



Miluc Pty Ltd IIOR & ATFT MLG Trust (In Liquidation)
ACN 084 459 987
(Miluc)

Liquidators' Second Report to Creditors

I refer to:

- the appointment of Rob Brauer and I as Voluntary Administrators of Miluc on 26 May 2021 and our subsequent appointment as Liquidators on 1 July 2021; and
- the Administrators' Report to Creditors dated 24 June 2021 and the Liquidators' Statutory Report to Creditors dated 1 October 2021 (collectively, **Previous Reports**).

The purpose of this report is to:

- provide you with an update on the progress of the liquidation and ongoing conduct of the Liquidators;
- advise you of the likelihood of a dividend being paid in the liquidation; and
- seek approval of the Liquidators' remuneration.

This report should be read in conjunction with our Previous Reports.

1 Liquidators' Declaration of Independence and Relevant Relationships (DIRRI)

In accordance with the Corporations Act 2001 (**Act**) and Australian Restructuring, Insolvency and Turnaround Association (**ARITA**) Code, a DIRRI was enclosed with our circular to creditors dated 31 May 2021.

We remain of the view that there are no real or perceived threats to the Liquidators' independence nor any reason that would preclude us from continuing in our role as Liquidators of Miluc. The Liquidators will continue to monitor independence and will advise creditors should this view change.

2 Update on the progress of the liquidation

As set out in the Previous Reports, the director of Miluc, Mr Michael Gosatti (**Director**) has not responded to our requests for information or provided access to Miluc's books and records.

The Director has continued to ignore the Liquidators' correspondence and consequently, our knowledge of the history and background of Miluc remains limited to publicly available information and the account of creditors who have provided information to the Liquidators.

The Liquidators have referred the matter to the Australian Securities and Investments Commission (**ASIC**) and have provided evidence for consideration by ASIC's prosecution team. The Liquidators have also obtained orders from the Supreme Court of Western Australia for (i) document production, and (ii) the public examination of the Director and the former director, Ms Lucy Gosatti.

Further information regarding the Liquidators' investigations into the Director's conduct is set out in section 5.

3 Update on the progress of property realisations

As set out in our Previous Reports, at the time of the Liquidators' appointment, 20 properties were registered in the name Miluc. The Liquidators' investigations immediately following their appointment identified that four properties were subject to competing ownership disputes.

After significant engagement with relevant stakeholders, the Liquidators obtained consent to include one of the disputed properties in the property realisation campaign.

Set out below is an update in relation to (i) the 17 properties subject to the Liquidators' realisation campaign (**Included Properties**), and (ii) the three properties subject to ownership disputes, which have not been included in the Liquidators' realisation campaign (**Excluded Properties**).



3.1 *Included Properties*

As set out in our Previous Reports, historically, Miluc had entered into arrangements with a number of creditors which resulted in 57 caveats being registered against the 20 Miluc properties by 10 creditors. The competing caveats contributed to difficulties realising these properties prior to the Liquidators' appointment and these caveats would have inhibited the Liquidators' ability to deal with the properties in the ordinary course.

The usual approach for a liquidator to realise properties in a liquidation would be to market the properties and negotiate with interested parties until acceptable offers are received, with net proceeds from the sale each property distributed consistent with the priorities of the various security interests. Adopting this approach for Miluc may have resulted in an inequitable position for caveat creditors, such that the proceeds from the sale of the first few properties sold would be paid to Miluc's first ranking secured creditor, National Australia Bank Limited (**NAB**), and the proceeds from the sale of later properties would be available to the relevant, subsequent ranking, caveat creditor(s). Notwithstanding NAB was first ranking secured creditor for each property, we note the order of priority for caveat creditors varied by property.

To avoid this inequitable outcome, the Liquidators developed a proposal (**Alternate Proposal**) whereby NAB would be repaid a portion of their debt from the sale of each property on a pro-rata basis, rather than seeking all of its debt repaid as soon as possible from properties that were settled first. The Liquidators' view is that the Alternate Proposal provides the fairest and most equitable distribution of property proceeds to all caveat holders.

After extensive consultation with caveat creditors, the Liquidators obtained the agreement from relevant stakeholders to proceed with the Alternate Proposal. On 14 September 2021, the Liquidators listed a matter before the Supreme Court of Western Australia regarding the Alternate Proposal and orders were granted confirming the Liquidators would be acting reasonably in implementing the Alternate Proposal. Please refer to section 4.2 of the Liquidators' Statutory Report to Creditors for further information regarding the Alternate Proposal.

Since issuing the Liquidators' Statutory Report to Creditors, the Liquidators have materially progressed the realisation campaign in respect of the Included Properties. At the date of this Report, the Liquidators have settled 16 of the 17 Included Properties. The final property is subject to an unconditional contract and is expected to settle on or before 12 April 2022.

The realisation of Miluc's Properties has been more complex and protracted than initially anticipated for the following reasons:

- Settlement delays – All sale contracts executed by the Liquidators relating to the Hammond Park Development that were subject to finance approval, have been affected by delays to finance approvals which exceeded 60 days in all cases. The cause of the delays has substantially been attributed to:
 - protracted building plan approvals as a result of increased activity in the construction sector;
 - delays in purchasers collating the requisite documentation and/or deposit in support of their finance application; and
 - incoming financier approval timeframes.

To minimise the impact of finance delays on the finalisation of the realisation program, the Liquidators instructed the selling agent to concurrently market the properties after finance clauses lapsed but while purchasers continued to progress their finance application. This enabled the Liquidators to have a second purchaser ready to transact in circumstances where contracts were terminated due to failure to obtain finance approval.

- Failure to achieve finance – Four purchasers were unable to obtain finance approval. These contracts were ultimately terminated, and contracts with new parties entered into following a remarketing of these properties. The Liquidators encountered particular challenges with Lot 747, Hammond Park, as detailed below.

The Liquidators initially executed a contract for the sale of Lot 747, Hammond Park on 14 September 2021. After the purchaser failed to secure finance within 60 days, the property was remarketed in November



2021. The Liquidators were notified in early December 2021 that finance approval was formally declined, and the contract was therefore terminated. Following a robust marketing campaign, a contract with a new party was executed in mid-December 2021.

Unfortunately the new purchaser also failed to secure finance within 60 days and the Liquidators were notified by their selling agent on 15 March 2022 that finance was declined and a further finance application could not be made for 60 days. Accordingly, Lot 747, Hammond Park was again remarketed.

On 24 March 2022 the Liquidators executed an unconditional contract (i.e. 'cash offer') for the sale of Lot 747, Hammond Park. The sale of Lot 747, Hammond Park, is expected to settle on or before 12 April 2022.

- Vacant blocks located at 22 & 24 Corvette Way, Landsdale (**Landsdale Properties**) – The Landsdale Properties are vacant land utilised as a drainage sump. Land title certificates disclose restrictive encumbrances in favour of the local council, the City of Wanneroo, attached to each property (**Encumbrances**).

Following consultation with the Liquidators' selling agent, it was determined that the most appropriate approach to realise the Landsdale Properties was (i) a public marketing campaign, supported by targeted marketing to developers who would likely have an interest in development potential, whilst (ii) engaging with the local council to explore a solution to the Encumbrances. Consultation with the local council did not identify an appropriate short-term solution, and the target market was therefore extremely limited.

Following a prolonged period of marketing, engagement with a purchaser who did not satisfy their due diligence and consultation with the Liquidators' appointed valuer, the sale of the properties completed in March 2022.

An update in relation to the Included Properties is set out below.

Included Properties - Summary

Property	Sale contract executed	Expected settlement date
25 Pavarotti Vista, Hammond Park (Lot 713)	Yes	Settled
5 Pavarotti Vista, Hammond Park (Lot 703)	Yes	Settled
23 Pavarotti Vista, Hammond Park (Lot 712)	Yes	Settled
1 Caruso Lane, Hammond Park (Lot 714)	Yes	Settled
3 Caruso Lane, Hammond Park (Lot 715)	Yes	Settled
7 Caruso Lane, Hammond Park (Lot 717)	Yes	Settled
11 Dimago Vista, Hammond Park (Lot 719)	Yes	Settled
9 Dimago Vista, Hammond Park (Lot 720)	Yes	Settled
6 Pavarotti Vista, Hammond Park (Lot 727)	Yes	Settled
2 Dimago Vista, Hammond Park (Lot 734)	Yes	Settled
28 Dimago Vista, Hammond Park (Lot 747)	Yes	12-Apr-22
30 Dimago Vista, Hammond Park (Lot 748)	Yes	Settled
39 Brazier Road, Yanchep	Yes	Settled
56 Trichet Road, Wanneroo	Yes	Settled
2 Dobson Lane, Eden Hill	Yes	Settled
24 Corvette Way, Landsdale	Yes	Settled
22 Corvette Way, Landsdale	Yes	Settled

3.1.1 Ownership dispute in relation to 2 Dobson Lane, Eden Hill

The Liquidators received a claim of equitable interest in relation to a portion of this property pursuant to a purported oral agreement with Miluc, whereby the interested party asserts that Miluc agreed to transfer a part of



the property in consideration of services and works that were allegedly undertaken, including introducing Miluc to the former owner of the property.

Based on the information provided, the Liquidators' preliminary view is that Miluc may hold part of the property on constructive trust for the interested party, although their interest is subject to NAB's mortgage. This position is disputed by an impacted caveat holder.

The interested party and impacted caveat holders consented to the sale of the property by the Liquidators, and settlement of the sale of the property completed in October 2021. The sale proceeds (net of costs and NAB's entitlement to proceeds) have been quarantined pending resolution of the competing ownership claims.

3.2 *Excluded properties*

As set out in the Liquidators' Statutory Report to Creditors, in addition to the ownership dispute in relation to 2 Dobson Lane, Eden Hill, the Liquidators have received competing ownership claims in respect of a further three properties registered in the name of Miluc. The Liquidators have not obtained the consent of the relevant parties to sell these properties and these properties have therefore been excluded from the Alternate Proposal detailed above. A brief update in relation to the Excluded Properties is set out below:

- **21 Pavarotti Vista, Hammond Park (Lot 711)** – The Liquidators' preliminary view is that Miluc holds the property on constructive trust for a party who purchased the property in December 2017, although their interest is subject to a first ranking mortgage registered in favour of NAB and the prior ranking caveatable interests of Morekam Pty Ltd and In Front Australian Business Solutions Pty Ltd. Consequently, the Liquidators have formed the view that it is likely that Miluc does not have the power to sell the property without the consent of the party to the unconditional contract.

The process of realising the property is subject to dispute between the purchaser and a party with a caveatable interest.

The Liquidators have introduced the relevant parties in an attempt to secure a commercial outcome in relation to this property, however we understand this has not yet been achieved. Consequently, this property has not been included in the Liquidators' sale process.

- **68 Austin Avenue, Kenwick and 17A Summershill Gate, Kenwick (Kenwick Properties)** – The Liquidators' preliminary investigations determined that the Kenwick Properties were held on constructive trust, although their interest is subject to a first ranking mortgage registered in favour of NAB.

The Liquidators are continuing to engage with relevant stakeholders in an attempt to secure a commercial outcome in relation to these two properties. Consequently, these properties have not been included in the Liquidators' sale process.

3.3 *Distribution of property sale proceeds*

The Liquidators have separately issued correspondence to each party with a caveatable interest in the properties in relation to the estimated distributions from property sale proceeds. Subject to no further disputes in relation to the priority and adjudication process, the Liquidators anticipate processing distributions within two weeks following the settlement of Lot 747, Hammond Park.

4 **Update on other asset realisations**

An update in relation to the progress of the realisation of Miluc's assets since the Liquidators' Statutory Report to Creditors is provided below.

4.1 *Local council bonds*

The Liquidators pursued recovery of bonds from a number of local shires / councils and an update on these investigations is detailed below:

- **City of Wanneroo** – Advised no bond held.



- **Town of Bassendean** – The bond valued at \$8,648 has been recovered by the Liquidators and part of this has been used to fund Court costs associated with the examination of the Director and Former Director.
- **City of Cockburn** – The Liquidators engaged with the City of Cockburn to understand the works required to recover the maintenance bond valued at \$14,259. These investigations disclosed that Miluc had not undertaken material civil works to a sufficient standard, and the cost of rectification works would exceed \$40,000. Accordingly, the bond is uncommercial to recover, and the City of Cockburn is an unsecured creditor of Miluc for the value of the shortfall.

4.2 *Local Council Scheme*

The Liquidators have contacted the City of Wanneroo in relation to funds that may be repayable following the conclusion of land development schemes. After extensive consultation with the City of Wanneroo, the Liquidators understand that funds may be repayable at the conclusion of the relevant schemes, however (i) the quantum is uncertain (and potentially \$nil), and (ii) the timing of payment is likely to be protracted (potentially more than five years).

The Liquidators will continue to engage with the City of Wanneroo and any other local council / shires where scheme amounts are potentially repayable for the benefit of creditors, where commercial to do so.

5 **Investigations**

Since issuing the Liquidators' Statutory Report to Creditors, the Liquidators have progressed the investigations into the affairs of Miluc and an update is provided below.

5.1 *Recovery Actions*

Notwithstanding the limited books and records received to date, the Liquidators have progressed investigations to identify potential liquidator recovery actions or other claims which could be pursued for the benefit of creditors.

An update on the progress of these potential recovery actions is provided below:

- **Insolvent trading** – The Liquidators have issued demands in relation to insolvent trading to the Director and the Former Director for \$6.2 million and \$1.8 million, respectively. The Former Director has formally responded to the letter of demand and disputes the Liquidators' claim, and the Liquidators are considering this response. The Director did not respond.
- **Uncommercial and/or unreasonable director related transactions** – The Liquidators' investigations, based on the limited records received to date, disclose potential transactions totalling circa \$0.8 million which we consider may be recoverable for the benefit of creditors. A summary of these investigations is provided below:
 - **Misappropriation of cheques by related entities** – The Liquidators have obtained bank statements and scans of cheques/bank cheques which disclose \$430,700 was transferred to related entities of Miluc.
 - **Cash** – The Liquidators have obtained email correspondence and signed receipt notes which disclose \$53,000 cash was received by the Director in relation to the sale Miluc's assets or rental payments for the use of Miluc's assets. The Liquidators have reviewed Miluc's bank statements and not identified any deposits for these amounts.
 - **Motor vehicle sales** – The Liquidators have obtained email correspondence which discloses proceeds from the sale of three motor vehicles registered in Miluc's name totalling \$124,149 were transferred to a related entity of Miluc.
 - **Other funds misappropriation** – The Liquidators have obtained evidence that the Director instructed parties to distribute the proceeds from the sale Miluc's assets sales or rental payments for the use of Miluc's assets totalling \$196,294 to related entities of Miluc.
 - **Motor vehicle transfers** – The Liquidators have obtained evidence which indicates two motor vehicles were transferred to a related entity of the Former Director for no consideration.



Letters of Demand have been sent to the Director and relevant entities regarding the above claims, however no response has been received to date.

5.2 *Public examinations and document production orders*

The Liquidators' preliminary investigations identified a number of potential contraventions of the Act that warranted further enquiry. As a result of the continued failure of the Director to cooperate, the Liquidators commenced the public examination and document production process to understand these contraventions and progress claims for the benefit of creditors.

The Liquidators filed an application for publication examination summonses and document production orders pursuant to sections 596A, 596B, 596D and 597(9) of the Act on 1 March 2022. This application sought orders in relation to the Director and the Former Director.

In addition, an application for document production orders pursuant to section 597(9) of the Act was sought in relation to the Department of Transport.

The public examination and document production orders sought were made on 10 March 2022. The Former Director has been served and a Process Server has been retained to effect service of the Court orders on the Director. The return date for the public examinations and provision of documents pursuant to the orders is 12 and 13 May 2022.

The Liquidators will shortly commence preparation for the public examinations and review of the documents to determine the strategy to maximise the return to creditors in relation to the claims identified.

5.3 *Purpose of public examinations and document production orders*

Due to the insufficient records of Miluc provided to the Liquidators, the purpose of the Actions is to:

- further understand the nature of Miluc's affairs and gather additional information;
- investigate the Former Director's position and role in the management of Miluc's affairs;
- review certain transactions that have been entered into by Miluc to the detriment of, and ultimately to defeat, creditors (refer section 5.1 above);
- consider the Director's breaches of the Act and evidence of underlying intent and/or knowledge of those breaches;
- assess the prospects of success of the claims identified in the Liquidators' preliminary investigations; and
- consider and assess the capacity of the Director, Former Director and related entities to respond to a claim.

Ultimately, the objective of the Liquidators in pursuing these enquiries is to maximise the potential return to Miluc's creditors.

5.4 *ASIC reports and prosecution of the Director*

As discussed in our Previous Reports, the Liquidators are currently liaising with ASIC, who are taking an interest in this matter.

The Liquidators have issued a confidential report to ASIC pursuant to section 533 of the Act and we will continue to provide ASIC information and further reports in relation to the liquidation as required.

6 **Likelihood of a dividend**

There has been no change in the estimated return to creditors outlined in our Previous Reports. In respect to the returns to creditors, the Liquidators expect:

- there will be sufficient funds available to repay NAB in full;
- after repaying NAB and realisation costs, there will be circa \$2.3 million available for distribution to four parties with an interest in the Included Properties;



- absent Liquidator recoveries through our investigations outlined in section 5 above, there is unlikely to be a distribution available to Miluc's remaining caveat creditors or unsecured creditors.

If a dividend is going to be paid, you will be contacted before that happens and, if you have not already done so, you will be asked to lodge a proof of debt. This formalises the record of your claim in the liquidation and is used to determine all claims against Miluc.

7 **Cost of the liquidation**

We enclose a detailed report of our remuneration, called a Remuneration Report.

We propose to have our remuneration approved by a proposal without a meeting. Accordingly, the following proposals are enclosed for creditors' review, being:

- the retrospective remuneration of the Liquidators for the period from 1 November 2021 to 1 April 2022 totalling \$185,577 (excluding GST); and
- prospective remuneration for the period from 2 April 2022 to 31 October 2022 totalling \$175,000 (excluding GST).

To vote on the proposals, you must return the enclosed voting forms to our office by post or email to jflores@mcgrathnicol.com by 2 May 2022. You must also include a completed proof of debt and information to substantiate your claim. A proof of debt form is enclosed, together with guidance notes to assist you when you complete it. If you have already completed a proof of debt, you are not required to complete another form.

We also enclose an ARITA information sheet on passing resolutions without a meeting.

8 **What happens next?**

We will proceed with the liquidation, which will include:

- finalising the realisation of the remaining Included Properties;
- completing our investigations into Miluc's affairs;
- pursuing any viable claims for the benefit of creditors if commercial to do so;
- preparing for and attending the public examination of the Director and the Former Director;
- liaising with ASIC as required; and
- finalising the creditor adjudication and dividend distribution process.

We may write to you again with further information on the progress of the liquidation.

We expect to have completed this liquidation within 12 months.

9 **Where can you get more information?**

You can access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors.
- ASIC at www.asic.gov.au (search for "insolvency information sheets").

If you have any queries, please contact Jacob Flores on (08) 6363 7686. For further information about this engagement, please refer to the website <https://www.mcgrathnicol.com/creditors/miluc-pty-ltd/>.

Dated: 6 April 2022

Rob Kirman
Liquidator



Enclosures:

- 1 Remuneration Approval Report
- 2 ARITA Information Sheet – Approving remuneration of an external administrator
- 3 Notices of Proposal to Creditors
- 4 ARITA Information Sheet – Proposals without meeting
- 5 Proof of Debt (Form 535)
- 6 Proof of Debt Guidance Notes
- 7 ARITA Information Sheet – Offences, Recoverable Transactions & Insolvent Trading