

**Form 531**

**Corporations Act 2001**

436DA(4A) & (6A)

449CA(4A) & (6A)

453D(3) & 453D(6)

456F(4) & 456F(6)

506A(3) & (6)

Corporations Regulations 2001

5.3B.35(4), 5.3B.36(3)

Insolvency Practice Rules (Corporations) 2016

90-18(2)(b) & (4)(d)

# Copy of declaration of relevant relationships and/or declaration of indemnities

## Liquidator details

Liquidator number

**384878**

Liquidator name

**BARRY FREDERIC KOGAN**

## Company details

ACN

**641 575 304**

Company name

**MEDIACLOUD PTY LTD**

## Type of declaration

This is a:

**Replacement declaration of relevant  
relationships and/or declaration of indemnities**

Declaration by:

**Administrator**

## Details of the DIRRI

Who referred the appointment to you?

**Maddocks Lawyers**

Date of declaration

**17-02-2021**

Were you appointed to any other company within a 2 year period prior to the appointment to the company covered by the attached declaration (the current company) which was an associate of the current company, or where there were common directors between the other company and the current company, or between the other company and a related body corporate of the current company?

**No**

Have you provided any professional advice to the company, or to an associate of the company, other than advice on the company's insolvency and, or, the process for insolvent companies under the Corporations Act 2001? (see s9 of the Corporations Act for the definition of 'associate')

**No**

Have you received, or are you entitled to receive, either an indemnity or an up-front payment for remuneration?

**Yes**

What is the amount of the indemnity or up-front payment? (Enter whole \$AUD only eg. 5000)

**850,000**

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## Authentication

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This form has been authenticated by

Name BARRY FREDERIC KOGAN

This form has been submitted by

Name Andrea Susan PALMER

Date 17-02-2021

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**For more help or information**

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



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

**Mediacloud Pty Ltd (Administrators Appointed)  
ACN 641 575 304 (Mediacloud)**

### Version Two

The purpose of this document is to assist creditors with understanding any relationships that the Administrators have and any indemnities or upfront payments that have been provided to the Administrators. None of the relationships disclosed in this document are such that the independence of the Administrators is affected.

This information is provided to you to enable you to make an informed assessment on any independence concerns, so you have trust and confidence in our independence and, if not, can act to remove and replace us if you wish.

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 Frederic Kogan and Jonathan Philip Henry, of the firm McGrathNicol have undertaken an assessment of the risks to our independence prior to accepting the appointment as Administrators of Mediacloud 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**

##### **B1. *Circumstances of appointment***

This matter was referred to us by Ms Danielle Funston, a partner at Maddocks Lawyers (**Maddocks**). Ms Funston was engaged to provide legal services to Mediacloud.

We believe this referral does not result in a conflict of interest or duty as there has been no prior work undertaken by McGrathNicol for Mediacloud or Maddocks in relation to Mediacloud. Maddocks has from time to time referred potential insolvency appointments to McGrathNicol. The referral from Maddocks is unconditional.

Ms Funston contacted Mr Kogan on 7 October 2020 in relation to the financial position of Mediacloud.

On Saturday, 10 October 2020, Mr Kogan attended a meeting with Ms Funston, Ms Stefanie Digrigoli] (director of Mediacloud), Mr Rory Lewis (former director of Mediacloud and current advisor to the group) and Mr Conor McShane of Alix Partners, who were providing advice to the broader group. The purpose of the meeting was for McGrathNicol to be briefed on the background and current circumstances of Mediacloud and to consider available insolvency options including the process to place Mediacloud into Voluntary Administration.

Following this meeting, there were a number of calls and emails to obtain background on the company and provide clarification on the options available to the Director in the circumstances.

On 4 November 2020, Ms Heather Matheson, a director of McGrathNicol, and Mr Kogan attended a meeting with Mr Lewis. The purpose of this meeting was for McGrathNicol to be further updated on the financial circumstances and operations of Mediacloud to enable pre-appointment Voluntary Administration planning to be undertaken.

On 5 November 2020, Mr Kogan and Ms Matheson attended a meeting with Ms Funston, Ms Digrigoli and Mr Masters. The purpose of this meeting was for McGrathNicol to be briefed on the status of other entities within the



group and the interactions they have with Mediacloud, to assist in the pre-appointment Voluntary Administration planning. Also, to receive an update on the likely timing of a Voluntary Administration appointment.

On 6 November 2020, a consent to act as Voluntary Administrators of Mediacloud was provided to Ms Funston. The appointment was subsequently made on 9 November 2020.

We received no remuneration for this advice or these meetings.

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

- the nature of the advice provided was such that it would not be subject to review and challenge during the course of the administration. Nor would the advice 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.
- given our limited interaction was focussed around understanding Mediacloud's financial position, options available and administration planning, these communications would not 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 Mediacloud beyond that outlined in this DIRRI.

#### **B2. *Prior professional services to the Insolvent***

Neither we, nor our firm, have provided any professional services to, or in relation to, Mediacloud, in the previous 24 months.

#### **B3. *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 Mediacloud, an associate of Mediacloud, a former insolvency practitioner appointed to Mediacloud or any person or entity that is entitled to enforce a security interest in the whole or substantially the whole of Mediacloud property.

#### **B5. *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 Mediacloud, an associate of Mediacloud, a former insolvency practitioner appointed to Mediacloud or any person or entity that is entitled to enforce a security interest in the whole or substantially the whole of Mediacloud property that should be disclosed.

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

~~We have not received any indemnities or up-front payments that should be disclosed.~~

We have been provided with the following indemnities for the conduct of this administration:

<b>Name</b>	<b>Relationship with Mediacloud</b>	<b>Nature of Indemnity or Payment</b>
<u>Special Broadcast Services Corporation (SBS)</u>	<u>SBS is the major customer of Mediacloud.</u>	<u>A Funding Facility in the amount of \$850,000 was provided by way of an upfront payment on 18 December 2020. The Funding Facility was subject to orders from the Supreme Court of NSW, following notification to all known creditors.</u>



		<p><u>This funding represents an indemnity for trading costs and the administrators' fees and costs, and is to be drawn only in the event that trading realisations are insufficient to cover these liabilities. Further, any funds utilised for payment of our remuneration will not be drawn down until relevant approval has been obtained under the Corporations Act.</u></p> <p><u>At the conclusion of either the administration, or any subsequent appointments arising from the administration, any balance of the upfront payment that remains will be returned to SBS.</u></p> <p><u>In addition to the upfront payment, an indemnity was provided against possible exposure to personal liability, from certain debts arising as a consequence of the Administration appointment.</u></p>
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This does not include statutory indemnities. We have not received any other indemnities or up-front payments that should be disclosed.

Dated: 17 February 2021

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**Barry Frederic Kogan**

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**Jonathan Henry**

Note:

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. For Creditors' Voluntary Liquidations and Voluntary Administrations, this document and any updated versions of this document are required to be lodged with ASIC.

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