 279 Limited (Subject to a Deed of Company Arrangement)
ACN 059 457 279 (the Company)**

A. Appointment of a proxy

I/We,
(If a company, strike out "I" and set out full name of the company)

of
(address)

a creditor of the Company appoint
as my/our proxy, or in his/her absence....., to vote at the meeting of
creditors to be held on Friday 27 September 2019 at Level 15, 125 St Georges Terrace, Perth WA 6000 at
10:30am AWST or at any adjournment of that meeting.

B. Voting directions

Option 1: If appointed as a general proxy, as he/she determines on my/our behalf
(Please proceed to section C ie do not complete the table below)

and/or

Option 2: If appointed as a special proxy in the manner set out below:
(Please complete the table below before proceeding to section C)

No	Resolution	For	Against	Abstain
1	The Company vary the terms of the Celtic DOCA on the terms set out in the Wilson DOCA proposal.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	The Company be wound up.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	If the Company is wound up, that a Committee of Inspection be formed comprising representatives as nominated at the meeting of creditors.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	If the Company is wound up, to approve early destruction of the Company's books and records six months after finalisation subject to authorisation from ASIC.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	If the Company is wound up, to authorise the Liquidators to compromise debts greater than \$100,000, pursuant to section 477(2A) of the Corporations Act 2001.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	If the Company is wound up, to authorise the Liquidators to enter into contracts with a duration of longer than three months, pursuant to section 477(2B) of the Corporations Act 2001.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C. Signature (in accordance with Sections 127 or 250D of the Corporations Act 2001)

If the creditor is an individual

.....

If the creditor is a Company

.....

Director/Company Secretary

.....

Print name

Dated this day of 2019

CERTIFICATE OF WITNESS

Please Note: *This certificate is to be completed only where the person giving the proxy is blind or incapable of writing. The signature of the creditor is not to be attested by the person nominated as proxy.*

I, _____ of _____ certify that
the

Above instrument appointing a proxy was completed by me in the presence of and at the request of the person appointing the proxy and read to him before he attached his signature or mark to the instrument.

Signature of witness: _____

Appendix B

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Deed Administrators of A.C.N. 059 457 279 Limited (Subject to a Deed of Company Arrangement)

1. This is to state that the company was, on 9 June 2018 ⁽¹⁾ and still is, justly and truly indebted to⁽²⁾ (full name):

.....
(‘Creditor’)

.....
of (full address)

for \$.....dollars andcents.

Particulars of the debt are:

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

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

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

Date	Drawer	Acceptor	Amount \$ c	Due Date

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

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

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

DATED this day of 2019

Signature of Signatory

NAME IN BLOCK LETTERS

Occupation

Address

See Directions overleaf for the completion of this form

OFFICE USE ONLY

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

Proof of Debt Form Directions

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

Annexures

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

Appendix C

NOTICE OF MEETING OF CREDITORS

A.C.N. 059 457 279 Limited (Subject to a Deed of Company Arrangement) ACN 059 457 279 (the Company)

Notice is given that a meeting of the creditors of the Company will be held on Friday 27 September 2019 at Level 15, 125 St Georges Terrace, Perth WA 6000 at 10:30am AWST.

Agenda

1. To receive the report by the joint and several Deed Administrators concerning the Deed Administration to date.
2. For creditors to consider the options available and to resolve:
 - (a) to vary the terms of the Celtic DOCA on the terms set out in the Wilson DOCA proposal, or
 - (b) that the Company be wound up.
3. If the Company is wound up, to consider the appointment of a Committee of Inspection and, if so, who are to be the committee members.
4. If the Company is wound up, to approve the early destruction of the Company's books and records six months after finalisation subject to authorisation from ASIC.
5. If the Company is wound up, to authorise the Liquidators to compromise debts greater than \$100,000, pursuant to section 477(2A) of the *Corporations Act 2001*.
6. If the Company is wound up, to authorise the Liquidators to enter into contracts with a duration of longer than three months, pursuant to section 477(2B) of the *Corporations Act 2001*.
7. Any other business.

There will be access to telephone conference facilities for creditors who cannot attend the meeting. Please contact Jo Muir (jo.muir@pwc.com) by Thursday 26 September 2019 if you require access to telephone facilities.

Creditors wishing to attend and vote are advised that proof of debts and proxies must be submitted to the Administrators by 4:00pm AWST Thursday 26 September 2019.

Dated this 11th day of September 2019.



Simon Theobald and Melissa Humann
Deed Administrators

Section 75-85 of the Insolvency Practice Rules (Corporations) sets out the entitlement to vote at meetings of creditors:

- (1) A person other than a creditor (or the creditor's proxy or attorney) is not entitled to vote at a meeting of creditors.
- (2) Subject to subsections (3), (4) and (5), each creditor is entitled to vote and has one vote.
- (3) A person is not entitled to vote as a creditor at a meeting of creditors unless:
 - (a) his or her debt or claim has been admitted wholly or in part by the external administrator; or
 - (b) he or she has lodged, with the person presiding at the meeting, or with the person named in the notice convening the meeting as the person who may receive of the debt or claim:
 - (i) those particulars; or
 - (ii) if required—a formal proof of the debt or claim.

- (4) A creditor must not vote in respect of:
 - (a) an unliquidated debt; or
 - (b) a contingent debt; or
 - (c) an unliquidated or a contingent claim; or
 - (d) a debt the value of which is not established;
unless a just estimate of its value has been made.
- (5) A creditor must not vote in respect of a debt or a claim on or secured by a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor unless he or she is willing to do the following:
 - (a) treat the liability to him or her on the instrument or security of a person covered by subsection (6) as a security in his or her hands;
 - (b) estimate its value;
 - (c) for the purposes of voting (but not for the purposes of dividend), to deduct it from his or her debt or claim.
- (6) A person is covered by this subsection if:
 - (a) the person's liability is a debt or a claim on, or secured by, a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor; and
 - (b) the person is either liable to the company directly, or may be liable to the company on the default of another person with respect to the liability; and
 - (c) the person is not an insolvent under administration or a person against whom a winding up order is in force

Appendix D



ASIC

Australian Securities & Investments Commission

Insolvency information for directors, employees, creditors and shareholders

ASIC has 11 insolvency information sheets to assist you if you're affected by a company's insolvency and have little or no knowledge of what's involved.

These plain language information sheets give directors, employees, creditors and shareholders a basic understanding of the three most common company insolvency procedures—liquidation, voluntary administration and receivership. There is an information sheet on the independence of external administrators and one that explains the process for approving the fees of external administrators. A glossary of commonly used insolvency terms is also provided.

The Insolvency Practitioners Association (IPA), the leading professional organisation in Australia for insolvency practitioners, endorses these publications and encourages its members to make their availability known to affected people.

List of information sheets

- INFO 41 *Insolvency: a glossary of terms*
- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 75 *Voluntary administration: a guide for employees*
- INFO 45 *Liquidation: a guide for creditors*
- INFO 46 *Liquidation: a guide for employees*
- INFO 54 *Receivership: a guide for creditors*
- INFO 55 *Receivership: a guide for employees*
- INFO 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*
- INFO 85 *Approving fees: a guide for creditors*

Getting copies of the information sheets

To get copies of the information sheets, visit ASIC's website at www.asic.gov.au/insolvencyinfosheets. The information sheets are also available from the IPA website at www.ipaa.com.au. The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.

Important note: The information sheets contain a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. These documents may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

Appendix E

Details of identified secured creditors

A.C.N. 059 457 279 Limited
(Subject to a Deed of Company Arrangement)

PPSR Claimant Name	Registration Number	Start Date	Item Description
The Trustee for the Celtic Capital Trust	201708280060320	28/08/2017	APAAP

Appendix F

Creditor Information Sheet

Offences, Recoverable transactions and Insolvent Trading



Offences

A summary of offences that may be identified by the administrator:

Section	Offence
180	Failure by officer to exercise a reasonable degree of care and diligence in the exercise of his powers and the discharge of his duties.
181	Failure to act in good faith.
182	Making improper use of position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of his position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for proper purpose. Use of position or information dishonestly to gain advantage or cause detriment.
206A	Contravening an order against taking part in management of a corporation.
206A, B	Taking part in management of corporation while being an insolvent under an administration.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of auditor.
314-7	Failure to comply with requirements for financial statement preparation.
437C	Performing or exercising a function or power as officer while a company is under administration.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to administrator.
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.

Voidable Transactions

Preferences

A preference is a transaction such as a payment between the company and one or more of its creditors, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant time period is six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent as a result of the transaction.

Where a creditor receives a preferred payment, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under either the Corporations Act.

Uncommercial Transaction

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into having regard to:

- the benefit or detriment to the company;
- the respective benefits to other parties; and
- any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation.

However, if a related entity is a party to the transaction, the time period is four years and if the intention of the transaction is to defeat creditors, the time period is ten years.

The company must have been insolvent at the time of the transaction, or become insolvent as a result of the transaction.

Unfair Loan

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only have to have been entered into any time on or before the day when the winding up began.

Arrangements to avoid employee entitlements

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person. It will only be necessary to satisfy the court that there was a breach on the balance of probabilities. There is no time limit on when the transaction occurred.

Unreasonable payments to directors

Liquidators have the power to reclaim "unreasonable payments" made to directors by companies prior to liquidation. The provision relates to transactions made to, on behalf of, or for the benefit of, a director or close associate of a director. To fall within the scope of the section, the transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

Voidable charges

Certain charges are voidable by a liquidator:

- Circulating security interest created with six months of the liquidation unless it secures a subsequent advance;
- Unregistered charges; and
- Charges in favour of related parties who attempt to enforce the charge within 6 months of its creation.

Insolvent Trading

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they actually did so expect;
- they did not take part in management for illness or some other good reason; or,
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

Important note: This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.

Appendix G



Private & Confidential

Our ref: WRD:DLF:115904
Contact: William Davies
Direct Line: (08) 9288 6622
Email: william.davies@lavan.com.au
Partner: Derek La Ferla
Direct Line: (08) 9288 6928
Email: derek.laferla@lavan.com.au

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lavan.com.au

120

Representing
Western Australians
for 120 years

28 August 2019

Attn: Simon Theobald & Melissa Humann
PriceWaterhouseCoopers
Brookfield Place, Tower 1
Level 15, 125 St Georges Terrace
Perth WA 6000
By Email: simon.theobald@pwc.com, melissa.humann@pwc.com

Dear Mr Theobald and Ms Humann

**Migme Limited (Subject to Deed of Company Arrangement) ACN 059 457 279
(the Company) – Proposal for Recapitalisation and Restructure**

1 This letter sets out the key terms of a binding proposal upon which our client, Wilson International Capital Limited or its nominees (**Wilson**), submits an offer to you in your capacity as deed administrators of the Company (**Deed Administrators**), for Wilson to act as proponent in relation to the recapitalisation and restructure of the Company by way of a Deed of Company Arrangement (**DOCA**) under Part 5.3A of the *Corporations Act 2001* (Cth) (**Corporations Act**) or otherwise.

2 Offer and Material Terms

2.1 Subject to the conditions set out in this letter, Wilson offers to act as proponent to manage and assist with the recapitalisation and reconstruction process for the Company as set out below (**Proposal**).

2.2 The material terms of the Proposal are as follows:

2.2.1 The Company will consolidate its existing securities such that the Company will have 13,200,000 fully paid ordinary shares

A full service Western Australian firm:

Asian Investment
Banking & Finance
Construction & Infrastructure
Corporate, Commercial & Tax

Employment & Safety
Family Law
Insolvency & Reconstruction
Intellectual Property

Liquor Licensing
Litigation & Dispute Resolution
Media & Defamation
Planning & Environment

Private Wealth
Property & Leasing
Wills & Estates

Our values:

Commitment
Integrity

(Shares) and no other material securities on issue post consolidation.

2.2.2 The Company will undertake the following capital raisings through issue of securities (on a post consolidation basis) **(Capital Raisings)**:

- (a) an issue of up to approximately 26,400,000 Shares at an issue price of \$0.02 each to sophisticated and professional investor clients of Wilson and/or its nominees, via a private placement **(Private Placement)**;
- (b) an issue of up to approximately 211,200,000 Shares at an issue price of \$0.02 each to Wilson and/or its nominees via a public prospectus **(Public Placement)**; and
- (c) an issue of up to 13,200,000 Shares at a deemed issue of price of \$0.02 each to Wilson and/or its nominees as payment for corporate advisory services provided.

2.2.3 The Private Placement shall be undertaken as soon as practicable after the creditors and the shareholders of the Company approve and agree to support the Proposal at the Creditors' Meeting (as defined in paragraph 3.1.6 below) and a meeting of shareholders **(Approval)**. The Public Placement is expected to be conducted within four months of Approval or such other date as mutually agreed between Wilson and the Deed Administrators.

2.2.4 Wilson will provide \$700,000 towards the creditors of the Company and funding the costs of the Deed Administrators, by way of payment into a Creditors' Trust **(Creditor Payment)** of which the Deed Administrators will be the trustee. As you are aware, \$27,500 has already been paid for the Company's listing fees and this amount is included in the Creditor Payment. The balance of the Creditor Payment is to be paid as follows:

- (a) \$672,500 within 5 business days of the effectuation of the DOCA.

2.3 With respect to any project, business or other asset that Wilson sells to the Company as part of the Company's re-listing and re-compliance process with the Australian Securities Exchange **(ASX)**, Wilson may elect to receive cash or Shares (or a combination of cash and Shares), as consideration for that project, business or asset.

2.4 Wilson may vary the proposed capital structure and the structure of the Capital Raisings (including the Share consolidation and the terms of the

Capital Raisings) at its own discretion, subject to necessary regulatory and/or the Company shareholder approvals first being obtained (if required).

3 Conditions of Proposal

- 3.1 The above offer under the Proposal is subject to and conditional upon the following:
- 3.1.1 The Deed Administrators will recommend this offer to the creditors of the Company in the absence of a superior proposal.
 - 3.1.2 From the date of this letter until the completion of the Creditors' Meeting (as defined in paragraph 3.1.6 below), the Deed Administrators will not market or advertise the Company to any other person(s).
 - 3.1.3 The Company to excise all subsidiaries.
 - 3.1.4 The Deed Administrators shall procure any such changes or appointments to the Company's board of directors as Wilson requests from time to time.
 - 3.1.5 In the event that the Proposal is not approved by the Company's creditors at the Creditor's Meeting (as defined in paragraph 3.1.6 below) and an alternative offer is accepted, then the Deed Administrators will reimburse the listing fee of \$27,500 to Wilson on completion of the DOCA by that other party.
 - 3.1.6 The Proposal must be approved by the Company's creditors at a creditors' meeting, which must be held as soon as possible but in any event, within one month from the date of this letter (**Creditors' Meeting**).
 - 3.1.7 The Proposal must be approved by the Company's shareholders at a meeting of the Company's shareholders.
 - 3.1.8 The Proposal must be formalised by way of the following documents (**Transaction Documents**) in a form that is satisfactory to Wilson (in its absolute discretion):
 - (a) a DOCA approved by the Company's creditors that reflects the terms of the Proposal (including the document in paragraph 3.1.8(b) below), and on terms that are consistent with sections 444DA and 556 of the Corporations Act; and
 - (b) a Creditors' Trust Deed to establish the Creditors' Trust referred to above under which the Deed Administrators (as **Trustees**) will administer claims and distribute the trust fund to the creditors of the

Company in a manner consistent with section 556 of the Corporations Act.

- 3.1.9 All liabilities between the Company and each of its creditors as at settlement of the Proposal must be mutually released and compromised as between those parties under the DOCA.
- 3.1.10 The DOCA must be wholly effectuated and the appointment of the Deed Administrators (as Deed Administrators of the DOCA) must terminate contemporaneously.
- 3.1.11 All creditors will be required to prove their debts against the Trustees of the Creditors' Trust as if the Trustees were the Company, and payments to creditors must be made in accordance with the DOCA and the Creditors' Trust Deed.
- 3.1.12 Confirmation must be obtained from the ASX that it will lift the suspension on the trading of the Company's securities immediately following completion of the Proposal. Such confirmation must be obtained before executing the DOCA or such later date agreed between Wilson and the Deed Administrators.

4 Costs

- 4.1 Wilson will:
 - 4.1.1 prepare the initial drafts of the Transaction Documents;
 - 4.1.2 in consultation with the Deed Administrators, take all reasonable steps to procure that the Company prepares and lodges all mandatory financial reports in relation to the Company as and when required by law, including those required under the ASX Listing Rules; and
 - 4.1.3 prepare the required general meeting materials and, as necessary, will submit these materials to ASX, the Australian Securities & Investments Commission and the Deed Administrators for approval prior to despatch to the shareholders of the Company.
- 4.2 The cost of preparing the above documents, obtaining the relevant approvals and despatching the general meeting materials will be borne by Wilson. However, Wilson will be entitled to claim reimbursement by the Company of all such costs in the event that the Proposal is approved and the Company's securities are reinstated to trading on ASX.
- 4.3 Wilson's legal advisers are Lavan (The Quadrant, 1 William St, Perth WA 6000) and can be contacted on 08 9288 6298 (Derek La Ferla).

5 Binding offer and acceptance

- 5.1 This letter constitutes a binding offer by Wilson to the Deed Administrators and the Company to undertake the recapitalisation and reconstruction of the Company on the terms and conditions of the Proposal set out above.
- 5.2 This letter, and all information, documents or discussions between the parties in relation to it, are confidential and must not be disclosed by Wilson, the Company or the Deed Administrators (or any of their respective officers, employees, agents or contractors) to another person, except:
- 5.2.1 with the written consent of the other parties;
 - 5.2.2 to the extent required by law or court order;
 - 5.2.3 to the extent required by ASX Listing Rules; or
 - 5.2.4 on a confidential basis to a party's legal, accounting, financial, insurance and other professional advisors who require the information for the purposes of considering or giving effect to a transaction under this letter.
- 5.3 Notwithstanding paragraph 3.1.2, the Deed Administrators are not prohibited from engaging and communicating with other person(s) who approach them for the purpose of presenting an alternative offer for the restructure and recapitalisation of the Company.

We look forward to working with the Deed Administrators to progress to the next stage of executing the DOCA.

Yours sincerely

A handwritten signature in black ink, appearing to read "Derek La Ferla".

Derek La Ferla
Partner

Please notify us if this communication has been sent to you by mistake. If it has been, any privilege between solicitor and client is not waived or lost and you are not entitled to use it in any way.



Acceptance

I, **Simon Theobald**, in my capacity as Deed Administrator of Migme Limited (Subject to Deed of Company Arrangement) ACN 059 457 279, hereby accept the offer set out in this letter.

Signature

Date

I, **Melissa Humann**, in my capacity as Deed Administrator of Migme Limited (Subject to Deed of Company Arrangement) ACN 059 457 279, hereby accept the offer set out in this letter.

Signature

Date

Signed by Wilson International Capital Limited, a company incorporated in the Hong Kong, by Shaoying Wang, being a person who, in accordance with the laws of that territory, is acting under the authority of the company.

For and on behalf of
Wilson International Capital Limited
滙生國際資本有限公司

.....

Authorized Signature(s)

Signature of authorised person