



**Deals, Tax & Legal**  
Tower Two  
Collins Square  
727 Collins Street  
Melbourne Vic 3008

GPO Box 2291U  
Melbourne Vic 3001  
Australia

ABN: 51 194 660 183  
Telephone: +61 3 9288 5555  
Facsimile: +61 3 9288 6666  
DX: 30824 Melbourne  
www.kpmg.com.au

CIRCULAR TO CREDITORS AND SUPPLIERS

Our ref 35395563\_1

16 January 2019

Dear Sir/Madam,

**Specialty Mens Apparel Pty Ltd (Administrators Appointed)**  
**ACN 149 766 307 (“the Company”)**  
**ABN 73 149 766 307**  
**Trading as “Ed Harry”**

The purpose of this document is to provide you with information about the voluntary administration of the Company and your rights as a creditor.

**1 Notification of appointment**

We advise that Gayle Dickerson and I, Brendan Richards, of KPMG were appointed as joint and several Voluntary Administrators of the Company on 15 January 2019 pursuant to section 436A of the Corporations Act 2001 (*Cth*) (“the Act”). A copy of our notice of appointment is attached.

**2 Declaration of Independence, Relevant Relationships and Indemnities**

In accordance with section 436DA of the Act, please find attached a copy of the Declaration of Independence, Relevant Relationships and Indemnities (“DIRRI”).

The DIRRI assists you to understand any relevant relationships that we have, and any indemnities or upfront payments that have been provided to us. We have considered each relationship and it is our opinion that none of the relationships disclosed in the DIRRI result in a conflict of interest or duty or affect our independence.

**3 What is voluntary administration**

A voluntary administration, or VA, is a process initiated by the directors of a company when they believe that the company is, or is likely to become, insolvent. This means that the company is unable to pay its debts, or is likely to become unable to pay its debts.

A voluntary administration gives a company an opportunity to consider its financial position and its future. Creditors will be given an opportunity to vote on the future of the company.

According to the company’s records, you may be a creditor of the Company.

The Administrators are currently working, and will continue to work with the Company’s senior management team, secured lenders and suppliers whilst undertaking a review of the Company’s current operating position, and will maintain regular contact with all key stakeholders throughout the process.



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#### **4 What happens to your debt**

All creditors of the Company are now creditors in the voluntary administration.

It is important to note that a voluntary administration creates restrictions on creditors being able to enforce their rights. You generally cannot enforce your claim, recover your property, enforce your security, commence an action to place the Company into liquidation or act on a personal guarantee.

Debts incurred by the Company prior to the date of our appointment will not be discharged by the Administrators. All debts incurred as at 15 January 2019 will be dealt with in the voluntary administration and will rank as an unsecured claim against the Company.

Any potential returns are dependent on the outcome of the Administration. Given the early stage of the Administration, we are not currently in a position to provide creditors with an estimate of any returns, nor are we able to provide an estimate of timing, where a return is pertinent.

Any payment made by the Administrators must be applied against debt incurred by the Administrator and cannot be applied against debt incurred by the Company prior to our appointment.

#### **5 PPSR and Consignment stock/Retention of Title/Pledges/PMSI**

If you believe you have title to any goods delivered to the Company pursuant to a contract or the Personal Property Securities Act or any lien over goods in your possession that are the property of the Company, details of your claim including supporting documentary evidence should be forwarded to our office immediately at [edharry@kpmg.com.au](mailto:edharry@kpmg.com.au).

Pursuant to section 440B(2) of the Act, with the exception of perishable goods, creditors seeking to enforce a retention of title claim of goods provided to the Company prior to our appointment cannot recover the goods without the written consent of the Administrators or leave of the Court.

If you are a supplier please also refer to section 8 of this circular.

#### **6 Legal proceedings**

Pursuant to section 440D(1) of the Act, any proceedings in a court against the Company or in relation to any of its property cannot be commenced or proceeded during the administration without the written consent of the Administrator, or alternatively, with the leave of the Court.

#### **7 Ongoing trading**

We are currently assessing the financial position of the Company. Whilst this assessment is being undertaken, we intend to continue trading the business including all 87 stores. We consider this to be in the best interests of all parties concerned and in this regard, ask for your support.

If you are an employee you should have received separate written communication. If you have not received a copy of this correspondence, please request a copy by email to [edharry@kpmg.com.au](mailto:edharry@kpmg.com.au).



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## 8 Suppliers

We outline below how this appointment impacts your ongoing dealings with the Company if you are a supplier.

During this period, we will continue to trade and operate the business as usual, and subject to the various conditions set out below.

Accordingly, and with respect to any account maintained by you in the name of the Company, we request that you:

- close that account as at the date of our appointment (15 January 2019) and forward details of the account outstanding to this office (refer to the attached Formal Proof of Debt form); and
- open a new account under the name "Specialty Mens Apparel Pty Ltd (Administrators Appointed)"

We advise that payment of your unsecured accounts as at 15 January 2019 (being the date of our appointment) is postponed in anticipation of the outcome of the second meeting of creditors of the Company.

We advise that as Administrators of the Company, we will not accept the delivery of any good or services following our appointment date **unless** those goods or services have been authorised by the Administrators or their authorised representatives in writing. We attach a list of authorised signatories to this effect.

During the period of voluntary administration, any further credit properly incurred by the Company that is authorised by us or by our authorised representatives, will represent a personal liability of the Administrators and payment will be made in the ordinary course. Any goods or services supplied without authorisation will not be the liability of the Administrators.

## 9 Leased assets

Pursuant to section 443B of the Act, liability under lease or hire agreements does not commence until more than five business days following our appointment. Further, pursuant to section 440B of the Act, the owner or lessor of property that is used or occupied by the Company is stayed from removing or otherwise taking possession of that property without of the Court or written consent from the Administrators.

If you are the owner or lessor of property that is currently used or occupied by the Company we request you send particulars of this arrangement to our office immediately.

## 10 Meetings of creditors

As voluntary administrators, we are required to hold two meetings of creditors.

### 10.1 First meeting of creditors

The first meeting of creditors pursuant to section 436E of the Act will be held as follows:



Specialty Mens Apparel Pty Ltd (Administrators  
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16 January 2019

**Date:** Thursday, 24 January 2019  
**Time:** 11:00 am ACDT (Australian Central Daylight Time – local Adelaide time)  
**Address:** Chartered Accountants Australia and New Zealand  
Level 29, Westpac House, 91 King William Street  
Adelaide SA 5000

Further meeting information, including notice of meeting is attached.

The purpose of this meeting is to determine whether to appoint a committee of inspection and if so, who the appointed committee members will be (see section 9 of this circular for further details). At this meeting, creditors may also resolve to remove us as Administrators and appoint someone else.

Electronic facilities will be made available at the meeting by way of telephone conference call. Creditors intending on using these facilities are required to provide a statement by email to [edharry@kpmg.com.au](mailto:edharry@kpmg.com.au) not later than two (2) business days before the meeting, notifying us of their intention to utilise these facilities. This statement should also set out:

- **Name:** The name of the person and of the proxy or attorney (if any)
- **Address:** An address to which notices to the person, proxy or attorney may be sent

On receipt of this statement, you will be provided by return email with conference call details and instructions on how to access the facilities for the meeting.

Due to the number of creditors who may dial into the meeting, it will not be possible to consider those creditors as attendees of the meeting and they will not be able to vote or participate in the meeting unless they attend in person or by proxy.

If you wish to vote or participate in this meeting, you are required to:

- Submit a **proof of debt** and information to substantiate your claim.

Please note, proof of debts lodged for this meeting are for voting purposes only but may be used for voting on resolution proposals without a meeting and distribution purposes, including a subsequent external administration of the Company.

Section 600G of the Act permits electronic notification to creditors of certain notices or documents. If you would like to nominate to receive electronic notification, please complete the relevant section on the proof of debt form.

- Appoint a person – a **"proxy"** or person authorised under a power of attorney – to vote on your behalf at the meeting. This may be necessary if you are unable to attend the meeting or if the creditor is a company.

If you are representing a company, please ensure your proxy form is executed pursuant to section 127 of the Act or your representative is appointed pursuant to section 250B of the Act, otherwise you will not be entitled to vote at the meeting.



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- You can appoint the chairperson of the meeting or another person as your proxy and direct them on how you wish your vote to be cast. If you choose to do this, the elected person, chairperson or otherwise, must cast your vote as directed.

A proof of debt and proxy form are enclosed. Completed proof of debt forms and, if applicable, proxy forms must be returned to the KPMG Perth office by post to KPMG, GPO Box A29, Perth WA 6837, fax +61 8 9263 7129 or email to [edharry@kpmg.com.au](mailto:edharry@kpmg.com.au) by **12:00pm AEDT on Wednesday, 23 January 2019**. Failing this, creditors or their proxies may be excluded from voting at the meeting.

## **10.2 Second meeting of creditors**

We will in due course call a second meeting of creditors. Before that meeting you will be sent the notice of meeting and a detailed report for your consideration, which sets out the options for the Company's future. We will also give our opinion as to what option we think is in the best interests of creditors. At that second meeting, creditors will decide about the future of the Company.

## **11 Committee of Inspection**

At this meeting, creditors will consider whether a Committee of Inspection ("COI") should be appointed. The role of a Committee of Inspection is to consult with the voluntary administrators and receive reports on the conduct of the administration. A creditors' committee can also approve the administrator's fees.

It is our opinion that a COI would be useful to assist with the conduct of the voluntary administration. An information sheet on the role of a COI is attached. You should think about whether you would like to act as a member of the COI.

## **12 Costs of the voluntary administration**

Attached is our Initial Remuneration Notice. This document provides you with information about how we will be remunerated for undertaking the voluntary administration and how disbursements may be calculated and incurred. Our remuneration is paid from the Company's funds including asset realisations. If there is insufficient funds in the administration, we may not get paid for all of the time we have incurred in the conduct of the administration. If there are no funds in the administration, we will not be remunerated at all however we will still attend to our statutory duties.



We may seek your approval of our remuneration and internal disbursements at the second meeting of creditors and we will provide you with detailed information regarding our remuneration before this meeting so that you can understand what tasks we have undertaken or will be required to undertake, and the costs of those tasks. Details of internal disbursements including how they were calculated will also be provided.

### **13 What happens next with the Voluntary Administration?**

We will proceed with the voluntary administration, including:

- An assessment of the ongoing trading of the business;
- Dealing with property leases;
- Preparing for and holding the meetings of creditors;
- Undertaking investigations into the Company's affairs;
- Analysing any offer for a Deed of Company Arrangement that is received; and
- Preparing our report to creditors.

As discussed above, you will receive further correspondence from me before the second meeting of creditors.

### **14 Your rights as a creditor**

Information regarding your rights as a creditor is provided in the attached information sheets.

This includes your right to:

- Make reasonable requests for information;
- Give directions to us;
- Appoint a reviewing liquidator;
- To replace us as voluntary administrator.

### **15 Where can you get more information?**

The Australian Restructuring Insolvency and Turnaround Association ("ARITA") provides information to assist creditors with understanding voluntary administrations and insolvency.

This information is available from ARITA's website at [arita.com.au/creditors](http://arita.com.au/creditors).

ASIC also provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at [asic.gov.au](http://asic.gov.au) (search for "insolvency information sheets").



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**16 What you should do next**

You should now:

- read the attached information
- decide whether you are going to attend the first meeting, and
- complete and return your proof of debt, and if required, proxy form by **12:00pm AEDT on Wednesday, 23 January 2019** and email these forms to [edharry@kpmg.com.au](mailto:edharry@kpmg.com.au).

Should you wish to receive future communication by email, please email [edharry@kpmg.com.au](mailto:edharry@kpmg.com.au) and provide your name, name of the creditor entity which you represent (if applicable) and the amount of your claim.

Should you have any queries in relation to this matter, please contact our office on +61 2 9335 7631 or by email to [edharry@kpmg.com.au](mailto:edharry@kpmg.com.au).

Yours faithfully

*Brendan Richards*

Brendan Richards  
Joint and Several Administrator

*Attachments:* Notice of appointment  
DIRRI  
ASIC/ARITA Creditor information sheets  
Notice of meeting  
Form 535 Formal proof of debt form  
Form 532 Proxy form  
Initial remuneration notice  
COI information sheet  
Authorised signatories

**Form 505**

Corporations Act 2001  
**415(1), 427(2), 427(4), 450A(1)(a),  
499(2C)(a) & (b), 537(1) & (2),**  
Insolvency Practice Rules (Corporations) 2016  
**s70-60(2)**

# External Administration or Controllership Appointment of an administrator or controller

## Liquidator details

Registered liquidator number

**339581**

Registered liquidator name

**BRENDAN JOHN RICHARDS**

## Company details

Company name

**SPECIALTY MENS APPAREL PTY LTD**

ACN

**149 766 307**

Company industry type

**Retail Trade**

## Add a new appointment

### Appointee details

Liquidator No. **339581**

Person Name

**BRENDAN JOHN RICHARDS**

Address

**KPMG, 'KPMG TOWER TWO COLLINS  
SQUARE' 727 COLLINS STREET  
DOCKLANDS VIC 3008 Australia**

Type of Appointment

**Appointed Jointly and  
Severally**

### Appointee details

Liquidator No. **390469**



Person Name

**GAYLE DICKERSON**

Address

**KPMG, 'KPMG TOWER THREE' 300  
BARANGAROO AVENUE SYDNEY NSW  
2000 Australia**

Type of Appointment

**Appointed Jointly and  
Severally**

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## Appointment Details

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Provide the date of appointment.

**15-01-2019**

Type of administrator

**Administrator**

Method of appointment

**other appointment**

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## Authentication

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This form has been authenticated by

Name **BRENDAN JOHN RICHARDS**

This form has been submitted by

Name **Brendan John RICHARDS**

Date **15-01-2019**

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## Payment

You need to pay the fee (and any late fees if required) by Bpay or cheque in accordance with the instructions on your invoice

### For more help or information

Web [www.asic.gov.au](http://www.asic.gov.au)  
Ask a question? [www.asic.gov.au/question](http://www.asic.gov.au/question)  
Telephone 1300 300 630

## **Corporations Act 2001**

### **Declaration of Independence, Relevant Relationships and Indemnities “DIRRI”**

**Specialty Mens Apparel Pty Ltd (Administrators Appointed)  
Trading as Ed Harry  
ACN 149 766 307 (the Company)**

This declaration requires us as the Practitioners appointed to the Company to make declarations as to:

- A. our independence generally;
- B. relationships, including:
  - i the circumstances of the appointment;
  - ii any relationships with the Companies and others within the previous 24 months;
  - iii any prior professional services for the Companies within the previous 24 months;
  - iv. that there are no other relationships to declare; and
- C. any indemnities given, or up-front payments made, to us as the Practitioner.

This declaration is made in respect of us, Brendan Richards and Gayle Dickerson, our partners, KPMG Australia partnership and related parties covered by the extended definition of firm.

#### **A. Independence**

We, Brendan Richards of the KPMG Australia partnership (“KPMG Australia”), Tower Two, Collins Square, 727 Collins Street Melbourne VIC 3008 and Gayle Dickerson, of KPMG Australia, Level 38, Tower 3, 300 Barangaroo Avenue, Sydney NSW 2000, have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Voluntary Administrators of the Company in accordance with the law and applicable professional standards. We declare that this assessment identified no real or potential risks to our independence. We are not aware of any reasons that would prevent us from accepting this appointment.

#### **B. Declaration of Relationships**

##### **i) Circumstances of appointment**

Brendan Richards, a Partner in the KPMG Restructuring Services team, received a phone call from the Managing Director of the Company, David Clark, on 8 January 2019 to discuss some challenges the Company was experiencing following a weaker than expected sales period in the second half of 2018. Brendan Richards had been referred to David Clark by Azurium Advisory, who were acting on behalf of the Company to raise capital and/ or strategic partners for the business. Azurium Advisory is a consulting firm established by Ferrier Hodgson, a firm at which Brendan Richards was a partner until November 2017.



Azurium Advisory, it is understood, did not advise the Company until after Brendan Richards had left Ferrier Hodgson. In our opinion, this relationship does not affect our independence for the following reasons:

- Referrals from accountants, lawyers, business advisors and government agencies are commonplace and do not impact on our independence in carrying out our duties as voluntary administrator.
- We have not identified any issue in relation to this relationship that would give rise to a conflict in undertaking the administration of the Company. This relationship has not impeded our independence.

We had 1 meeting with the Company and its Directors on Wednesday 9<sup>th</sup> January 2019 prior to our appointment for the purposes of:

- Discussing the recent trading performance of the Company.
- Clarifying and explaining to the Company and its directors the various options available to the Company and the nature and consequences of an insolvency appointment.

A summary of the meeting is provided below.

<b>Date</b>	<b>KPMG Attendees</b>	<b>External Attendees</b>	<b>Agenda</b>
9 January 2019	Brendan Richards (Partner), David Hardy (Director)	David Clark, John Read, Anthony Hawkins, Adrian Crowley	Discussion on challenges in the retail sector  Discussion on general background and current trading performance of the Company  Discussion on implications of formal insolvency

We did not receive any remuneration in relation to this advice.

Post this meeting, there were a series phone calls and emails with David Clark and John Read in the period from 9 January to 14 January 2019. These communications were focused on information provided by the Company, general advice, provision of Consents to Act and undertaking preliminary planning for a Voluntary Administration.



In our opinion, the meeting held and subsequent phone calls do not affect our independence for the following reasons:

- The discussions were at all times factual in nature, focused on the historical and financial position of the Company, the consequences of insolvency and the possible voluntary administration. Neither we nor KPMG provided advice to the Company. Discussions were restricted to the Company situation and no advice was provided to the directors personally. We understand the directors have sought their own advice.
- No fees or charges were rendered in respect to time incurred by us and our staff in attending the above meetings or reviewing information.
- The discussions were restricted in accordance with the limitations imposed by Principle 2 of the ARITA Code of Professional Practice in relation to independence and pre-appointment communications and meetings.
- As the discussions were of a factual nature, they are unlikely to be subject to review by an Administrator or Liquidator and would not impact on compliance with our statutory and fiduciary duties.

## ii) Relevant Relationships

We, or a member of our Firm, have, or have had within the preceding 24 months, a relationship with the following parties:

Name	Nature of relationship	Reasons
Commonwealth Bank of Australia ("CBA") provides financial services to the Company.  We have made no determination at this time whether the secured creditor has a charge on the whole of or substantially the whole of the Company.	KPMG has had relationships with CBA due to the nature of KPMG's business. This includes business advisory, consulting services and the appointment of KPMG's registered liquidators to companies as a formal insolvency appointment (in some cases by the secured creditor), where the secured creditor has provided banking facilities, loan facilities and/ or leasing facilities to insolvent companies.	In our opinion, this relationship does not result in a conflict of interest or duty as KPMG has never undertaken any work for CBA in respect of the Company.
Australian Taxation Office ("ATO")	KPMG undertakes work from time to time on behalf of the ATO. This includes business advisory, consulting services and the appointment of KPMG's registered liquidators to companies as a formal insolvency appointment where the ATO has asked us to consent to act as liquidators.	In our opinion, this relationship does not result in a conflict of interest or duty as KPMG have not identified any issue in relation to this relationship that would give rise to a conflict in undertaking the administration of the Company. This relationship has not impeded our independence.

### **iii) Prior professional services to the Company**

Neither we, nor our firm, have provided any professional services to the Company in the previous 24 months prior to the acceptance of this appointment.

Brendan Richards was a partner at Ferrier Hodgson between 2009 and 2017. In 2011, Ferrier Hodgson were appointed voluntary administrators and subsequently liquidators to the company that traded the Ed Harry business, EDH Pty Ltd (Deregistered), which was later acquired by the Company.

We believe that this relationship does not result in a conflict of interest or duty because:

- Brendan Richards was not personally involved in the voluntary administration of EDH Pty Ltd (Deregistered);
- The Company and EDH Pty Ltd (Deregistered) are unrelated; and
- The voluntary administration and liquidation of EDH Pty Ltd (Deregistered) occurred almost 8 years ago such that there would not be any transactions that would or could be subject to review during the conduct of the external administration.

Should a conflict arise, we will keep creditors informed and take appropriate action to resolve the conflict.

### **iv) Other relevant relationships**

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with the Company, an associate of the Company, a former insolvency practitioner appointed to the Company or any person or entity that has security over the whole or substantially whole of the Company's property that should be disclosed.



### **C. Indemnities and up-front payments**

We not been indemnified in relation to this voluntary administration, other than any indemnities that we may be entitled to under statute.

We have not been provided with any upfront payments in respect of my remuneration or disbursements.

Dated: 16 January 2019

*Brendan Richards*

**Brendan Richards**  
**Administrator**

*Gayle Dickerson*

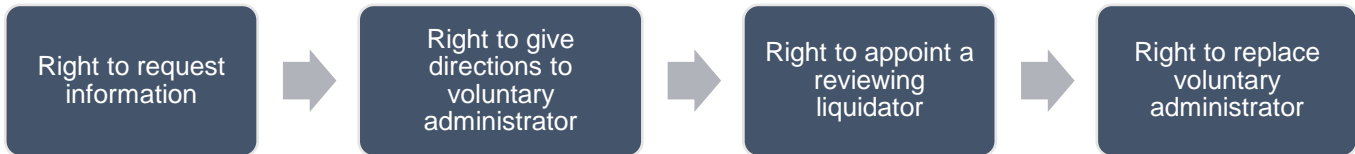
**Gayle Dickerson**  
**Administrator**

Note:

1. If circumstances change, or new information is identified, we are required under the Corporations Act 2001 and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication as well as table a copy of any replacement at the next meeting of the insolvent's creditors.
2. Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.

# Creditor Rights in Voluntary Administrations

As a creditor, you have rights to request meetings and information or take certain actions:



## Right to request information

Information is communicated to creditors in a voluntary administration through reports and meetings.

In a voluntary administration, two meetings of creditors are automatically held. You should expect to receive reports and notice of these meetings:

- The first meeting is held within 8 business days of the voluntary administrator's appointment. A notice of meeting and other information for this meeting will be issued to all known creditors.
- The second, or decision, meeting is usually held within 6 weeks of the appointment, unless an extension is granted. At this meeting, creditors will get to make a decision about the company's future. Prior to this meeting the voluntary administrator will provide creditors with a notice of the meeting and a detailed report to assist in making your decision.

Important information will be communicated to creditors prior to and during these meetings. Creditors are unable to request additional meetings in a voluntary administration.

Creditors have the right to request information at any time. A voluntary administrator must provide a creditor with the requested information if their request is 'reasonable', the information is relevant to the voluntary administration, and the provision of the information would not cause the voluntary administrator to breach their duties.

A voluntary administrator must provide this information to a creditor within 5 business days of receiving the request, unless a longer period is agreed. If, due to the nature of the information requested, the voluntary administrator requires more time to comply with the request, they can extend the period by notifying the creditor in writing.

## Requests must be reasonable.

### They are not reasonable if:

- (a) complying with the request would prejudice the interests of one or more creditors or a third party
- (b) the information requested would be privileged from production in legal proceedings
- (c) disclosure would found an action for breach of confidence
- (d) there is not sufficient available property to comply with the request
- (e) the information has already been provided
- (f) the information is required to be provided under law within 20 business days of the request
- (g) the request is vexatious

If a request is not reasonable due to (d), (e) or (f) above, the voluntary administrator must comply if the creditor meets the cost of complying with the request.

Otherwise, a voluntary administrator must inform a creditor if their information request is not reasonable and the reason why.

## Right to give directions to voluntary administrator

Creditors, by resolution, may give a voluntary administrator directions in relation to a voluntary administration. A voluntary administrator must have regard to these directions, but they are not required to comply with the directions.

If a voluntary administrator chooses not to comply with a direction given by a resolution of the creditors, they must document their reasons for not complying.

An individual creditor cannot provide a direction to a voluntary administrator.

## Right to appoint a reviewing liquidator

Creditors, by resolution, may appoint a reviewing liquidator to review a voluntary administrator's remuneration or a cost or expense incurred in a voluntary administration. The review is limited to:

- remuneration approved within the six months prior to the appointment of the reviewing liquidator, and
- expenses incurred in the 12 months prior to the appointment of the reviewing liquidator.

The cost of the reviewing liquidator is paid from the assets of the voluntary administration, in priority to creditor claims.

An individual creditor can appoint a reviewing liquidator with the voluntary administrator's consent, however the cost of this reviewing liquidator must be met personally by the creditor making the appointment.

## Right to replace voluntary administrator

At the first meeting, creditors have the right to remove a voluntary administrator and appoint another registered liquidator to act as voluntary administrator.

A creditor must ensure that they have a consent from another registered liquidator prior to the first meeting if they wish to seek the removal and replacement of a voluntary administrator.

Creditors also have the opportunity to replace a voluntary administrator at the second meeting of creditors:

- If creditors vote to accept a proposed deed of company arrangement, they can appoint a different registered liquidator as the deed administrator.
- If creditors vote to place the company into liquidation, they can appoint a different registered liquidator as the liquidator.

It is however usual for the voluntary administrator to act as deed administrator or liquidator. It would be expected that additional costs would be incurred by an alternate deed administrator or liquidator to gain the level of knowledge of the voluntary administrator.

Like with the first meeting, a creditor must ensure that they have a consent from another registered liquidator prior to the second meeting if they wish to seek to appoint an alternative registered liquidator as deed administrator or liquidator.

**For more information, go to [www.arita.com.au/creditors](http://www.arita.com.au/creditors).  
Specific queries about the voluntary administration should be directed to the voluntary administrator's office.**





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](http://www.asic.gov.au/insolvencyinfosheets). The information sheets are also available from the IPA website at [www.ipaa.com.au](http://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.

**NOTICE OF MEETING OF CREDITORS OF COMPANY**

**Specialty Mens Apparel Pty Ltd (Administrator Appointed)**

**ACN 149 766 307 (the "Company")**

On 15 January 2019 the Company under section 436A of the Corporations Act 2001 (*Cth*) ("the Act") appointed Brendan Richards and Gayle Dickerson of KPMG as the Administrators of the Company. The Company trades under the name, "Ed Harry".

Notice is given that the first meeting of the creditors of the Company will be held as follows:

**Date:** Thursday, 24 January 2019  
**Time:** 11:00am ACDT (Australian Central Daylight Time – local Adelaide time)  
**Address:** Chartered Accountants Australia and New Zealand  
Level 29, Westpac House, 91 King William Street  
Adelaide SA 5000

**Agenda**

The purpose of the meeting is to:

- Provide a brief history of the Company and the background to the appointment.
- The meeting would also determine:
  - whether to appoint a committee of inspection; and
  - if so, who are to be the committee's members.
- At the meeting, creditors may also, by resolution:
  - remove the Administrators from office; and
  - appoint someone else as administrator of the Company.
- Discuss any other relevant business which may arise.

**Attending and voting at the meeting**

Creditors are invited to attend the meeting, however they are not entitled to participate and vote at a meeting unless:

- **Proof of debt:** They have lodged with the Administrators particulars of the debt or claim and the claim has been admitted, wholly or in part, by the Administrators. If a proof of debt has already been lodged, they do not need to do so again. Refer to the circular above for further guidance on entitlement to vote.
- **Proxies or attendance:** They are either present in person or by electronic facilities or validly represented by proxy, attorney or an authorised person under s250D of the Corporations Act. If a corporate creditor or represented, a proxy form, power of attorney or evidence of appointment of a company representative pursuant to Section 250D of the Corporations Act 2001 ("the Act") must be validly completed and provided to the Administrators at or before the meeting.

To enable sufficient time to review, proofs of debt and proxies (or document authorising the representation) should be submitted to [edharry@kpmg.com.au](mailto:edharry@kpmg.com.au) or by post to KPMG Perth, GPO Box A29, Perth WA 6837 by no later than **12:00pm AEDT on Wednesday, 23 January 2019**. If you choose to return these documents, please allow sufficient time for the documents to be received prior to the due date.

### **Electronic facilities**

Electronic facilities will be made available at the meeting by way of telephone conference call facilities. To access those facilities, you need to provide a statement by email to [edharry@kpmg.com.au](mailto:edharry@kpmg.com.au) not later than two (2) business days before the meeting, notifying us of your intention to utilise these facilities. This statement should also set out:

- **Name:** The name of the person and of the proxy or attorney (if any)
- **Address:** An address to which notices to the person, proxy or attorney may be sent

On receipt of this statement, you will be provided with instructions on how to access the facilities for the meeting.

Due to the number of creditors who may dial into the meeting, it will not be possible to consider those creditors as attendees of the meeting and they will not be able to vote or participate in the meeting unless they attend in person or by proxy.

Should you have any queries in relation to the above, please contact our office on +61 2 9335 7631 or by email to [edharry@kpmg.com.au](mailto:edharry@kpmg.com.au).

Dated: 16 January 2019

*Brendan Richards*

.....  
Brendan Richards  
Joint and Several Administrator

### **Note 1: Entitlement to vote and completing proofs**

#### **IPR (Corp) 75 85 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 particulars 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.

FORMAL PROOF OF DEBT OR CLAIM

To the Administrators of:

**Specialty Mens Apparel Pty Ltd (Administrators Appointed)**

**ACN 149 766 307 (the "Company")**

1. This is to state that the Company was on 15 January 2019, and still is, justly and truly indebted to: \_\_\_\_\_

(full name, ABN and address 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) for \_\_\_\_\_ dollars and \_\_\_\_\_ cents

Particulars of the debt are:

Date	Consideration <i>(state how the debt arose)</i>	Amount	Remarks <i>(include details of voucher substantiating payment)</i>
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\$

2. 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
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\$

3. Signed by (select option):

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

Signature: \_\_\_\_\_ Dated: \_\_\_\_\_

Name: \_\_\_\_\_ Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**RECEIVE REPORTS BY EMAIL**

Yes No

Do you wish to receive all future reports and correspondence from our office via email?

Email:.....

**If being used for the purpose of voting at a meeting:**

- a) Is the debt you are claiming assigned to you?  No  Yes
- b) If yes, attach written evidence of the debt, the assignment and consideration given.  Attached
- c) If yes, what value of consideration did you give for the assignment (eg, what amount did you pay for the debt?) \$ \_\_\_\_\_
- d) If yes, are you a related party creditor of the Company?  No  Yes  
*(f you are unsure contact the Administrators at edharry@kpmg.com.au)*

**APPOINTMENT OF PROXY**

**Specialty Mens Apparel Pty Ltd (Administrators Appointed)  
ACN 149 766 307 (the "Company")**

\*I/\*We \_\_\_\_\_(name of signatory) of \_\_\_\_\_  
\_\_\_\_\_(creditor name)

a creditor of **Specialty Mens Apparel Pty Ltd (Administrators Appointed)** appoint \_\_\_\_  
\_\_\_\_\_(name of proxy)

of \_\_\_\_\_(address of proxy)

or in his or her absence \_\_\_\_\_(details of alternate proxy)

as \*my/\*our \*general/\*special proxy to vote at the meeting of creditors to be held on Thursday, 24 January 2019 at 11:00 am ACDT (Australian Central Daylight Time – local Adelaide time), or at any adjournment of that meeting.

*If a special proxy, specify how you wish your proxy to vote for each of the resolutions.*

**Resolutions**

	<b>For</b>	<b>Against</b>	<b>Abstain</b>
1. "That a Committee of Inspection of Specialty Mens Apparel Pty Ltd (Administrators Appointed) be established and if so, the appointed members will be: _____".			
2. "That Brendan Richards and Gayle Dickerson be removed as the Administrators of Specialty Mens Apparel Pty Ltd (Administrators Appointed) and _____ of _____ be appointed as Administrators of Specialty Mens Apparel Pty Ltd (Administrators Appointed)".			

\*I/\*We authorise \*my/\*our proxy to vote as a general proxy on resolutions other than those specified above (*delete if not required*)

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

Dated: \_\_\_\_\_

\*Omit if inapplicable



## Initial Remuneration Notice

Specialty Mens Apparel Pty Ltd

ACN 149 766 307 (“the Company”)

The purpose of the Initial Remuneration Notice is to provide you with information about how we propose our remuneration for undertaking the Administration will be set.

### 1 Remuneration Methods

There are four basic methods that can be used to calculate the remuneration charged by an insolvency practitioner. They are:

- A. *Time based / hourly rates:*** This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.
- B. *Fixed Fee:*** The total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration. Sometimes a practitioner will finalise an administration for a fixed fee.
- C. *Percentage:*** The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.
- D. *Contingency:*** The practitioner’s fee is structured to be contingent on a particular outcome being achieved.

### 2 Method chosen

Given the nature of this administration we propose that our remuneration be calculated on a time based / hourly rates. This is because:

- It ensures that creditors are only charged for work that is performed;
- The Practitioner is required to perform a number of tasks which do not relate to the realisation of assets, for example responding to creditor enquiries, reporting to ASIC, distributing funds in accordance with the provisions of the Corporations Act 2001;
- The practitioner is unable to estimate with certainty the total amount of fees necessary to complete all tasks required in the Administration;
- The practitioner has a time recording system that can produce a detailed analysis of time spent on each type of task by each individual staff member utilised in the administration;
- Time based remuneration calculates fees upon a basis of time spent at the level appropriate to the work performed; and
- The method provides full accountability in the method of calculation.



### 3 Explanation of Hourly Rates

The rates for our remuneration calculation are set out in the following table together with a general guide showing the qualifications and experience of staff engaged in the administration and the role they take in the administration. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.

Details of the hourly rates are set out in the table below:

KPMG Restructuring Services Guide to Hourly Rates		
Title	Description	Hourly Rate
Appointee / Partner	Registered Liquidator. Appointee bringing his or her specialist skills to the administration or insolvency task.	\$720
Director	Minimum of twelve years insolvency experience, at least five years at manager level, qualified accountant and capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in his/her own right.	\$615
Associate Director	More than 7 years insolvency experience, more than 3 years as a manager, qualified accountant. Answerable to the appointee but otherwise responsible for all aspects of administration. Experienced at all levels and considered very competent. Control staff and their training.	\$540
Manager	6-7 years, qualified accountant, with well-developed technical and commercial skills. Self-sufficiently conducts small insolvency appointments and takes a supervisory role on work streams in larger matters.	\$490
Executive	2-4 years. Post graduate qualification (or equivalent) would normally be completed within this period. Assists planning and control of small to medium sized jobs as well as performing some of the more difficult work on larger jobs.	\$360
Analyst	1-2 years. Completed an undergraduate degree. Post graduate qualification (or equivalent) will be commenced in this period. Assists senior staff members on aspects of the administration and completes administrative and statutory tasks independently.	\$285
Graduate	0-1 year. Recently completed an undergraduate degree, but with limited experience. Provides assistance in day-to-day fieldwork under supervision of more senior staff.	\$285
Team Administrator	Appropriately experienced and undertakes support activities.	\$150

### 4 Estimated remuneration

We estimate that this administration will cost approximately \$600,000 (exclusive of GST and disbursements) to complete, subject to the following variables which may have a significant effect on this estimate and that we are unable to determine at this early stage in the administration:

- Volume of creditor and customer enquiries;
- Adequacy of the company's books and records;
- Quantification of unviable stores and associated closures;
- Scope for any potential sale of business;
- Trading period required for an orderly wind down or until business sale settlement
- Investigations required; and
- Any other unforeseen circumstances.

Prior to our appointment, an estimate of the cost of the administration was provided to the directors. This estimate is consistent with the estimate provided to the directors prior to our appointment. As disclosed in our declaration of relevant relationships and indemnities ("DIRRI"), no indemnity or up-front payments were provided to contribute to this estimated cost.





## 5 Disbursements

Disbursements are divided into three types:

- **Externally provided professional services** - these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- **Externally provided non-professional costs** such as travel, accommodation and search fees - these are recovered at cost.
- **Internal disbursements** such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

We are not required to seek creditor approval for disbursements paid to third parties, but must account to creditors. However, we must be satisfied that these disbursements are appropriate, justified and reasonable.

We are required to obtain creditor's consent for the payment of internal disbursements where there may be a profit or advantage. Creditors will be asked to approve internal disbursements where there is a profit or advantage prior to these disbursements being paid from the administration.

Details of the basis of recovering disbursements in this administration are provided below.

### ***Basis of disbursement claim***

Disbursement type	Rate (excl GST)
Externally provided professional services	At Cost
Externally provided non-professional services	At Cost
Internal disbursements	At Cost

Should you have any queries in relation to this matter, please contact my staff at [edharry@kpmg.com.au](mailto:edharry@kpmg.com.au).

Dated: 16 January 2019

*Brendan Richards*

Brendan Richards  
Joint and Several Administrator

## Information Sheet: Committees of Inspection

You have been elected to be, or are considering standing for the role of, a member of a Committee of Inspection (COI) in either a liquidation, voluntary administration or deed of company arrangement of a company (collectively referred to as an external administration).

This information sheet is to assist you with understanding your rights and responsibilities as a member of a COI.

### What is a COI?

A COI is a small group of creditors elected to represent the interests of creditors in the external administration. The COI advises and assists the external administrator and also has the power to approve and request certain things – this is discussed in more detail below.

Membership of the COI is a voluntary, unpaid position.

### Who can be elected to a COI?

To be eligible to be appointed as a member of a COI, a person must be:

- A creditor
- A person holding the power of attorney of a creditor
- A person authorised in writing by a creditor; or
- A representative of the Commonwealth where a claim for financial assistance has, or is likely to be, made in relation to unpaid employee entitlements.

If a member of the COI is a company, it can be represented by an individual authorised in writing to act on that creditor's behalf. It also allows the creditor to maintain its representation if a change in the individual is required

A COI usually has between 5 and 7 members, though it can have more, or less, depending on the size of the external administration.

A member of a COI can be appointed by:

- resolution at a meeting of creditors
- an employee or a group of employees owed at least 50% of the entitlements owed to employees of the company
- a large creditor or group of creditors that are owed at least 10% of the value of the creditors' claims,

If an employee or group of employees, or a large creditor or group of creditors, appoints a member to the COI, they cannot vote on the general resolution of creditors to appoint members to the COI. Each of these groups also have the power to remove their appointed member of the COI and appoint someone else.

If you are absent from 5 consecutive meetings of the COI without leave of the COI or you become an insolvent under administration, you are removed from the COI.

## What are the roles and powers of a COI?

A COI has the following roles:

- to advise and assist the liquidator, voluntary administrator or deed administrator (collectively referred to as the external administrator)
- to give directions to the external administrator
- to monitor the conduct of the external administration.

In respect of directions, the external administrator is only required to have regard to those directions. If there is a conflict between the directions of the COI and the creditors, the directions of the creditors prevail. If the external administrator chooses not to comply with the directions of the COI, the external administrator must document why.

A COI also has the power to:

- approve remuneration of the external administrator after the external administrator has provided the COI with a Remuneration Approval Report (a detailed report setting out the remuneration for undertaking the external administration)
- approve the use of some of the external administrator's powers in a liquidation (compromise of debts over \$100,000 and entering into contracts over 3 months)
- require the external administrator to convene a meeting of the company's creditors
- request information from the external administrator
- approve the destruction of the books and records of the external administration on the conclusion of the external administration
- with the approval of the external administrator, obtain specialist advice or assistance in relation to the conduct of the external administration
- apply to the Court for the Court to enquire into the external administration.

An external administrator is not required to convene a meeting of creditors if the request by the COI is unreasonable, or provide requested information if the request is unreasonable, not relevant to the administration or would cause the external administrator to breach their duties.

A request to convene a meeting of creditors is unreasonable if:

- it would substantially prejudice the interests of a creditor or third party
- there are insufficient funds in the external administration to cover the cost of the request
- a meeting of creditors dealing with the same matters has already been held or will be held within 15 business days, or
- the request is vexatious.

If a request for a meeting is reasonable, the external administrator must hold a meeting of creditors as soon as reasonably practicable.

A request for information is unreasonable if:

- it would substantially prejudice the interests of a creditor or third party
- the information would be subject to legal professional privilege
- disclosure of the information would be a breach of confidence
- there are insufficient funds in the external administration to cover the cost of the request
- the information has already been provided or is required to be provided within 20 business days, or
- the request is vexatious.

If the request for information is not unreasonable, the external administrator must provide the requested information within 5 business days, but the law provides for further time in certain circumstances.

An external administrator must inform the COI if their meeting or information request is not reasonable and the reason why.

### How does the COI exercise its powers?

A COI exercises its powers by passing resolutions at meetings of the COI. To pass a resolution, a meeting must be convened and a majority of the members of the COI must be in attendance.

A meeting is convened by the external administrator by giving notice of the meeting to the members of the COI. Meetings of the COI can be convened at short notice.

The external administrator must keep minutes of the meeting and lodge them with ASIC within one month of the end of the meeting.

ASIC is entitled to attend any meeting of a COI.

### What restrictions are there on COI members?

A member of a COI must not directly or indirectly derive any profit or advantage from the external administration. This includes by purchasing assets of the company or by entering into a transaction with the company or a creditor of the company. This prohibition extends to related entities of the member of the COI and a large creditor(s) that appoints a member to the COI.

Creditors, by resolution at a meeting of creditors, can resolve to allow the transaction. The member of the COI or the large creditor(s) that appoints a member to the COI is not allowed to vote on the resolution.

### Where can you get more information?

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides information to assist creditors with understanding external administrations and insolvency.

This information is available from ARITA's website at [www.arita.com.au/creditors](http://www.arita.com.au/creditors).

ASIC provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at [www.asic.gov.au](http://www.asic.gov.au) (search "insolvency information sheets").



**Specialty Mens Apparel Pty Ltd (Administrators Appointed)  
ACN 149 766 307 (the "Company")  
Trading as "Ed Harry"**

**Schedule of authorised signatories**

**Purchase Orders – Unlimited value**

Brendan Richards

Signature:

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

Gayle Dickerson

Signature:

A handwritten signature in black ink that reads 'Gayle Dickerson'.

David Hardy

Signature:

A handwritten signature in black ink that reads 'David Hardy'.

Edwin Clark

Signature:

A handwritten signature in black ink that reads 'Edwin Clark'.

Gregory Pitt

Signature:

A handwritten signature in black ink that reads 'Gregory Pitt'.