**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 Circular to Creditors 291119

29 November 2019

Dear Sir / Madam

**Bardot Pty Ltd (Administrators Appointed)**
**ACN 074 147 434 ("the Company")**
**ABN 61 074 147 434**
**Trading as "Bardot" and "Bardot Junior"**

Ryan Eagle and I were appointed joint and several Voluntary Administrators of the Company on 28 November 2019 pursuant to Section 436A of the Corporations Act 2001 (**the Act**).

The Administrators now control the Company's operations and are assessing the Company's financial position.

The purpose of this correspondence is to provide you with information about the administration of the Company and your rights as a creditor, and contains the following sections:

1 First meeting of creditors
2 Declaration by the Administrators
3 Trading
4 Legal proceedings
5 Employees
6 Report to creditors and second meeting of creditors
7 Creditor rights
8 Administrators' remuneration
9 Electronic notification
10 Further information

Attachments to this letter are described in the table below:

| Annexure | Document | Description |
|---|---|---|
| A | Notice of first meeting of creditors (form 529A) | Refer to section 1 |
| B | Formal proof of debt (form 535) | Refer to section 1 |

KPMG, an Australian partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity.

Liability limited by a scheme approved under Professional Standards Legislation.

| Annexure | Document | Description |
|---|---|---|
| C | Appointment of proxy (form 532) | Refer to section 1 |
| D | Nominations Form – Committee of Inspection (COI) | Refer to section 1<br>Only to be completed if you wish to nominate a member to the COI |
| E | Declaration of independence, relevant relationships and indemnities | Refer to section 2 |
| F | Short guide to the Personal Property Securities Act | Refer to section 3.2 |
| G | Information sheet - creditor rights in voluntary administration | Refer to section 7 |
| H | Initial remuneration notice | Refer to section 8 |

## 1 First meeting of creditors

We are required to call a first meeting of creditors within eight business days of our appointment pursuant to Section 436E of the Act. The purpose of this meeting is to provide creditors with an opportunity to:

- Appoint a Committee of Inspection (**COI**); and
- Appoint an alternative Administrator, if they so desire.

The notice of meeting is attached as **Annexure A**. Details of the meeting are as follows:

| | |
|---|---|
| **Date:** | Tuesday, 10 December 2019 |
| **Time:** | 11:00am (AEST) registration from 10:30am (AEST) |
| **Location:** | Suite A & B, The Business Centre, Collins Square, Level 6, Tower 2, 727 Collins Street, Melbourne VIC 3008 |

Creditors wishing to vote at the meeting, who will not be attending in person or are a company, must complete the attached formal proof of debt form (**Annexure B**) and proxy form (**Annexure C**) and lodge with this office before the meeting and, in any event, no later than **4.00pm on the last business day prior to the meeting**. Forms can be scanned and emailed to alloyd5@kpmg.com.au.

A person is not entitled to vote at the meeting unless they provide particulars of the debt or claim to the Administrators before the meeting. All creditors must furnish full details of their claims, indicating whether they rank as secured, preferential or unsecured, and whether they claim title to any goods supplied to the Company or any lien over goods in their possession which are the property of the Company.

For creditors who are unable to attend the meeting, a conference call facility will be available. Please contact KPMG by email at alloyd5@kpmg.com.au or by telephone to +61 3 8663 8203 at least one business day prior to the meeting to advise that you will be using the conference facilities and to be provided with the conference call code.

A COI is a small working group of creditors appointed to assist the Administrators. Section 80-55 of Schedule 2 to the Act imposes certain limitations on the ability of members of a COI to trade with the Company and/or purchase assets. Those creditors wishing to nominate a member for appointment to a COI (if one is appointed) must complete the attached Nomination Form – COI (**Annexure D**) and return it to this office no later than **4.00pm on the day prior to the meeting** by email on alloyd5@kpmg.com.au.

## 2 Declaration by Administrators

Pursuant to Sections 436DA(2) and (3) of the Act and the Australian Restructuring Insolvency & Turnaround Association (**ARITA**) Code of Professional Practice (**the Code**), we attach our 'Declaration of Independence, Relevant Relationships and Indemnities' (**DIRRI**) as **Annexure E**.

## 3 Trading

At this stage, the Administrators intend to continue to trade the Company and we draw your attention to the following information.

### *3.1 Trading accounts*

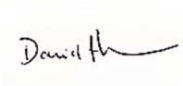
The Act provides that the Administrators are personally liable for liabilities arising from services rendered, goods bought or property hired, leased, used or occupied during the administration.

Please close your accounts with the Company in respect of goods supplied and / or services rendered up to 27 November 2019.

Please open a new account in the name of 'Bardot Pty Ltd' with the suffix "(Administrators Appointed)" for the supply of authorised goods and services to the Administrators.

From 28 November 2019, liability will only be accepted by the Administrators in respect of the purchase of goods or services authorised by the Administrators or their representatives, whose specimen signatures are below. Accounts will be paid in accordance with your usual terms of credit.

| Authoriser name | Authorisation limit | Signature |
|---|---|---|
| Brendan Richards | Unlimited | |

| Authoriser name | Authorisation limit | Signature |
|---|---|---|
| Ryan Eagle | Unlimited | |
| David Hardy | AUD 50,000 |  |
| Richard Bastow | AUD 50,000 | |
| Thomas Austin | AUD 10,000 | |
| Nicholas Tsaptsalis | AUD 10,000 | |

If there are any outstanding or unfulfilled orders placed by the Company prior to our appointment, including those under which there are goods in transit, please contact my office on +61 3 8663 8425 or khutchison1@kpmg.com.au to obtain written confirmation that the order should proceed.

You may be aware that payment of unsecured creditors' accounts as at 27 November 2019, is postponed pending the outcome of the second meeting of creditors (see section 6 below).

### *3.2 Consignment stock, goods subject to purchase money security interests and liens / pledges*

If you supplied consignment stock to the Company, or believe you provided stock subject to a purchase money security interest (formerly a retention of title clause), or claim a lien / pledge over any of the Company's assets, please contact my office on +61 3 8663 8425 or via email at khutchison1@kpmg.com.au as a matter of urgency. Please see further information at **Annexure F**.

### *3.3 Contracts / agreements*

The Administrators expressly refrain from personally adopting any of the Company's contracts existing at the date of their appointment. All contracts are currently under review. The Administrators will advise the status of contracts as soon as practicable.

### *3.4 Property used but not owned by the Company*

In accordance with section 443B of the Act, the Administrators' liability under hire purchase or lease agreements does not commence until seven days after the Administrators' appointment. Further, pursuant to Section 440B of the Act, the lessor or owner of property in the Company's control is not entitled to take possession of such property without leave of the Court or the Administrators' written consent.

We will write separately to known lease and hire purchase creditors regarding such assets. Please contact this office if you do not receive our letter.

**4 Legal proceedings**

The appointment of Administrators stays a proceeding in a court against the Company. You cannot commence or continue a proceeding against the Company without our written consent or the leave of the Court.

**5 Employees**

We have written separately to employees regarding the appointment of the Administrators.

Questions regarding the administration should be directed to my office on +61 3 8626 0959 or via email at hbailey@kpmg.com.au.

**6 Report to creditors and second meeting of creditors**

The Administrators will prepare a report to creditors under Section 438A of the Act and Insolvency Practice Rules (Corporations) 2016 (**IPR**) 75-225 which will include details on the Company's business, property, affairs and financial circumstances.

A second meeting of creditors will be held on or before 6 January 2020 unless the Court extends this date. It is at this meeting that creditors will consider the Administrators' report and consider resolutions regarding the Company's future.

**7 Creditor rights**

Enclosed at **Annexure G** is an information sheet setting out your rights as a creditor in the administration of the Company, including:

- Making reasonable requests for a meeting or information.
- Giving directions to the Administrators.
- Appointing a reviewing Liquidator or replacing the Administrators.

**8 Administrators' remuneration**

For the purposes of the Company's administration, the Administrators' remuneration will be fixed on the basis of time spent by the Administrators and the Administrators' staff of an appropriate level having regard to the nature and complexity of the work, and calculated by reference to hourly rates.

Enclosed at **Annexure H** for your information is the Administrators' Initial Remuneration Notice which sets out the four basic methods of calculating remuneration together with an explanation as to why the time based (hourly rates) method is appropriate in this administration.

An information sheet concerning approval of remuneration in external administrations can be obtained from the ASIC at www.asic.gov.au.

We estimate fees for the administration of the Company's affairs at $1,000,000 to $1,500,000 plus applicable GST and disbursements.

It should be noted that if, during the course of the administration, any unanticipated issues arise, it may be necessary to revisit the fee estimate. In the event that we become aware that our costs will exceed this amount we will advise you accordingly.

## 9 Electronic notification

You may elect to receive future notices or other documents, including circulars and reports regarding the administration, via email. Should you wish to do so, please tick the box on the attached Form 535 – Proof of Debt (**Annexure B**). Alternatively, email alloyd5@kpmg.com.au with the following information:

- The person to who matters regarding the administration should be directed.
- The full name of the creditor entity.
- The email address at which the creditor is to receive future correspondence.

## 10 Further information

For further information concerning the Voluntary Administration process and KPMG, you may wish to visit our website at www.kpmg.com.au. In addition, you can access general information about external administrations and insolvency from ARITA's website at www.arita.com.au.

Questions regarding the administration should be directed to my office on +61 3 8663 8425 or via email at alloyd5@kpmg.com.au.

Yours faithfully,

Brendan Richards
Joint Administrator

## Annexure A

**Form 529A**
**Notice of first meeting of creditors of company under administration**

*Insolvency Practice Rules (Corporations) 2016, Section 75-15*

**Bardot Pty Ltd (Administrators Appointed)**
**ACN 074 147 434 ("the Company")**
**ABN 61 074 147 434**
**Trading as "Bardot" and "Bardot Junior"**

1. Notice is given that on 28 November 2019 the Company, under Section 436A, appointed Ryan Reginald Eagle of KPMG, Level 38, Tower Three, 300 Barangaroo Avenue, Sydney, NSW, 2000 and Brendan John Richards of KPMG, 727 Collins Street, Melbourne, VIC 3008, of as Joint and Several Administrators of the Company.

2. Notice also is given that a meeting of the creditors of the Company will be held at Suite A & B, The Business Centre, Collins Square, Level 6, Tower 2, 727 Collins Street, Melbourne VIC 3008 on Tuesday, 10 December 2019 at 11:00am (AEST).

3. The purpose of the meeting is to determine:

   3.1 Whether to appoint a committee of inspection; and

   3.2 If so, who are to be the committee's members.

4. At the meeting, creditors may also, by resolution:

   4.1 Remove the Administrators from office; and

   4.2 Appoint someone else as Administrator of the Company.

Creditors wishing to vote at the meeting, who will not be attending in person or are a company, must complete and return a Proxy Form (and Proof of Debt if one has not already been lodged) by no later than 4pm on the last business day prior to the meeting by email to alloyd5@kpmg.com.au or by post to KPMG, GPO Box 223, Brisbane QLD 4001. A Proxy Form is enclosed.

For creditors who are unable to attend the meeting, a conference call facility will be available. Please contact KPMG by email at to alloyd5@kpmg.com.au or by telephone to +61 3 8663 8203 at least one business day prior to the meeting to advise that you will be using the conference facilities and to be provided with the conference call code.

Dated this 29th day of November 2019.

**Brendan Richards**
Joint Administrator

**Bardot Pty Ltd (Administrators Appointed)**
c/- KPMG
Tel: +61 3 8663 8203
Email: alloyd5@kpmg.com.au

Note: In accordance with IPR Section 75-15(1)(c) please see effect of IPR Section 75-85 Entitlement to vote at meetings of creditors on the following page.

**Effect of IPR Section 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.

**Annexure B**

**Form 535 Formal Proof of Debt or Claim Form**

*Corporations Act 2001, Regulation 5.6.49(2)*

Return to:
KPMG, GPO Box 223 Brisbane QLD 4001
Tel: +61 3 8663 8203
Email: alloyd5@kpmg.com.au

**Indebted Company: Bardot Pty Ltd ACN: 074 147 434**

**Date of Appointment: 28 November 2019**

***A. Name and Contact Details of Creditor***

[1] (**the Creditor**)

*(if in a personal capacity, given name and surname; if a corporate entity, full name of company, etc)*

[2] of

*(insert address)*

[3] Tel: [4] Email:

☐ Tick this box to elect to receive electronic notification of notices or documents, in accordance with Section 600G of the Corporations Act 2001, at the email address specified above.

***B. Details of Debt or Claim***

[1] Amount owing:

*(insert dollars and cents, inclusive of GST if applicable)*

[2] Nature of Debt or Claim:

*(insert description of debt and/or reference any supporting documentation)*

[3] Select one of the following options:

☐ The Creditor is an unsecured creditor of the indebted Company

☐ The Creditor is a secured creditor of the indebted Company

☐ The Creditor is an employee / former employee of the indebted Company

For all claims:

☐ [4] I have attached supporting documentation to substantiate the Creditor's claim *(secured creditors must attach evidence of security)*

☐ [5] 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 details and value of security where relevant)*

***C. Signature***

[1] Dated:

[2] Signature:

[3] Name / Capacity:

**Creditor Assistance Sheet: Completing a Proof of Debt Form**

**Section A – Name and Contact Details of Creditor**

1. Insert the full name of the employee, individual, sole trader, partnership or company that the debt is owed to.
2. Insert the address of the employee, individual, sole trader, partnership or company that the debt is owed to.
3. Insert the telephone number of the employee, individual, sole trader, partnership or company that the debt is owed to.
4. Insert the email address of the employee, individual, sole trader, partnership or company that the debt is owed to.

**Section B – Details of Debt or Claim**

1. The amount owing should only include debts or claims which arose prior to the date of appointment.
2. Insert the currency if not Australian dollars.
3. Type of creditor: tick one of the options only.
4. For all claims, ensure supporting documentation is attached, such as invoices, statements, agreements.
5. For secured creditors, 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, indicate "refer attached" above and show them in a schedule in the following form:

| Date | Drawer | Acceptor | Amount ($) | Due Date |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |

**Section C – Signature Instructions**

1. Insert the date that the proof of debt form is being signed.
2. The form should be signed by **one** of the following persons:
   - If the debt is owed to an employee/individual, then the individual that the debt is owed to; or
   - If the debt is owed to a sole trader, then the sole trader that the debt is owed to; or
   - If the debt is owed to a partnership, then one of the partners of the partnership; or
   - If the debt is owed to a company, then a duly authorised office of the company (normally a director or secretary of the company).
3. Insert the name of the person signing the form, and note their capacity (that is, their role):
   - If the debt is owed to a sole trader, note their capacity as proprietor, eg: "[Full name], proprietor"; or
   - If the debt is owed to a partnership, note their capacity as partner, eg: "[Full name], partner of the firm named in Section A above"; or
   - If the debt is owed to a company, note their capacity as director or secretary, eg: "[Full name], director/secretary of the company named in Section A above"]

**Annexure C**

**Form 532 - Appointment of Proxy**
*Insolvency Practice Rules (Corporations) 2016, Section 75-25*

Return to:
KPMG, GPO Box 223 Brisbane QLD 4001
Tel: +61 3 8663 8203
Email: alloyd5@kpmg.com.au

**Indebted Company: Bardot Pty Ltd ACN 074 147 434**

**Date of Appointment: 28 November 2019**

## *A. Name and Contact Details of Person or Entity Entitled to Attend Meeting*

1

*(if entitled in a personal capacity, given name and surname; if a corporate entity, full name of company, etc)*

2 of

*(address)*

3 Tel: 4 Email:

## *B. Appointment of Person to Act as Proxy*

*Note: You may nominate "the Chairperson of the meeting" as your proxy (or your alternate proxy in the event that the first-named proxy is not in attendance).*

1 I/We, as named in Section A above, a creditor/employee/contributory/member of the Company, appoint

2

*(name of person appointed as proxy)*

3 4 or in his / her absence

*(address of person appointed as proxy)*

5

*(name of person appointed as alternate proxy)*

*6* 7 as *my / *our proxy

*(address of person appointed as alternate proxy)*

to vote at the meeting of creditors to be held on Tuesday, 10 December 2019 at 11:00am (AEST) at Suite A & B, The Business Centre, Collins Square, Level 6, Tower 2, 727 Collins Street, Melbourne VIC 3008, or at any adjournment of that meeting in accordance with the instructions in Section C below.

## *C. Voting Instructions*

1 *My / *Our proxy, as named in Section B above, is entitled to act as *my / *our :

☐ 2 **general proxy**, to vote on *my / *our behalf **and / or**

☐ 3 **special proxy,** to vote on *my / *our behalf specifically as follows:

| Resolution | | For | Against | Abstain |
|---|---|---|---|---|
| 1. | "That a Committee of Inspection of Bardot Pty Ltd (Administrators Appointed) be established and if, the appointed member will be: _____" | ☐ | ☐ | ☐ |
| 2. | That Brendan Richards and Ryan Eagle be removed as the Administrators of Bardot Pty Ltd (Administrators Appointed) and _____ of _____ be appointed as Administrators of Bardot Pty Ltd (Administrators Appointed)." | ☐ | ☐ | ☐ |

## *D. Signature*

1 Dated:

2 Signature:

3 Name / Capacity:

**Creditor Assistance Sheet: Completing a Proxy Form**

**Section A – Name and Contact Details of Person or Entity Entitled to Attend Meeting**

1. Insert the full name of the employee, individual, sole trader, partnership or company that the debt is owed to.
2. Insert the address of the employee, individual, sole trader, partnership or company that the debt is owed to.
3. Insert the telephone number of the employee, individual, sole trader, partnership or company that the debt is owed to.
4. Insert the email address of the employee, individual, sole trader, partnership or company that the debt is owed to.

**Section B – Appointment of Person to Act as Proxy**

1. Cross out any wording that is **not** applicable. For example, if the employee/individual/sole trader/partnership/company is a creditor, cross out '*eligible employee creditor', '*contributory', '*debenture holder' and '*member'.
2. Insert the name of the person who will be exercising the creditor's vote at the meeting. If someone is attending the meeting in person, that person's name should be inserted. Alternatively, if someone is unable to attend, but you still want to cast a vote at the meeting, then you can appoint the Chairperson of the meeting to vote on your behalf by inserting the words 'the Chairperson' here.
3. Insert the address of the person nominated at (2) that will be attending the meeting as proxy. If you have elected 'the Chairperson' because no one is attending in person, leave this row blank.
4. Cross out any wording that is **not** applicable.
5. If the person you have elected to attend is unavailable on the day, you may nominate a second person to attend in their absence. Alternatively, you can appoint the Chairperson of the meeting to vote on your behalf by inserting 'the Chairperson'.
6. Insert the address of the second person here. If you have elected 'the Chairperson', leave this row blank.
7. Cross out any wording that is not applicable.

**Section C – Voting Instructions**

1. Cross out any wording that is not applicable.
2. Insert an 'X' in this box if you want the person who is attending the meeting to vote as they see fit on each of the resolutions in the 'Resolution' table. If you select this option, proceed to Section D, **unless** you wish to vote specifically on certain resolutions, in which case you also insert an 'X' in the special proxy box and select 'For', 'Against' or 'Abstain' on the resolutions. The person voting at the meeting will have discretion to vote as they see fit on any resolutions where you have **not** selected 'For', 'Against' or 'Abstain'.
3. Insert an 'X' in this box if you want the person who is attending the meeting, to vote exactly in accordance with your instructions. If you select this option, you must select 'For', 'Against' or 'Abstain' for each of the resolutions in the 'Resolution' table. Do not tick more than one box for each resolution.

**Section D – Signature Instructions**

1. Insert the date that the proxy form is being signed.
2. The form should be signed by **one** of the following persons:
   - If the debt is owed to an employee/individual, then the individual that the debt is owed to; or
   - If the debt is owed to a sole trader, then the sole trader that the debt is owed to; or
   - If the debt is owed to a partnership, then one of the partners of the partnership; or
   - If the debt is owed to a company, then a duly authorised office of the company (normally a director or secretary of the company).
3. Insert the name of the person signing the form, and note their capacity (that is, their role):
   - If the debt is owed to a sole trader, note their capacity as proprietor, eg: "[Full name], proprietor"; or
   - If the debt is owed to a partnership, note their capacity as partner, eg: "[Full name], partner of the firm named in Section A above"; or
   - If the debt is owed to a company, note their capacity as director or secretary, eg: "[Full name], director/secretary of the company named in Section A above"]

**Annexure D**

**Nomination Form – Committee of Inspection**

*Section 80-55 of Schedule to the Corporations Act 2001*

Return to:
KPMG, GPO Box 223 Brisbane QLD 4001
Tel: +61 3 8663 8203
Email: alloyd5@kpmg.com.au

**Indebted Company: Bardot Pty Ltd ACN 074 147 434**

**Date of Appointment: 28 November 2019**

## *A. Name and Contact Details of Person or Entity Entitled to Attend Meeting*

1

*(if entitled in a personal capacity, given name and surname; if a corporate entity, full name of company, etc)*

2 of

*(address)*

3 Tel: 4 Email:

## *B. Nomination of Person as Member of Committee of Inspection, if one is appointed*

I/We, as named in Section A above, nominate

1

*(name of person nominated as member of Committee of Inspection, if one is appointed)*

*2*

*(address of person nominated as member of Committee of Inspection, if one is appointed)*

3

*(email address of person nominated as member of Committee of Inspection, if one is appointed)*

## *C. Declaration in relation to Transactions with the Indebted Company*

During the external administration, I/We, as named in Section A above, contemplate entering into the following transactions with the Indebted Company during the external administration[1]:

☐ **continuance of service and/or supply agreements** as detailed below:

……

……

☐ **potential acquisition of the business and/or assets** of the Indebted Company

☐ **other –** please provide details below:

……

……

## *D. Signature*

1 Dated:

2 Signature:

3 Name / Capacity:

**Creditor Assistance Sheet: Completing a Committee of Inspection Nomination Form**

**Section A – Name and Contact Details of Person or Entity Entitled to Attend Meeting**

1. Insert the full name of the employee, individual, sole trader, partnership or company that the debt is owed to.
2. Insert the address of the employee, individual, sole trader, partnership or company that the debt is owed to.
3. Insert the telephone number of the employee, individual, sole trader, partnership or company that the debt is owed to.
4. Insert the email address of the employee, individual, sole trader, partnership or company that the debt is owed to.

**Section B – Nomination of Person as Member of Committee of Inspection, if one is appointed**

1. Insert the name of the person who is being nominated by the creditor as the member of the Committee of Inspection.
2. Insert the address of the person nominated at (1).
3. Insert the email address of the person nominated at (1).

**Section C – Declaration in relation to Transactions with the Indebted Company**

1. Indicate the type of transactions contemplated between the person/entity named in Section A and the Indebted Company during the course of the external administration.

**Section D – Signature Instructions**

1. Insert the date that the nomination form is being signed.
2. The form should be signed by **one** of the following persons:
   - If the debt is owed to an employee/individual, then the individual that the debt is owed to; or
   - If the debt is owed to a sole trader, then the sole trader that the debt is owed to; or
   - If the debt is owed to a partnership, then one of the partners of the partnership; or
   - If the debt is owed to a company, then a duly authorised office of the company (normally a director or secretary of the company).
3. Insert the name of the person signing the form, and note their capacity (that is, their role):
   - If the debt is owed to a sole trader, note their capacity as proprietor, eg: “[Full name], proprietor”; or
   - If the debt is owed to a partnership, note their capacity as partner, eg: “[Full name], partner of the firm named in Section A above”; or
   - If the debt is owed to a company, note their capacity as director or secretary, eg: “[Full name], director/secretary of the company named in Section A above”]

## Annexure E

*Corporations Act 2001*
*Sections 436DA, 449CA*

**Bardot Pty Ltd (Administrators Appointed) (the Company)**
**ACN 074 147 434**

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

Practitioners appointed to an insolvent entity are required to make declarations as to:

A. Their independence generally;
B. Relationships, including
   (i) The circumstances of the appointment;
   (ii) Any relationships with the Company and others within the previous two years;
   (iii) Any prior professional services for the Company within the previous two years;
   (iv) That there are no other relationships to declare; and
C. Any indemnities given or upfront payments made to the practitioner(s).

This declaration is made in respect of ourselves, our partners, KPMG Australia and related parties covered by the extended definition of the firm (collectively **KPMG**).

### A. Declaration of independence

We, Ryan Reginald Eagle and Brendan John Richards, and KPMG, have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Administrators of the Company in accordance with the Corporations Act 2001 (Cth) (**the Act**), the Australian Restructuring Insolvency & Turnaround Association (**ARITA**) Code of Professional Practice (**the Code**) and applicable professional standards.

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.

If any conflict arises, we will seek independent legal advice or court directions if appropriate.

If this declaration needs to be updated we will issue written notice to all known creditors as set out in the records of the Company or as otherwise known to us.

### B. Declaration of relationships

(i) Circumstances of appointment

This appointment was referred to us by Deloitte Financial Advisory Pty Ltd (Deloitte). That firm is known to us on a professional basis.

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

- Referrals from solicitors, business advisors and accountants are commonplace and do not impact on our independence in carrying out our duties as administrators.
- KPMG has never undertaken any work for Deloitte in respect of the Company.

The work that we, or KPMG, undertake for Deloitte will not influence our ability to fully comply with the statutory and fiduciary obligations associated with the Company's administration in an objective and impartial manner.

We had five meetings with the Company and/or its advisors:

- 17 September 2019, attended by James Stewart and Kevin Winterburn of KPMG and Basil Artemides (CEO) of the Company for the purpose of discussing the Company's financial situation. No further meetings occurred until 22 November 2019 and no engagement developed from this meeting.
- 22 November 2019, attended by Ryan Eagle and Brendan Richards of KPMG, Sal Algeri and Daniel Bell of Deloitte, and Koula Skoufi (Director) and Basil Artemides (CEO) of the Company for the purpose of discussing the Company's financial situation.
- 26 November 2019, attended by Ryan Eagle, Brendan Richards and David Hardy of KPMG and Sal Algeri and Vaughan Strawbridge of Deloitte for the purpose of discussing the Company's financial situation.
- 27 November 2019, attended by Ryan Eagle, Brendan Richards and David Hardy of KPMG and Sal Algeri and Daniel Demir of Deloitte for the purpose of discussing the Company's financial situation.
- 28 November 2019, attended by Ryan Eagle, Brendan Richards and David Hardy of KPMG, Sal Algeri, Daniel Bell, Daniel Demir and Victoria Brilliant of Deloitte, and Koula Skoufi (Director) and Basil Artemides (CEO) of the Company for the purpose of discussing the Company's financial situation and to provide our consent to act.

We received no remuneration for this advice.

These meetings do not affect our independence for the following reasons:

- KPMG's advice was limited to assessing the Company's financial position, the consequences of insolvency and restructuring options.
- Advice was given to the Company only. We did not advise the directors personally or others.
- The Courts and the Code specifically recognise the need for practitioners to provide advice on the insolvency process and the options available and do not consider that such advice results in a conflict or an impediment to accepting the appointment.
- The nature of the advice is such that it would not be subject to review and challenge during the administration.
- The pre-appointment advice will not influence our ability to fully comply with the statutory and fiduciary obligations associated with the administration in an objective and impartial manner.

We have provided no other information or advice to the Company, its directors and its advisors prior to our appointment beyond that outlined in this DIRRI.

(ii) Relevant relationships (excluding professional services to the Company)

We, or KPMG, have, or have had ***within*** the preceding 24 months, a relationship with:

National Australia Bank Limited (Security Holder)

| Nature of relationship | Reasons why no impediment or conflict of interest or duty |
|---|---|
| The Security Holder holds security interests over the Company's property. We and KPMG have professional relationships with the majority of the major banks and lenders in Australia and with a number of staff within the Security Holder's organisations, particularly in the credit and workout areas. We and KPMG have previously undertaken formal and informal assignments on behalf of the Security Holder for a number of years. | We believe that this relationship does not result in a conflict of interest or duty because KPMG's previous relationships with the Security Holder were not in relation to the Company's and/or the director's affairs, or related parties of the Company and/or the directors. |

Deloitte Financial Advisory Pty Ltd (Deloitte)

| Nature of relationship | Reasons why no impediment or conflict of interest or duty |
|---|---|
| Deloitte act for the Company and referred this matter to us.<br><br>We and KPMG have had previous professional relationships with Deloitte's staff for a number of years. We have previously undertaken formal and informal assignments on companies referred to us by Deloitte. | We believe that this relationship does not result in a conflict of interest or duty because:<br><br>– Our previous relationship with Deloitte was not in relation to the Company and/or the director, or related parties of the Company and/or the directors.<br>– We have a wide referral base and Deloitte is one of many referrers of work in the past 24 months.<br>– Referrals from solicitors, business advisors or accountants are commonplace and do not impact on our independence in carrying out our duties as Administrators. |

(iii) Prior professional services to the Company

Neither we nor KPMG have provided any professional services to the Company in the previous 24 months.

(iv) No other relevant relationships to disclose

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

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

We have not been indemnified in relation to this administration, other than any indemnities that we may be entitled to under statute. We have not received any upfront payments in respect of our remuneration or disbursements.

Dated this 29th day of November 2019

**Ryan Reginald Eagle**
Administrator

**Brendan John Richards**
Administrator

***Note:***

*If circumstances change, or new information is identified, we are required under Subsection 436DA(5) and 449CA(5) of the Act and the Code to update this declaration and provide a copy to creditors with our next communication as well as table a copy of any replacement declaration at the next meeting of the Company's creditors.*

*Any relationships, indemnities or up-front payments disclosed in the declaration must not be such that the practitioner is no longer independent. The purpose of components B and C of the declaration 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.*

**Annexure F**

## What is the Personal Property Securities Act?

The Personal Property Securities Act 2009 (PPSA) established national legislation governing security interests in personal property. It replaced a large number of existing Commonwealth, State and Territory laws. "Personal Property" is any property that is not "Real Property" (i.e. land and buildings and fixtures). Personal Property generally includes all property (tangible and intangible) other than land and buildings, fixtures, most water rights and some statutory licences. It includes goods or inventory, intellectual property, shares, debts and contractual rights.

There is a single national Register for parties to record their interests in personal property, called the Personal Property Securities Register (PPSR), on which all security interests in personal property can be registered. The PPSR replaced a number of State and Commonwealth registers, including the ASIC Register of Company Charges and all State Registers of Encumbered Vehicles (REVs). Any holder of a security interest in personal property must register to ensure they have a priority claim over that property.

The PPSA has changed the way security interests are dealt with across Australia. Legal title to personal property in some situations is no longer enough to protect owners, as this legislation overturns fundamental personal property law concepts.

## What is a 'Security Interest'?

A security interest is an interest in personal property, created by a transaction that secures payment or performance of an obligation.

Security interests can include:

- Interests of owners in assets leased to other parties;
- Interests of sellers of goods subject to hire purchase agreements;
- Interests of suppliers in stock delivered but subject to retention of title arrangements.

The PPSA states that a security interest exists regardless of the form of the transaction, or the identity of the person who has title to the property. The concept of a security interest under the PPSA covers a broader range of interests than traditional security concepts.

**If you have a security interest, it must be perfected. If you have not perfected your security interest, usually by registration on the PPSR, you may lose the ability to enforce your claim.**

## How does the PPSA impact your business?

There are some significant implications for businesses arising from the PPSA, for example:

### Retention of title arrangements

Some transactions that were not previously security interests are now registerable on the PPSR. For example, if you sell goods on retention of title terms, you may need to review your terms of trade and register an interest on the PPSR to protect your interest in goods delivered but not paid for.

### Leases

Under the PPSA, 'title' or 'ownership' of goods can have a lower status than possession or control of goods if the owner of the goods has not registered their interest on the PPSR. You should register your security interest to 'perfect' your rights. If you do not register, then you may not be able to recover your goods or receive payment if the customer becomes insolvent. You may also lose your rights to another creditor of the customer who has 'perfected' their security interest over the property.

**You should seek legal advice about the implications of the PPSA to your individual circumstances.**

For more information regarding how the PPSA may impact your business, including detailed examples and case studies, visit our website at:

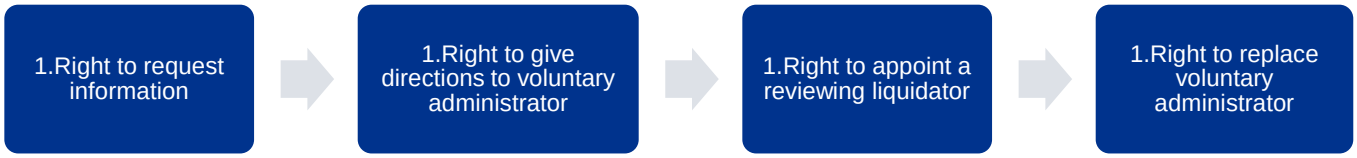
SecuriSearch is an Android, iOS and Windows application allowing users to search and review the PPSA quickly and easily from a mobile device.

*This document is intended to provide commentary and general information only. It is not intended to provide legal or professional advice, is not intended as a substitute for legal or professional advice, and should not be relied upon as such. Readers of this document should seek their own legal or professional advice with respect to their own circumstances.*

**Annexure G**

# 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. These additional costs of appointing another registered liquidator are paid from the assets of the deed of company arrangement or liquidation, in priority to creditor claims.
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.

## Annexure H

**Bardot Pty Ltd (Administrators Appointed)**
**ACN 074 147 434 ("the Company")**
**Trading as "Bardot" and "Bardot Junior"**

**Initial Remuneration Notice**

The purpose of the Initial Remuneration Notice is to provide you with information about how the Administrators' 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 as follows:

1.1 Time based (hourly rates)

This is the most common method. The total fee charged is calculated by reference to the hourly or time unit rate charged for each person who carries out the work multiplied by the number of hours spent by each person on necessary work properly performed.

1.2 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.

1.3 Percentage

The total fee charged is based on a percentage of a particular variable such as the gross proceeds of asset realisations.

1.4 Contingency

The insolvency practitioner's fee is contingent on achieving a particular outcome.

### 2 Remuneration method chosen

Given the nature of this administration, we propose that the remuneration of the Administrators be calculated using the time based method. Time based remuneration is appropriate in this administration given:

– It ensures actual time is billed at an hourly rate applicable to staff experience;
– It ensures that remuneration claimed is only for necessary work properly performed in the administration; and
– It covers tasks required to be undertaken in the administration which not only relate to asset realisations but also to reporting requirements and other tasks of an administrative or statutory nature.

### 3 Explanation of hourly rates

The hourly 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. The hourly rates encompass the total cost of providing professional services and should not be compared to an hourly wage.

| Title | Rate $/hour | Experience |
|---|---|---|
| Partner / Appointee | $695 | The Partner / Appointee is a registered liquidator and member of CAANZ and, generally, ARITA, bringing specialist skills to the administration or insolvency task. For specific experience and other details of the appointee(s), please visit our website at www.kpmg.com.au. |
| Director | $625 | Generally, minimum of 12 years' experience at least 2 years of which is to be at Manager level. University degree; member of CAANZ and, generally, ARITA, with deep knowledge and lengthy experience in relevant insolvency legislation and issues. |
| Associate Director | $575 | Generally, more than 7 years' experience with at least 2 years as a Manager. University degree; member of CAANZ and, generally, ARITA; very strong knowledge of relevant insolvency legislation and issues. |
| Manager | $525 | Generally, 5 to 7 years' chartered accounting or insolvency management experience. University degree; member of CAANZ and, generally, ARITA; sound knowledge of relevant insolvency legislation and issues. |
| Executive | $450 | Generally, 2 to 6 years' chartered accounting or insolvency management experience. University degree; completing CAANZ's CA program or member of CAANZ; completing ARITA Insolvency Education Program. Good knowledge of relevant insolvency legislation and issues. |
| Analyst | $375 | Generally, 0 to 3 years' chartered accounting or insolvency management experience. University degree, CAANZ's CA program commenced. |
| Personal / Team Assistant | $250 | Appropriate skills including machine usage. |
| Accounts Supervisor / Assistant | $225 | Generally non-qualified administrative assistant. Classification depends on experience, salary and complexity of work to be completed. |

***Notes:***

- *The hourly rates are exclusive of GST.*
- *The guide to staff experience is intended only as a general guide to the qualifications and experience of staff engaged in the administration. Staff may be engaged under a classification considered appropriate for their experience.*
- *Time is recorded and charged in six-minute increments.*
- *Creditor approval will be sought prior to the application of any new rates to this administration.*

## 4 Estimated remuneration

We estimate fees for the administration of the Company's affairs at $1,000,000 to $1,500,000 plus applicable GST.

It should be noted that if, during the course of the administration, any unanticipated issues arise, it may be necessary to revisit the fee estimate. In the event that we become aware that our costs will exceed this amount we will advise you accordingly.

## 5 Disbursements

Disbursements are divided into three types:

- Externally provided professional services. These are recovered at cost. An example is legal fees.
- Externally provided non-professional costs such as travel, accommodation and search fees. These disbursements 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; although if a data room is utilised, the fee will comprise an initial setup fee and then a fee based on the duration and size of the data room or the number of users per month. Certain services provided by KPMG may require the processing of electronically stored information into specialist review platforms. Where these specialist resources are utilised, the fee will be based on units (e.g. number of computers), size (e.g. per gigabyte) and/or period of time (e.g. period of hosting).

We are not required to seek creditor approval for disbursements paid to third parties, but must account to creditors. However, we must be justified 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 our internal disbursements prior to these disbursements being paid from the administration.

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

| Disbursement type | Charges (excl GST) |
|---|---|
| Advertising | At cost |
| ASIC industry funding model levy – metric events | At prescribed ASIC rates |
| Couriers | At cost |
| Data room set-up | $450.00 |
| Data room hosting – Option A | Variable – see separate table below |
| Data room hosting – Option B (incl 100GB of data) | $84.95 per user per month |
| eDiscovery services | Variable |
| Photocopying / printing (colour) | $0.50 per page |
| Photocopying / printing (mono) | $0.20 per page |
| Photocopying / printing (outsourced) | At cost |
| Postage | At cost |
| Searches | At cost |
| Staff travel reimbursement | Up to $100/day |
| Staff vehicle use | At prescribed ATO rates |
| Storage and storage transit | At cost |
| Telephone calls | At cost |

*Note: Above rates are applicable for the financial year ending 30 June 2020. Disbursements charged at cost do not require creditor approval.*

| Data room hosting fees by size (MB) | Charges per month (excl GST) |
|---|---|
| 0-300 | $950 |
| 300-1000 | $950 + $2.50/MB |
| 1000-5000 | $2,500 + $1.25/MB |
| 5000+ | $7,500 + $0.60/MB |

Dated this 29th day of November 2019.

**Brendan Richards**
Joint Administrator