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21 June 2022

## Circular to Creditors

Dear Sir/Madam,

### Ex MWG Ltd (Formerly McWilliam's Wines Group Ltd) (Subject to Deed of Company Arrangement) ACN 000 024 108 (the Company)

I refer to the appointment of Gayle Dickerson, Ryan Eagle and myself, Tim Mableson, as Administrators of the Company and to our subsequent appointment as Deed Administrators, firstly on 3 August 2020 pursuant to the first deed of company arrangement, and then secondly, pursuant to the second deed of company arrangement (**Second DOCA**) on 29 April 2021.

I also refer to the two dividends paid to unsecured creditors to date, being a first dividend of 60c/\$ on 28 September 2021 and a second dividend of 4c/\$ on 21 December 2021.

As advised in our circular to creditors dated 7 December 2021, we anticipated a third and final dividend to unsecured creditors may be declared on or before 30 June 2022 as we were still dealing with matters that had a potential financial impact on any final dividend. This circular is to update creditors in this regard.

I confirm that all matters relating to the sale of the Company's businesses and assets have now been resolved, in particular with Calabria Family Wines Pty Ltd relating to the McWilliams Wines winery at Hanwood. It did take longer than expected to resolve the transfer of water licences and certain trademarks, however, a final accounting of funds between ourselves and Calabria Family Wines Pty Ltd has now been completed.

This means there is only one outstanding matter which we have been trying to resolve since November 2021. We recently held a Committee of Inspection (**COI**) meeting on 9 June 2022 to update the COI and it is now appropriate to update all creditors given we understand 30 June 2022 is approaching and some creditors have contacted us enquiring as to the timing of a third and final dividend.

On 8 November 2021 on behalf of the Company we lodged an Application (**Application**) with the Australian Securities & Investments Commission (**ASIC**) seeking relief in the form of a no-action letter from compliance with the Company's financial reporting obligations pursuant to Chapter 2M of the Corporations Act 2001 (Cth) (**Act**). Specifically, relief from the Company's financial reporting obligations required by Part 2M.3 of the Act for the financial years ending 30 June 2019 (**FY2019**), 30 June 2020 (**FY2020**) and 30 June 2021 (**FY2021**) and the Company's obligations to hold annual general meetings in the period required by Section 250N of the Act for the 2019 and 2020 calendar years (**AGM 2019 & 2020**).

In March 2022 ASIC rejected the Application.

On 19 April 2022 we lodged with ASIC an alternative application (**Alternative Application**). The Alternative Application was prepared pursuant to Sections 111AT and 250PAB of the Act, seeking ASIC exempt the Company from compliance with the relevant obligations in Part 2M.3 and Section 250N of the Act on the basis that:

- a) throughout the external administration of the Company, as the Deed Administrators we have kept the Company's stakeholders, and importantly its creditors and shareholders, updated regarding all aspects of the external administration;
- b) as a consequence of the external administration, the whole of the Company's assets and undertaking have been sold meaning that the Company's business is no longer a going concern and the business is no longer

- operated by the Company. The Second DOCA also had the effect of extinguishing the liabilities of the Company, leaving the Company as a shell entity (with no assets and no liabilities) on the effectuation of the Second DOCA. Thus, the effect of the Second DOCA is, in essence, a distribution fund in order to pay dividends to creditors - a position that is analogous to a distribution in a winding up. For clarity's sake, this is not an external administration where there is any prospect of the Company continuing to carry on its previous business and, accordingly, the members of the Company have no ongoing economic interest in it;
- c) the Company's majority shareholders (Maxsons and Rueith that together account for a 52.5% of the shareholding in the Company) have confirmed in letters previously provided to ASIC on 3 February 2022 that they are keen for the Second DOCA to be finalised and a final dividend issued as soon as possible. Accordingly, both Maxsons and Rueith support the Application;
  - d) the Company's Directors have indicated their intention to wind up or otherwise deregister the Company once the external administration has been completed;
  - e) our most recent report to creditors estimated the return to unsecured creditors is between 65.76c/\$ and 66.49c/\$ (noting 64c/\$ has been paid to date). We are advised by the Company's pre-appointment external auditor, Deloitte, that the estimated costs of the Company preparing and finalising the audited financial statements required by Part 2M.3 of the Act are at least \$680,000 and possibly as high as \$900,000 before considering the additional time costs of the Deed Administrators including assisting Deloitte, holding further creditors meetings and preparing reports and remuneration reports for further fee approval from the Company's creditors. The current funds held in the Second DOCA are insufficient to meet all of these costs (including Deloitte's costs) if incurred;
  - f) being required to comply with the relevant obligations in Part 2M.3 and Section 250N of the Act will further delay completion of the Company's external administration until at least 30 November 2022; and
  - g) being required to incur such costs and complete such matters against the present state of the Company (i.e. final distribution to creditors and the Company handed back to the Directors with no assets and no liabilities) serves no real policy or regulatory purpose to stakeholders of companies in Australia, creditors of the Company or shareholders of the Company.

On 20 May 2022 ASIC advised that it did not support the Alternative Application. Whilst ASIC set out its reasons, of note is that ASIC was "not persuaded in this instance that it would impose an unreasonable burden on the Company to comply with its obligations".

Having further considered the matter (including all paths available to us - including the involvement of any Court process), in light of ASIC's position with respect to the Application and Alternative Application, we have no option but to proceed to ensure the Company meets its financial reporting obligations for FY2019, FY2020 and FY2021 and obligations to hold AGM 2019 & 2020. We will attempt to minimise the cost of doing so, by first obtaining alternate quotations to the Deloitte quotation which we have commenced with the assistance of certain former Company employees. Subject to the alternate quotations received and our estimate of the total cost of undertaking this work, we hope there might still be a third and final dividend to unsecured creditors, however, the amount (if any) and timing is uncertain.

As you may recall, clause 7.9 of the Second DOCA provides that payment of all payments / dividends must be paid by the Final Payment Date (being 31 December 2021 or other date as notified by the Deed Administrators to the creditors in writing). Further to our previous circulars to creditors, for the reasons set out above, we hereby provide written notification to creditors that the Final Payment Date (as defined) pursuant to the Second DOCA dated 29 April 2021 is extended to 31 December 2022.

We will continue to keep creditors informed however should you have any queries in the meantime please contact this office by telephone or via email at [mcwilliams@kpmg.com.au](mailto:mcwilliams@kpmg.com.au).

Yours faithfully,

**Ex MWG Ltd (Subject to Deed of Company Arrangement)**



**Tim Mableson**

Joint & Several Deed Administrator