



**SHERIDANS**  
CHARTERED ACCOUNTANTS

# **JEMM & CO INVESTMENTS PTY LTD**

(In Liquidation)

ACN 144 902 812

Trading as “Taste Asian Fusion”, “Kathmandu Kitchen Applecross”,  
“Ginger & Lime Café Restaurant”, “Star Anise Restaurant”, “The  
Wallcliffe Arms Bar and Restaurant”, “Sunsets Café & Bistro”,  
“Kingfisher Bar Café and Restaurant” and “The Samovar”

## **Report to Creditors**

Section 70-40

Insolvency Practice Rules (Corporations) 2016

**16 August 2018**

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### **Enclosures**

- (i) Proof of Debt or Claim form

## 1. Introduction

- 1.1 I refer to my appointment as Liquidator of the company on 7 June 2018 and to my initial information for creditors dated 15 June 2018.
- 1.2 The purpose of this report is to provide creditors with an update on the progress of the liquidation in accordance with Section 70-40 of the Insolvency Practice Rules (Corporations) 2016, and to advise creditors of the likelihood that a dividend will be paid in the liquidation.

## 2. Receipts and payments

- 2.1 The following is a summary of the receipts and payments in the liquidation to date:

	\$
<b>Receipts</b>	
Contribution	20,000
Coffee machine	345
	20,345
<b>Payments</b>	
Bank fees	21
Liquidator's fees	10,000
Insurance	802
Valuations	850
GST (net)	1,041
	12,714
<b>Cash at bank as at 16 August 2018</b>	<b>7,631</b>

## 3. Assets

- 3.1 The company's director gave an estimate in her Report as to Affairs ("RATA") of potential realisations. Set out below is a comparison of this estimate with the Liquidator's estimate and actual realisations to date.

	Ref	RATA estimate \$	Liquidator's estimate \$	Liquidator's realisations to date \$
Cash at bank	3.2	Nil	Nil	Nil
Plant and equipment	3.3	3,000	17,360	Nil
Motor vehicles	3.4	Nil	Nil	Nil
Coffee machine	3.5	Not on RATA	345	345
		<b>3,000</b>	<b>17,705</b>	<b>345</b>

### 3.2 Cash at bank

- 3.2.1 A debit balance was held in the company's ANZ bank account at the date of my appointment. Therefore, no amount was realised following the closure of this bank account.

### 3. Assets (cont.)

#### 3.3 *Plant and equipment*

- 3.3.1 In a meeting held on 7 June 2018, the director advised me that the company had realisable plant and equipment located at the company's Margaret River premises. These assets comprise various whitegoods, furniture, tableware, decorations, kitchen equipment and electronics.
- 3.3.2 Accordingly, I conducted a stocktake of the company's plant and equipment on 8 June 2018.
- 3.3.3 I note that on her RATA the director estimated that the company's plant and equipment assets had a value of \$3,000.
- 3.3.4 Excluding the assets that were subject to a valid Purchase Money Security Interest (see Section 4), I have determined that the company's plant and equipment has a market value of \$17,360.
- 3.3.5 I am currently in negotiations with a former employee of the company who has expressed an interest in purchasing the company's plant and equipment in situ. I note that the potential purchaser is currently operating the company's former business, Kingfisher Café Bar and Restaurant.
- 3.3.6 All of the company's plant and equipment which was subject to a valid Purchase Money Security Interest has been disclaimed due to negative equity.

#### 3.4 *Motor vehicles*

- 3.4.1 The director advised on her RATA that the company had three vehicles at the date of liquidation, being two Holden Captivas and a BMW X1.
- 3.4.2 A search of the Personal Property Securities Register ("PPSR") showed security interests registered against the company in respect of the motor vehicles (see Section 4).
- 3.4.3 All of the company's vehicles held at the date of liquidation have been disclaimed due to negative equity.

#### 3.5 *Coffee machine*

- 3.5.1 Following my appointment as liquidator, the director advised that a former supplier was in possession of a coffee machine belonging to the company.
- 3.5.2 Accordingly, I arranged for my agent to collect the coffee machine and sell it by auction. A total of \$345 was realised from the sale of the coffee machine.

#### 4. Secured creditors

- 4.1 According to a search of the PPSR, the following security interests have been registered against the company's ACN:

Secured party	Details of charge
BMW Australia Finance Limited	Purchase Money Security Interests over motor vehicles. (See Section 3.4)
Capital Finance Australia Limited	
Macquarie Leasing Pty Ltd	
Service Finance Corporation Ltd	Purchase Money Security Interests over kitchen equipment. (See Section 3.3)
Silver Chef Rentals Pty Ltd	
Thorn Australia Pty Ltd	
Sealanes (1985) Pty Ltd	Purchase Money Security Interest. Relates to supply of food. Unable to identify any collateral that could be subject to the security interest.
Prospa Advance Pty Ltd	All present and after-acquired property Security Interest. Invalid registration.
Nissan Financial Services Australia Pty Ltd	Purchase Money Security Interest over motor vehicle. Motor vehicle sold and creditor paid in full prior to the date of liquidation.
BOC Limited	There is no debt owed to these creditors.
Liquid Mix (WA) Pty Ltd	
Samuel Smith & Son Pty Ltd	

#### 5. Priority creditors

- 5.1 The director's RATA listed the Australian Taxation Office ("ATO") as the company's only priority creditor in respect of unpaid superannuation.
- 5.2 The ATO has advised that the outstanding superannuation guarantee charge (including interest charges) is \$245,851.
- 5.3 I understand that there may be further entitlements owed to the company's former employees. However, the quantum of the entitlements is currently unknown.
- 5.4 If you were an employee of the company at the date that I was appointed, or you have previously been employed by the company, you may be a creditor of the company for any or all of the following debts: outstanding wages, annual leave, long service leave, pay in lieu of notice, redundancy and/or superannuation.
- 5.5 If you are owed accrued entitlements, you may be eligible for assistance under the Federal Government's Fair Entitlements Guarantee Act 2012 ("FEG"). For further information regarding FEG, please call the FEG hotline: 1300 135 040 or go to the website: [www.employment.gov.au/fair-entitlements-guarantee-feg](http://www.employment.gov.au/fair-entitlements-guarantee-feg). **Former employees have only 12 months to lodge a FEG claim and FEG has no discretion to extend this time.**
- 5.6 Please find enclosed a Proof of Debt or Claim form to enable any creditors who have not already done so to lodge their claim against the company. Note that any FEG claim must be lodged separately with FEG.

## 6. Unsecured creditors

- 6.1 According to the director's RATA, the company had seventeen unsecured creditors, whose claims totalled \$596,984.
- 6.2 On the basis of current information, I estimate that the total amount owed to unsecured creditors is \$442,031.
- 6.3 Please find enclosed a Proof of Debt or Claim form to enable any creditors who have not already done so to lodge their claim against the company.

## 7. Dividend

- 7.1 The likelihood that a dividend will be paid to creditors will be affected by a number of factors including:
  - (i) The size and complexity of the administration.
  - (ii) The amount of assets realisable and the costs of realising those assets.
  - (iii) The statutory priority of certain claims and costs.
  - (iv) The value of various classes of claims including secured, priority and unsecured creditor claims.
  - (v) The volume of enquiries by creditors and other stakeholders.
- 7.2 Due to the quantum of asset realisations to date, and the expected future realisations (see Section 3), I consider it unlikely that a dividend will be paid to any class of creditor of the company.
- 7.3 However, the likelihood of a dividend is largely dependent on the outcome of my investigations into any possible recovery actions (see Section 11). My investigation is still ongoing.
- 7.4 If a dividend is payable, creditors will be contacted prior to payment of the dividend and will be asked to lodge a Proof of Debt. This will formalise creditors' claims against the company.

## 8. Reasons for the company's failure

- 8.1 I note that the company ceased to trade the business, Sunsets Café & Bistro, on or around 15 May 2018.
- 8.2 I note that the company ceased to trade the business, Kingfisher Bar Café and Restaurant, on 7 June 2018.
- 8.3 From my preliminary inquiries to date (see Section 9 below), I consider that the reasons for the company's failure are likely to be as follows:
  - (i) Inability to meet taxation liabilities;
  - (ii) Insufficient cash flow and budget due to inadequate revenue to meet expenses, particularly wages expense; and
  - (iii) Poor strategic management.

## 9. Inquiries undertaken to date

9.1 The following inquiries have been made to date:

- (i) Undertaking searches including a company search, PPSR search, vehicle search, director search and property search.
- (ii) Contacting the Sheriff's Office to determine whether any recovery action has been undertaken on behalf of creditors.
- (iii) Contacting the Child Support Agency and Workcover WA to determine the company's outstanding liabilities.
- (iv) Contacting the Office of State Revenue and the Australian Taxation Office ("ATO") to determine the company's outstanding tax-related liabilities.
- (v) Requesting that the ATO provide me with access to the company's taxation records via the Business Portal.
- (vi) Attending the company's former premises.
- (vii) Collecting and preparing a listing of the company's books and records.
- (viii) Reviewing the company's financial statements and draft accounts to determine whether there are any unaccounted for assets and/or liabilities.
- (ix) Reviewing the director's Report as to Affairs.
- (x) General inquiries of the company's director regarding assets and liabilities.
- (xi) Sending an initial notice to creditors, encouraging creditors to submit their claim against the company.

## 10. Further inquiries that may need to be undertaken

10.1 I note the following further inquiries may need to be undertaken:

- (i) Extensive review of the company's books and records.
- (ii) Conducting an investigation into the company's affairs and the conduct of its officers.
- (iii) Determining whether there are any possible recovery actions (see Section 11 below).
- (iv) Lodging a report with ASIC detailing my investigation findings.
- (v) General inquiries of the company's director regarding assets and liabilities.

10.2 If creditors are aware of a particular matter that requires further investigation, please contact this office immediately.

## 11. Possible recovery actions

11.1 I am yet to uncover any possible recovery actions but note that the most common recovery actions available to a liquidator are as follows:

- (i) Insolvent trading.
- (ii) Unfair preferences.
- (iii) Uncommercial transactions.
- (iv) Unfair loans.
- (v) Unreasonable director-related transactions.

## 12. What happens next?

12.1 I will proceed with the liquidation, including:

- (i) Realising the remaining assets.
- (ii) Recovering any further available property.
- (iii) Completing my investigations into the company's affairs.
- (iv) Completing my reporting to the corporate insolvency regulator, the Australian Securities and Investments Commission.

12.2 I may write to creditors again with further information on the progress of the liquidation.

## 13. More information

13.1 Creditors can access information which may be of assistance on the following websites:

- (i) Sheridans at [www.sheridansac.com.au/downloads/](http://www.sheridansac.com.au/downloads/)
- (ii) ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors)
- (iii) ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for "insolvency information sheets")

If you wish to discuss the above matters, please contact David Blanchett or Sarah Marsegaglia of this office.

Yours faithfully



JENNIFER E. LOW  
Liquidator of  
Jemm & Co Investments Pty Ltd



**JEMM & CO INVESTMENTS PTY LTD**  
**ACN 144 902 812**  
**(In Liquidation) (“the company”)**

**PROOF OF DEBT OR CLAIM**

This is to state that the company was on 7 June 2018 and still is justly and truly indebted to

\_\_\_\_\_ for:

\$ \_\_\_\_\_ and \_\_\_\_\_ cents

Date	Consideration (how the debt arose)	Amount \$	Remarks (include details of voucher substantiating payment)

To my knowledge or belief the creditor has not, nor has any person by the creditor’s order, had or received any satisfaction or security for the sum or any part of it except for the following: *(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).*

Date	Drawer	Acceptor	Amount \$	Due date

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, remains unpaid and unsatisfied. ①

I am the creditor’s agent authorised in writing to make this statement in writing. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied. ①

① *Delete both if this proof is made by the creditor personally. Otherwise, strike out or leave, as appropriate.*

**Please ensure this proof is signed for completion, before lodgement.**

**Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Occupation:** \_\_\_\_\_

**Creditor’s address:** \_\_\_\_\_

I nominate to receive electronic notification of notices or documents in accordance with Section 600G of the Corporations Act 2001 at the following email address:

\_\_\_\_\_