



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

**Focus on Furniture Pty Ltd (Administrators Appointed)  
ACN 089 394 712  
and associated entities listed in Schedule 1  
(collectively, the Focus Group)**

The *Corporations Act 2001 (the Act)* and professional standards require the Practitioners 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, Kathy Sozou and Matthew Caddy, of the firm McGrathNicol have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Joint and Several Administrators of the Focus Group 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 18 April 2019, Barry Kogan was contacted by Mr Joshua Bolot of Monash Private Capital (**Monash**), a corporate advisory and investment firm, in his capacity as Director of the Focus Group. Monash Investment Nominees Pty Limited, an entity associated with Monash is a shareholder of e-Commerce Ventures Pty Limited (holding 29% of equity). The purpose of this conversation was to discuss the Focus Group's financial circumstances with a view to seeking advice from McGrathNicol.

#### ***20 April 2019 engagement***

On 20 April 2019, we were engaged by the Focus Group to provide a letter setting out:

- the matters to take into account when considering solvency;
- the ramifications of trading whilst insolvent; and
- alternative courses of action available, including an overview of the 'safe harbour' regime under Section 588GA of *the Act*.

Our advice was of a preliminary nature only and of limited scope focusing on a factual briefing on the Australian insolvency regime and restructuring options.



We were not provided with information to form any concluded view as to solvency. Additionally, we did not form a view or express an opinion as to whether the safe harbour legislation applied in the Group's circumstances as we had not undertaken the work that would be required to test compliance with same.

Barry Kogan attended part of a board meeting on 23 April 2019 (as an observer) to explain the advice.

We charged a fixed fee of \$2,500 for this advice, which was finalised on 25 April 2019. This fee will be paid by Monash and not from any member of the Focus Group.

A number of phone calls occurred following provision of the advice between Barry Kogan and the Directors to clarify aspects of the advice.

### ***3 May 2019 engagement***

On 3 May 2019, following a meeting between Barry Kogan and Kathy Sozou with the Directors on 2 May 2019, we were engaged by the Focus Group as Investigating Accountants to assist with:

- considering the financial situation of the Focus Group;
- assessing the short term cash flow forecast; and
- determining the alternative courses of action available with reference, if required, to available insolvency options.

Shortly after commencing the assignment, it became apparent from assessing the financial position of the Group that a likely outcome for the Group was the appointment of Voluntary Administrators. Accordingly, our work since being instructed on 3 May 2019 was predominantly focussed on planning for the Voluntary Administration of the Focus Group as a contingency whilst other options were considered by the Directors.

Over the period from 3 May 2019 to 14 May 2019, various McGrathNicol staff were present at the Focus Group head office in Hallam, Victoria, for the purposes of obtaining various information to assist in planning the Voluntary Administration of the Focus Group (should this be required).

Specific interaction with the Focus Group since 2 May 2019 was as follows:

- On 2 May 2019, Barry Kogan and Kathy Sozou met with Joshua Bolot and Robert Santalucia (the Directors of the Company), to discuss the financial position of the Focus Group.
- On 3 May 2019, McGrathNicol were engaged to provide advice (as set out above), with the work ultimately focussed on contingency planning for a Voluntary Administration.
- Over the period from 2 May 2019 to 14 May 2019, various McGrathNicol staff liaised with Robert Santalucia and Joshua Bolot (Directors), Chris Kouvardas (Chief Financial Officer) and a senior Focus Group staff member for the purposes of gathering sufficient background and information to undertake contingency planning for a Voluntary Administration appointment.
- Barry Kogan and Kathy Sozou attended meetings and calls with the Focus Group's major shareholders, IFM Investors and Monash, to discuss the Focus Group's financial situation.
- Barry Kogan and Kathy Sozou had various conversations with the Focus Group's secured lender, to discuss the Focus Group's financial situation with a view to planning the Voluntary Administration appointment and potential funding requirements.
- On 10 May 2019, Barry Kogan, Kathy Sozou and Jason Ireland (a McGrathNicol partner) attended a meeting with the Directors of the Focus Group and the secured creditor, Commonwealth Bank of Australia (**CBA**) to discuss the Focus Group's current financial situation, the likely appointment of Voluntary Administrators (and the proposed strategy for the administration).



- On 11 May 2019, at the request of the Directors of the Focus Group, we provided the Directors with our consent to act as Voluntary Administrators of the Focus Group with that appointment being made on 15 May 2019.

We received remuneration from the Focus Group totalling \$25,000 for this engagement (which was paid in advance of the work being undertaken). No further work will be billed in relation to this engagement. In our opinion, the pre-appointment engagements with the Focus Group and meetings with various parties do not affect our independence for the following reasons:

- Our dealings with the Focus Group were initially focussed on an information gathering, short term cash flow analysis (to a very limited extent) and the provision of information about insolvency options and implications. It quickly evolved into a contingency planning brief to prepare for the effective implementation of a Voluntary Administration to a significant operating business. The nature of this preparatory work would not be subject to review and challenge during the course of the Voluntary Administration or any subsequent Liquidation.
- Nor would the advice and interaction with various stakeholders influence our ability to be able to fully comply with the statutory and fiduciary obligations associated with the Voluntary Administration in an objective and impartial manner. This is because our interactions with the Focus Group and other interested parties were of a limited scope falling within the recognised exceptions to pre appointment contact both with the insolvent entity and the major secured creditor (being the provision of advice about insolvency options and contingency planning for a potential appointment). At all times the Directors were being separately advised. Advice was not provided to the directors in relation to their personal positions.
- It is recognised by the Courts that developing an evolving contingency plan for a potential Voluntary Administration appointment is appropriate and does not represent a threat to the independence of the potential appointees should the Voluntary Administration proceed.
- It is also recognised by the Courts and Australian Restructuring, Insolvency and Turnaround Association's (ARITA) Code of Professional Practice (CoPP) that pre-appointment advice on the insolvency process and available options is necessary and does not amount to an impediment to accepting an appointment.
- All amounts received by McGrathNicol from the Focus Group were prepaid (or payable by a third party). As such, we are not in the position of potentially having received any form of voidable transaction from any member of the Focus Group, including an unfair preference.
- The work undertaken has been beneficial in that it assisted us in developing an understanding of the Focus Group and its activities with an emphasis on information gathering and planning for a Voluntary Administration appointment.

We have provided no other information or advice to the Focus Group or its Directors prior to our appointment beyond that outlined in this DIRRI.

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

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

Name	Nature of relationship	Reasons
CBA	<p>CBA holds a charge over the whole or substantially the whole of the property of the Focus Group.</p> <p>McGrathNicol undertakes corporate recovery and</p>	<p>We believe this relationship does not result in a conflict of interest or duty because:</p> <ul style="list-style-type: none"> <li>▪ Each professional engagement undertaken for CBA in relation to a particular entity or group of entities is conducted on an entirely</li> </ul>



	<p>advisory work from time to time on instructions from CBA.</p>	<p>separate basis which has no bearing on this appointment.</p> <ul style="list-style-type: none"> <li>▪ These engagements are only commenced after full regard is given to potential conflicts of interest in relation to all interested stakeholders.</li> <li>▪ We have not been engaged by CBA to undertake work in relation to the Focus Group.</li> <li>▪ We have had only limited discussions with representatives of the CBA regarding the Focus Group (as described above) to prepare for the prospective Voluntary Administration appointment.</li> </ul> <p>Given these factors, our independence in acting as Voluntary Administrators of the Focus Group has not been affected.</p>
<p>Monash</p>	<p>Monash is a corporate advisory and investment firm which holds shares in the Focus Group as described in section B(i) above.</p> <p>Monash has a nominee director, Joshua Bolot, who was involved in referring the matter initially to McGrathNicol.</p> <p>McGrathNicol undertakes advisory work from time to time on instructions from Monash.</p>	<p>We believe this relationship does not result in a conflict of interest or duty because:</p> <ul style="list-style-type: none"> <li>▪ Each professional engagement undertaken for Monash in relation to a particular entity or group of entities is conducted on an entirely separate basis which has no bearing on this appointment.</li> <li>▪ These engagements are only commenced after full regard is given to potential conflicts of interest in relation to all interested stakeholders.</li> <li>▪ Monash do not constitute a material part of McGrathNicol's business.</li> </ul> <p>Given these factors, our independence in acting as Voluntary Administrators of the Focus Group has not been affected.</p>

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

Other than the services outlined in Part B(i) of this DIRRI, neither we, nor our firm, have provided any professional services to the Focus Group, 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 the Focus Group, an associate of the Focus Group, a former insolvency practitioner



appointed to the Focus Group or any person or entity that has security over the whole or substantially the whole of the Focus Group's property that should be disclosed.

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

We have not been provided with any indemnities or upfront payments for remuneration or costs associated with the conduct of these voluntary administrations.

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 12 entities within the Focus Group of companies.

The Administrators are of the view that the appointment to the group of companies will have significant benefits to the conduct of the 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. The Administrators are aware that it is probable that there have been inter-company transactions within the group but at this time are not aware of any potential conflicts of interest arising from the appointments over the various 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: 20 May 2019

**Barry Kogan**

**Kathy Sozou**

**Matthew Caddy**

Note:

- 1 If the circumstances change or new information is identified, we are required under *the Act* and the ARITA CoPP 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 meetings 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.