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29 November 2019

Circular to Employees

Dear Sir/Madam

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

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

The effect of the appointment is that the Voluntary Administrators are now in control of the Company's assets, undertakings and operations. The Administrators intend to trade the Company's business in the ordinary course whilst its financial position is assessed.

The Australian Securities & Investments Commission (ASIC) has produced Information Sheet 75 which provides general information to employees whose employer is in voluntary administration. A copy of that information sheet can be obtained from https://asic.gov.au/regulatory-resources/insolvency/insolvency-for-employees/voluntary-administration-a-guide-for-employees/.

This circular is to advise you about the status of your employment with the Company.

1 Employment during the administration

The Administrators have decided to continue trading the Company's business for the time being. Your employment by the Company continues on the same terms and conditions that existed at the time of our appointment. Salaries and wages will be paid as usual.

We have enclosed a Frequently Asked Questions document for your reference which provides additional information about the Administration and the minor changes that will affect the operations of the Company's business.

As a consequence of the appointment, the Administrators assume responsibility for the Company's management and the control of assets. Without the written authority of the Administrators, you must not, nor must you permit anyone else to:

- Place any orders for goods or services, unless they have been duly authorised by the Administrators or others as notified in my circular to creditors.
- Accept delivery of any goods or services, unless they are the subject of a duly authorised order.
- Supply any services to customers or dispatch any goods to customers.
- Enter into any commitments with suppliers or customers.
- Make any compromise or arrangement with any debtor or creditor of the Company, including the allowance of any set-offs.
- Incur any debts or liabilities in the name of the Company or pledge its assets.
- Return any goods to suppliers.

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– Make any payments.
– Remove any of the Company's assets from the Company's custody or control.

All monies received must be forwarded to KPMG or paid into the Administrators' bank account named "Bardot Pty Ltd (Administrators Appointed)". Bank details will be provided to employees in due course.

Every invoice, order for goods, business letter, or similar document must have the words "(Administrators Appointed)" immediately following the name of the Company.

All assets must be secured against theft.

We must be notified in writing immediately of all known breaches of the law or regulations (for example, health, safety, hygiene, fire, etc).

2 Your employee entitlements at the date of the administration

Your entitlements, such as wages, superannuation contributions payable by the Company, holiday pay, long service leave and retrenchment payments, which have accrued prior to our appointment are frozen and are afforded a statutory priority.

An employee's priority claim ranks after the Administrators' costs and remuneration but ahead of ordinary unsecured creditor claims. At this stage, I am not in a position to determine whether the Company will have sufficient funds to pay employee entitlements.

We will write to you regarding your outstanding pre-appointment employee entitlements in due course.

Entitlements of directors and other related persons also have a statutory priority, however the priority for such persons is limited to $2,000 for wages and superannuation contributions and $1,500 for holiday pay and long service leave entitlements.

3 Change of address

Please advise us of any change in address. If you do not, you may not receive future communications regarding the Company and your entitlements.

4 Confidentiality

While employed by the Company or after leaving your employment, you must not disclose (except in the proper course of your duties or as is required by law) any confidential information acquired by you about the Company, its products and customers to any person or organisation, including the Company's directors, except where written permission is granted by the Administrators or our authorised representatives. You must not use any confidential information in a manner which may cause injury or loss to the Company and associated businesses.

If you leave your employment, you must return all Company property and confidential documents.

5 Further information

We will provide regular updates to employees during the process of the Administration.

Should you have any questions, please contact:

KPMG employee key contacts

Telephone: +61 3 8626 0959

Email: AU-FMbardotemployees@kpmg.com.au

A dedicated email address and hotline is currently being set up and will be circulated in future updates and listed on our website at https://home.kpmg/au/en/home/services/advisory/deal-advisory/services/restructuring/creditors-shareholders

Yours faithfully
Bardot Pty Ltd

Brendan Richards
Administrator

FREQUENTLY ASKED QUESTIONS

EMPLOYEES

APPOINTMENT BACKGROUND

On 28 November 2019, Brendan Richards and Ryan Eagle of KPMG were appointed joint and several Voluntary Administrators of Bardot Pty Ltd by the Company's Directors.

What will happen to the Company?

It is the intention of the Administrators to continue to trade the Company on a 'business as usual' basis whilst its future viability is assessed.

In the interim, your employment with the Company continues on the same terms and conditions that existed at the time of our appointment (further discussed below).

What do I tell customers if they ask what is going on?

Do not attempt to explain the situation to customers, in detail. Rather, if a customer does ask what is going on, advise them that it is business as usual. If the customer requires further clarification you can direct them to our website https://home.kpmg/au/en/home/services/advisory/deal-advisory/services/restructuring/creditors-shareholders.html.

ADMINISTRATORS' POLCIES

Can I continue to use my staff discount?

Staff will continue to have the benefit of their staff discount and the usual policy remains.

Can customers use gift cards and credit notes?

Legally, customers with gift cards and credit notes stand as a creditor of the Company and are not entitled to redeem a gift card as this gives them preferential treatment over other creditors of the Company.

However, in this instance, in recognition of the loyalty of Bardot's customers, we will honour gift cards on a $1 for $1 basis. For example, if a customer intends to redeem a $100 gift card, they will need to purchase product of $200 in value and pay $100 in cash, by card or using AfterPay. This applies to all stock including sale items.

Gift cards are redeemable in store only.

Can I still use my clothing allowance?

Staff will continue to have the benefit of their clothing allowance and the usual policy remains.

In my capacity as an employee, I have a staff credit note, can I still use it?

Legally, employees with credit notes stand as a creditor of the Company and are not entitled to redeem a credit notes in preference to other creditors of the Company.

However, in this instance, in recognition of the loyalty of Bardot's employees, we will honour staff credit notes on a $1 for $1 basis. For example, if you intend to redeem a $100 staff credit note, you will need to purchase product of $200 in value and contribute $100 of cash. This applies to all stock including sale items.

Can customers purchase new gift cards?

No new gift cards will be issued.

Can exchanges be accepted?

Exchanges will be accepted as per usual policy.

Will refunds be accepted?

In-store purchases

As per usual policy, i.e. a credit note will be issued.

The returns policy is located at the bottom of the customer's tax invoice and on counter signage in all stores.

Please note when a credit note is redeemed it will be on a $1 for $1 basis.

For example, to redeem a $100 credit note, the customer will need to purchase product to the value of $200 and pay $100 in cash, by card or using AfterPay. This applies to all stock including sale items.

Online purchases

As per usual policy.

The return policy for online purchases can be found on the Company's website.

A customer purchased a product and it is faulty, what happens now?

Any customer with a valid faulty claim will be provided with a credit note for the value of the item which must be redeemed dollar for dollar.

For example, to redeem a $100 credit note, the customer will need to purchase product to the value of $200 and pay $100 in cash, by card or using AfterPay. This applies to all stock including sale items.

How do I order packaging and supplies for store and maintenance requests

Please continue to submit monthly orders to head office.

What will happen to corporate credit cards?

All corporate cards will be cancelled, any urgent expenses personally incurred by staff members will be reimbursed in the regular payroll.

ONGOING EMPLOYMENT

What is happening to me as an employee of the Company?

The Company is continuing to trade on as business as usual basis. However, the Administrators now control the business and its operations.

Your employment terms have not changed and you will continue to remain employed by the Company to perform your customary duties and responsibilities in accordance with the terms and conditions of your employment contract. The usual lines of reporting remain in place.

You are also required to perform duties and responsibilities as requested by the Administrators and their representatives.

Please note, we have not adopted your employment contract with the Company in existence at the date of our appointment and will formally notify you in writing should we wish to do so.

Will I continue to be paid wages for hours worked during the voluntary administration?

Yes, actions in the ordinary course of business including wage and salary payments will continue to be made by the Voluntary Administrators.

You will be paid on the same day and on the same basis as before the voluntary administration.

Will my roster continue as per usual?

Yes, rosters will continue as per usual unless otherwise advised. If you are unable to complete any scheduled shift please contact your Manager.

EMPLOYEE ENTITLEMENTS

What is the priority of employee entitlements outstanding at the date of our appointment relative to other creditors of the Company?

Employees (except directors and certain relatives) have a statutory priority for payment for outstanding entitlements (such as wages, superannuation, annual leave, long service leave, redundancy) payable by the Company at appointment.

An employee's priority ranks after the Administrators' costs and remuneration but ahead of ordinary unsecured creditor claims out of the proceeds of circulating assets. To assist us in determining your claim, you will be required to complete a "proof of debt or claim" form which will be attached to our initial circular.

Please note that your employee entitlements will continue to accrue during the Administration period.

When will I be paid my outstanding entitlements?

Given the preliminary nature of the administration we are unable to say whether the Company will have sufficient funds to pay outstanding employee entitlements, or advise of the timing of any such payments.

KPMG staff will be working with the Company's officers and management to understand your employee entitlements from the available records of the Company.

What will happen to my entitlements if I resigned prior to the voluntary administration?

If you resigned before 28 November 2019, payment will not be paid in the pay run following your final day as would be the case prior to administration.

These outstanding entitlements are a priority claim in the voluntary administration. Accordingly, payment of these outstanding entitlements will be dependent on the outcome of the administration.

What will the status of my retrenchment payments be if I resign during the voluntary administration?

If you are eligible for retrenchment payments and you resign voluntarily, you will not receive any retrenchment payments.

Can I offer to be made voluntarily redundant?

We are currently not offering voluntary redundancies but will notify eligible employees should circumstances change.

Are employees entitled to vote at creditors meetings?

Yes, if you have outstanding entitlements as at the date of appointment you are a creditor of the Company and therefore entitled to vote at the creditor meetings.

In order to vote at creditor meetings, you will need to submit a:

- Proof of Debt; and
- Proxy Form – if you do not wish to physically attend the meeting and would like to appoint someone else to vote on your behalf. The nominated person can be the chairperson presiding at the meeting or otherwise.

What happens if the Company enters into liquidation?

If the Company proceeds to liquidation, you might have standing to submit an application and be compensated for unpaid employee entitlements under FEG.

FEG provides eligible applicants with compensation for employee entitlements including unpaid wages, outstanding annual leave, long service leave, pay in lieu of notice and redundancy to a maximum limit in accordance with the scheme. FEG does not provide funds in respect of superannuation.

For further information regarding the FEG, including your eligibility, please contact the Department of Workplace and Employee Relations on 1300 135 040 or FEG@deewr.gov.au or visit its website at: https://www.employment.gov.au/fair-entitlements-guarantee-feg.

Fact sheets on the Government's *Fair Entitlement Guarantee ("FEG")* scheme will be provided to employees in due course. Please note that the FEG does not apply in a voluntary administration.

What is the status of outstanding sick leave?

Outstanding sick leave is generally not paid out upon termination. Treatment of outstanding sick leave will be dependent on the terms specified in your employment contract.

I had annual leave approved prior to administration to be taken post appointment, can I still take leave and be paid for it?

Pre-approved annual leave will be allowed to be taken.

What will happen if I am required to take personal leave post appointment?

The process will be the same as prior to voluntary administration. For example, if you wish to take personal leave after the Administrators' appointment, you will need to submit your request to your store manager.

I have additional questions, who can I contact?

KPMG

Name: Bardot Employee Hotline

T: +61 3 8626 0959

E: AU-FMbardotemployees@kpmg.com.au

ASIC
Australian Securities & Investments Commission

INFORMATION SHEET 75

Voluntary administration: a guide for employees

If a company is in financial difficulty, it can be put into voluntary administration.

This information sheet provides general information for employees of companies in voluntary administration. Employees should also read ASIC's information sheet INFO 74 *Voluntary administration: a guide for creditors*.

Who is an employee?

You are likely to be classified as an employee if you are:

- engaged by a company under an award, Certified Agreement, Australian Workplace Agreement, or a contract of employment, and
- paid a salary, wages or commission.

Contractors are not employees. They are ordinary unsecured creditors of the company.

If you are an employee who is owed money for unpaid wages, superannuation, annual leave, sick leave, long service leave, retrenchment pay or other benefits, you are a creditor of the company. You may be entitled to some or all of what you are owed in priority to the company's other creditors.

The purpose of voluntary administration

Voluntary administration is designed to resolve a company's future direction quickly. An independent and suitably qualified person (the voluntary administrator) takes full control of the company to try to work out a way to save either the company or its business.

If it isn't possible to save the company or its business, the aim is to administer the affairs of the company in a way that results in a better return to creditors than they would have received if the company had instead been placed straight into liquidation. A mechanism for achieving these aims is a deed of company arrangement.

A voluntary administrator is usually appointed by a company's directors, after they decide that the company is insolvent or likely to become insolvent. Less commonly, a voluntary administrator may be appointed by a liquidator, provisional liquidator, or a secured creditor.

A secured creditor is someone who has a charge, such as a mortgage, over company assets, to secure a debt owed by the company. Lenders usually require a charge over company assets when they provide a loan.

A company in voluntary administration may also be in receivership: see ASIC information sheet

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

INFO 55 *Receivership: a guide for employees*.

The voluntary administrator's role

After taking control of the company, the voluntary administrator investigates and reports to creditors on the company's business, property, affairs and financial circumstances, and on the three options available to creditors (including employees). These are:

- end the voluntary administration and return the company to the directors' control
- approve a deed of company arrangement through which the company will pay all or part of its debts and then be free of those debts, or
- wind up the company and appoint a liquidator.

The voluntary administrator must give an opinion on each option and recommend which option is in the best interests of creditors. In doing so, the voluntary administrator tries to work out the best solution to the company's problems, assesses any proposals put forward by others for the company's future, and compares the possible outcomes of the proposals with the likely outcome in a liquidation.

A creditors' meeting is usually held about five weeks after the company goes into voluntary administration to decide on the best option. In complex administrations, the meeting may be held later if the court consents. Employees are entitled to vote at creditors' meetings. You should lodge details of your claim with the voluntary administrator before the meeting to enable you to vote.

The voluntary administrator has all the powers of the company and its directors. This includes the power to sell or close down the company's business, or sell individual assets in the lead up to the creditors' decision on the company's future.

Another responsibility of the voluntary administrator is to report to ASIC on possible offences by people involved with the company.

Employee entitlements

If the voluntary administrator continues to trade the business, they must pay out of the assets available to them ongoing wages for services provided and other employee entitlements that arise after the date of their appointment. These payments are treated as an expense of the voluntary administration.

The appointment of a voluntary administrator does not automatically terminate the employment of the company's employees. As a result, unless the voluntary administrator adopts the employment contracts or enters into new contracts of employment with employees, they are not personally liable for any employee entitlements that arise during voluntary administration.

As voluntary administration is an interim form of external administration, employee entitlements that arose prior to voluntary administration are not usually paid during voluntary administration.

How and when these employee entitlements are paid depends on the option passed at the creditors' meeting (i.e. company returned to directors, a deed of company arrangement, or liquidation).

Company returned to directors

If the company is returned to the directors, the directors will be responsible for ensuring that the company pays outstanding entitlements as they fall due. It is only in very rare circumstances that creditors will resolve to return the company to the control of its directors.

Deed of company arrangement

If creditors approve a deed of company arrangement, the priority in which outstanding employee entitlements are paid depends on the terms of the deed. Sometimes the deed proposal is for these entitlements to be paid in the same priority as in a liquidation. Other times, a different priority is proposed.

A deed of company arrangement must ensure that employees' entitlements have the same priority as in

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a liquidation unless the eligible employees agree by a majority in both number and value to vary this priority.

This means that unless a variation to priority is agreed to, in a deed of company arrangement employees have the right, if there are funds left over after payment of the fees and expenses of the voluntary administrator and deed administrator, to be paid their outstanding entitlements in priority to other unsecured creditors.

Priority employee entitlements are grouped into classes and paid in the following order:

1. outstanding wages and superannuation
2. outstanding leave of absence (including annual leave and sick leave, where applicable, and long service leave), and
3. retrenchment pay.

Each class is paid in full before the next class is paid. If there are insufficient funds to pay a class in full, the available funds are paid on a pro rata basis (and the next class or classes will be paid nothing).

To find out more, see ASIC's information sheet INFO 46 *Liquidation: a guide for employees*.

Where deed proposal seeks to vary priority for employee entitlements

If a deed proposal seeks to vary the priority for employee entitlements, the voluntary administrator must call a meeting of eligible employees giving at least five business days notice of the meeting. They must give to eligible employees at the same time as the notice of meeting a statement setting out:

- their opinion about whether the proposed variation would result in the same or better outcome for employees than if the company went into liquidation
- their reasons for this opinion, and
- any other information to help them make an informed decision about varying the priority.

Before you make a decision on how to vote at the meeting of eligible employee creditors or the creditors' meeting where the decision is made whether or not to accept the deed of company arrangement proposal, make sure you understand how the deed will affect the priority of payment of your outstanding entitlements.

The General Employee Entitlements and Redundancy Scheme (GEERS)

GEERS is a basic payment scheme designed to assist employees whose employment has been terminated due to the liquidation or bankruptcy of their employer and who are owed certain employee entitlements. GEERS is administered by the Department of Education, Employment and Workplace Relations.

You are not eligible for GEERS assistance if your former employer is a company in voluntary administration or subject to a deed of company arrangement until and unless the company goes into liquidation.

If the company was subject to a deed of company arrangement in the 12 months before the liquidation and:

- the deed had a different priority for payment of outstanding claims, including employee entitlements to that in a liquidation; and/or
- the deed did not provide for the distribution of all of the company's available funds and assets;

this will affect your ability to make a claim under GEERS.

You may wish to seek independent legal advice on whether the terms of a proposed deed will affect your ability to make a claim under GEERS if the company subsequently goes into liquidation.

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For more on liquidation, refer to our related information sheets (listed below).

For more on GEERS, visit www.deewr.gov.au/geers or contact the GEERS Hotline on 1300 135 040 or email GEERS@deewr.gov.au.

If the deed provides for your ongoing employment, you may wish to seek advice on how this affects payment of your outstanding entitlements.

Liquidation

If creditors resolve that the company is to be wound up, the priority given to outstanding employee entitlements in a liquidation will apply.

Employees have the right, if there are funds left over after payment of the fees and expenses of the administrator and liquidator, to be paid their outstanding entitlements in priority to other unsecured creditors.

The grouping of outstanding employee entitlements and order of payment in a liquidation is the same as discussed above.

To find out more, see ASIC's information sheet INFO 46 *Liquidation: a guide for employees*.

You may also be entitled to make a claim under GEERS when the company enters into liquidation.

Establishing your claim under a deed of company arrangement

How claims are dealt with under a deed of company arrangement depends on the deed's terms. Sometimes the deed incorporates the *Corporations Act 2001* provisions for dealing with claims in a liquidation.

Regardless of the deed's terms, if the deed administrator must pay outstanding priority employee entitlements, they may advise you beforehand how much they believe you are owed. Contact the deed administrator promptly if you disagree with their calculation.

You may be required to complete an employee entitlement claim form (this is called a 'proof of debt' in a liquidation). In this case, contact the deed administrator's office to agree and settle the amount.

You may need to provide evidence to justify your claim. It is important that you keep your pay records or other records of the terms of your employment. You may also need these records to help you complete your income tax return and establish any entitlement to GEERS if the company proceeds to liquidation.

When submitting a claim, ask the deed administrator to acknowledge receipt of your claim and advise if any further information is needed.

If the deed administrator rejects your claim after you have taken the above steps, you may wish to seek your own legal advice. This should be done promptly. Depending on the terms of the deed, you may have a limited time in which to take legal action to challenge the decision. If you have a query about the timing of the payment, discuss this with the deed administrator.

For details on proving your claim in a liquidation, see ASIC's information sheet INFO 46 *Liquidation: a guide for employees*.

Payment Summaries and Separation Certificates

Most employees require a PAYG Payment Summary (group certificate) to complete and lodge their income tax return. A Separation Certificate may also be required before an employee who loses their job can apply for social security.

If a voluntary administrator or deed administrator pays you any employee entitlements, they must provide you with a PAYG Payment Summary recording the entitlements paid and any income tax deducted. Contact the voluntary administrator or deed administrator to find out if they are going to prepare your PAYG Payment Summary for entitlements paid by the company prior to their appointment, and, if so, what period it will cover.

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If you can't obtain a PAYG Payment Summary for any period, contact the Australian Taxation Office on 13 28 61 to find out how to meet your obligations.

A voluntary administrator and deed administrator must prepare a Separation Certificate for any employee whose employment is terminated during the voluntary administration or deed of company arrangement. They are not obliged to prepare one for terminations of employment that occurred prior to voluntary administration.

Contact Centrelink on 13 10 21 to find out what you should do if you can't obtain a Separation Certificate.

Creditors' committee

A creditors' committee may be formed to consult with the voluntary administrator or deed administrator, and receive reports on the conduct of their administration. In a voluntary administration, this committee is called a 'committee of creditors'. While the company is under a deed of company arrangement, it is called a 'committee of inspection'.

Employees may wish to nominate a representative to be on the committee and have a say in matters that may impact on their interests.

Queries and complaints

You should first raise any queries or complaints with the voluntary administrator/deed administrator. If this fails to resolve your concerns, including any concerns about the administrator's conduct, you can lodge a complaint with ASIC at www.asic.gov.au/complain, or write to:

ASIC Complaints
PO Box 9149
TRARALGON VIC 3844

ASIC will usually not become involved in matters of commercial judgement by a voluntary administrator or deed administrator. Complaints against companies and their officers can also be made to ASIC. For other enquiries, contact ASIC's infoline on 1300 300 630 or make an enquiry at www.asic.gov.au/question.

To find out more

For an explanation of terms used in this information sheet, see ASIC's information sheet INFO 41 *Insolvency: a glossary of terms*. For more on external administration, see ASIC's related information sheets at www.asic.gov.au/insolvencyinfosheets:

- INFO 74 *Voluntary administration: a guide for creditors*
- 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*

These are also available from the Insolvency Practitioners Association (IPA) website at www.ipaa.com.au. The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.

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