



## **Declaration of Independence, Relevant Relationships and Indemnities (DIRRI)**

**And Chill Pty Ltd (Administrators Appointed) ACN 611 286 358 (AC)**

**And Chill Property Management Pty Ltd (Administrators Appointed) ACN 617 365 456 (ACPM)  
(Together known as, And Chill or the Companies)**

The *Corporations Act* and professional standards require the Practitioner/s appointed to an insolvent entity to make a declaration as to:

- A. their independence generally;
- B. relationships, including
  - a) the circumstances of the appointment;
  - b) any relationships with the company and others within the previous 24 months;
  - c) any prior professional services for the company within the previous 24 months;
  - d) that there are no other relationships to declare; and
- C. any indemnities given, or up-front payments made, to the Practitioner.

This declaration is made in respect of ourselves, our partners, the firm McGrathNicol, which for the purpose of this declaration includes the McGrathNicol Partnership, the McGrathNicol Advisory Partnership and McGrathNicol Services Pty Ltd.

### **A. Independence**

We, Barry Kogan and Kathy Sozou, of the firm McGrathNicol have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Joint and Several Voluntary Administrators of the Companies in accordance with the law 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.

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

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

On 6 June 2019, Rajiv Goyal, a Director at McGrathNicol was contacted by Lewis Seelenmeyer of K&L Gates (**K&L**), legal advisor for the Companies.

K&L flagged that the Companies would like to consider engaging McGrathNicol as Investigating Accountant (**IA**) for the Companies and requested a meeting.

We believe this referral from K&L does not result in a conflict of interest or duty because:

- from time to time we are referred work from and refer legal work to K&L, but we have not previously been referred work in relation to the Companies;
- the referral is unconditional; and
- referrals between professional advisors are common place.



On 12 June 2019, Mr Kogan and Mr Goyal met with the Companies' Directors, Callum Forbes and Jeffrey Feng (Mr Feng attended via telephone) and Mr Seelenmeyer for the purposes of McGrathNicol being briefed on the background of the Companies' financial position and to agree a scope for the proposed IA engagement. Ultimately, the IA engagement did not proceed.

On 18 June 2019, Mr Kogan and Mr Goyal and another McGrathNicol staff member met again with Mr Forbes and Mr Feng for the purposes of McGrathNicol being provided with further background information in relation to the Companies, which was followed by a teleconference on 19 June 2019 covering the same topics between these same parties and some additional K&L personnel.

On 24 June 2019, two teleconferences were held with Mr Goyal, Mr Forbes, Mr Feng, Mr Seelenmeyer and the Companies' secured creditor, Partners for Growth V, L.P (**PFG**) together with their lawyers, Arnold Bloch Leibler (**ABL**). The purpose of the calls and a further follow up call on 25 June 2019 was for the Companies to provide an update to PFG on their current financial circumstances with a view to seeking funding.

Over the period 25 June 2019 to 27 June 2019, discussions were held between McGrathNicol, PFG and the Companies to further understand the current situation and consider and plan for a potential appointment as Voluntary Administrators (should this be required).

Also during this period, McGrathNicol was advised by Mr Feng that he had resigned as Director of the Companies and also as the Licensed Real Estate Agent (**Licensee**) of ACPM. Accordingly, a number of discussions were then held with PFG, K&L and ABL to assess insolvency options for ACPM. It was determined that PFG would initiate the insolvency appointment to ACPM, following the appointment of Voluntary Administrators to AC.

On 27 June 2019, Mr Kogan and Mr Goyal had a teleconference with Bailey Compton of Leverage Group, lawyer acting for Mr Feng. It was confirmed on the teleconference that Mr Feng had resigned as Director of the Companies and also Licensee of ACPM. Mr Kogan advised Mr Compton that PFG were intending to appoint Administrators to ACPM which was without a director immediately after Mr Forbes, as sole Director of AC, appoints Administrators to AC.

On 28 June 2019, Mr Kogan and Ms Sozou were appointed Joint and Several Administrators to the Companies.

No remuneration was received for participating in the above discussions.

In our opinion, these communications do not affect our independence as:

- they were of limited scope over a short term with a clear information gathering and planning focus and would not be subject to review and challenge during the course of the administration;
- noting our limited objectives (i.e. to understand the Companies' current financial position and to plan for a possible voluntary administration), these communications would not be subject to review or influence our ability to be able to fully comply with the statutory and fiduciary obligations associated with the administration in an objective and impartial manner; and
- it is recognised by the Australian Restructuring, Insolvency and Turnaround Association's (**ARITA**) Code of Professional Practice that pre-appointment discussions regarding insolvency options and obtaining background information are necessary and do not amount to an impediment to accepting an appointment.

We have provided no other information or advice to the Companies beyond that outlined in this Declaration of Independence, Relevant Relationships and Independence (**DIRRI**). We provided no advice to the Directors or Former Directors in their capacity as Directors of the Companies.

**(ii) *Relevant Relationships (excluding professional services to the Insolvent)***

Neither we, nor our firm, have, or have had, within the preceding 24 months, any relationships with And Chill, an associate of And Chill, a former insolvency practitioner appointed to And Chill or any person or entity that has security over the whole or substantially whole of And Chill's property.

**(iii) *Prior professional services to the Insolvent***

Neither we, nor our firm, have provided any professional services to And Chill, 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, from the previous 24 months with And Chill, an associate of And Chill, a former insolvency practitioner appointed to And Chill or any person or entity that has security over the whole or substantially the whole of And Chill's property that should be disclosed.

**C. Indemnities and Up-front Payments**

We have been provided with the following up-front payment for the conduct of these VAs:

Name	Relationship with And Chill	Nature of Indemnity or Payment
PFG	PFG holds a charge over the whole or substantially the whole property of the Companies.	<p>During the planning work undertaken prior to the appointment, we identified a potential need for funding for the costs and expenses of the Voluntary Administrations. Prior to the appointment, PFG paid \$130,000 into McGrathNicol's trust account. These funds will be transferred shortly into an account operated by the Companies under the control of the Voluntary Administrators.</p> <p>The \$130,000 sum represents an indemnity for trading costs and the Administrators' fees and costs which may be drawn at any time (subject to creditor approval, if required).</p> <p>There are no conditions on the conduct of the Voluntary Administrations associated with the provision of this indemnity.</p>

This does not include statutory indemnities. We have not received any other indemnities or up-front payments that should be disclosed.

**D. Appointments to Members of a Corporate Group**

As specified on page one of this Declaration, the administrators have been appointed as Voluntary Administrators of two entities within the And Chill Group of companies.

The Administrators are of the view that the appointment to two entities will have significant benefits to the conduct of the Voluntary Administration, particularly in that this will provide for cost-savings and enable an accurate as possible view to be obtained of the activities and financial position of the Companies as a whole. At this time, the Administrators are aware that there may be inter-company transactions within the group but are not aware of any potential conflicts of interest arising from the appointments over the two group members. However, to the extent it becomes apparent that pre-appointment dealings between companies in the group may give rise to a conflict which may impact the outcome for creditors of either company, then the Administrators undertake to disclose any such conflicts to the creditors and as appropriate, seek Court directions as to the means of resolving the potential conflict.

Dated: 3 July 2019

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**Signed, Barry Kogan**

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**Signed, Kathy Sozou**



Note:

- 1 If the 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 Declaration 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.

Please note that the presentation of the above information is in accordance with the standard format suggested by ARITA.