



**Miluc Pty Ltd IOR & ATFT MLG Trust
ACN 084 459 987
(Miluc)**

Statutory 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.

The purpose of this report is to:

- provide you with an update on the progress of the liquidation; and
- advise you of the likelihood of a dividend being paid in the liquidation.

A detailed report on Miluc's affairs (**Administrators' Report**) was provided to creditors on 24 June 2021 and should be read in conjunction with this report. A copy of the Administrators' Report is available from <https://www.mcgrathnicol.com/creditors/miluc-pty-ltd/>.

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

In accordance with the Corporations Act 2001 (**the 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

2.1 Background

The Liquidators confirmed in the Administrators' Report that the director, Mr Michael Gosatti (**Director**) has not responded to our requests for information or provided access to Miluc's books and records.

Since releasing the Administrators' Report, the Director has continued to ignore the Liquidators' correspondence and the only books and records of Miluc obtained by the Liquidators are those provided by creditors, Miluc's accountant until 2017 and publicly available records. Consequently, our knowledge of the history and background remains limited to that information and the account of creditors who have provided information to the Liquidators.

2.2 Outcome of second meeting of creditors

The second meeting of creditors of Miluc was held on 1 July 2021. Creditors voted for Miluc to be wound up and for Rob Brauer and I to be appointed as Liquidators. Resolutions were also passed to approve (i) the Voluntary Administrators' and Liquidators' remuneration and disbursements, (ii) the early destruction of Miluc's books and records (when the liquidation has been completed), and (iii) the Liquidators to compromise any debt to Miluc greater than \$100,000 and enter agreements exceeding three months.

3 Estimated assets and liabilities

Set out overleaf is a summary of the known assets and liabilities of Miluc identified by the Liquidators to date. The Liquidators have not carried out an audit, nor verified information in preparation of the summary set out in this report. Accordingly, no warranty of accuracy or reliability is provided by the Liquidators in respect of the financial information.



3.1 *Assets*

Set out below is a summary of the assets of Miluc which have been identified by the Liquidators to date:

Estimated asset position			
\$'000	Ref.	High	Low
Cash	3.1.1	-	-
Plant & equipment	3.1.2	-	-
Local council bonds	3.1.3	15	1
Properties	3.1.4	7,068	5,617
Total estimated assets (before realisation costs)		7,083	5,618

3.1.1 *Cash at bank*

The Liquidators wrote to 73 financial institutions seeking details of accounts held by Miluc. With no financial institution identifying a Miluc account with a positive balance. Accordingly, no cash has been realised by the Liquidators and no realisations are expected relating to cash at bank.

Miluc's pre-appointment solicitor has confirmed that no funds are held on trust on behalf of Miluc.

3.1.2 *Plant and equipment*

On 18 June 2021, the Department of Transport (**DoT**) provided records that indicated a 2006 Mazda B2600 utility (**Vehicle**) was registered to Miluc. The Liquidators wrote to the Director to confirm the status of the Vehicle and request it be returned. Having received no response from the Director, the Liquidators contacted the Western Australian Police Department to report the Vehicle as stolen, however were advised that Police records indicated the Vehicle was sold in March 2021, and transfer papers were filed with the DoT in July 2021.

In this regard, the Liquidators again wrote to the DoT to seek further information regarding the transfer. The DoT has since provided information that discloses the transfer of the Vehicle to Chartag Pty Ltd (**Chartag**). Mr Trevor Gosatti is the Director of Chartag.

The Liquidators wrote to Chartag to seek further information relating to the transfer and have been advised that (i) Chartag had been utilising the vehicle for circa 3 years and paid all running costs during this time, and (ii) \$4,000 was paid in cash to the Director for the Vehicle in March 2021, as evidenced by a receipt signed by the Director.

The Liquidators have not identified a deposit to any account of Miluc that corresponds to the receipt provided.

Our investigations into the transfer of the Vehicle are ongoing. Further information relating to other pre-appointment transactions are set out at section 5.3.

3.1.3 *Local council bonds*

The Liquidators wrote to five local councils in Western Australia to understand if any bonds or funds were held in relation to Miluc. A summary of the responses received is set out below:

- **City of Gosnells** – Confirmed no bonds held.
- **City of Wanneroo** – Investigations ongoing.
- **City of Kalamunda** – One bond valued at \$500 held, which has been secured by the Liquidators.
- **Town of Bassendean** – One bond valued at \$8,648 held. On 15 June 2021, the Director wrote to the Town of Bassendean requesting to have the funds transferred to reduce Miluc's loan with St George. Noting this was done without the Liquidators' consent, the Liquidators are (i) attempting to secure these funds, and (ii) further considering the actions of the Director in providing instruction to the Town of Bassendean.



- **City of Cockburn:**

- One fencing bond valued at \$25,884 held for work that was not completed by Miluc. Miluc confirmed with the City of Cockburn prior to the Liquidators' appointment that the bond should be forfeited. The Liquidators have reviewed relevant information from the City of Cockburn (including photos, quotes and correspondence) and have formed the view that the bond is not recoverable.
- One maintenance bond valued at \$14,259 held that requires the sign-off from a civil engineer to be recovered by Miluc. The Liquidators are liaising with the City of Cockburn and a civil engineer to progress recovery of this bond, however the estimated net recovery after the cost of any remediation works is currently unknown.

The Liquidators have not identified any further recoverable assets from local councils.

3.1.4 Properties

The Liquidators engaged an independent valuer to inspect and provide an opinion of the estimated market value of each of the 20 properties Miluc is the registered owner of. Please refer to section 4.1.3 of the Administrators' Report for a description of each property. The independent valuer finalised valuation reports for each property and advised the estimated market value of Miluc's properties is circa \$7.1 million (excluding GST).

The Liquidators have materially progressed the realisation campaign in respect of Miluc's properties since appointment. This includes:

- reviewing contracts executed prior to our appointment, negotiating price improvements (where possible) and documenting contract variations. Having obtained the Court directions discussed at section 4, the Liquidators are in a position to execute contracts for property sales, and have executed 13 to date;
- engaging with multiple sales and marketing agents, considering proposals received and engaging Acton as exclusive sales and marketing agent to the properties not subject to contracts capable of execution by the Liquidators;
- engaging with the valuer in relation to specific advice regarding the realisation strategy of 2 Dobson Lane, Eden Hill and 39 Brazier Road, Yanchep;
- negotiating with both Telstra and Optus to provide additional rental security to 2 Dobson Lane, Eden Hill, materially improving the value of this property;
- negotiating and agreeing appropriate selling commissions with agents engaged by Miluc prior to the Administrators' appointment in relation to purchasers introduced;
- managing the Acton sales and marketing campaign;
- extensively investigating ownership disputes in relation to four properties registered to Miluc (refer section 3.1.4.1); and
- preparing for and attending the settlement of Lot 715, Hammond Park, including approval of the settlement statement and transfer documentation, and obtaining necessary releases from caveat holders and NAB.



An update in relation to the properties is set out below.

Property summary				
Property	Miluc is beneficial owner	Sale contract executed	Contract subject to finance	Expected settlement date
21 Pavarotti Vista, Hammond Park (Lot 711)	TBC	No	N/A	N/A
25 Pavarotti Vista, Hammond Park (Lot 713)	Yes	Yes	Yes	26-Dec-21
5 Pavarotti Vista, Hammond Park (Lot 703)	Yes	Yes	Yes	11-Dec-21
23 Pavarotti Vista, Hammond Park (Lot 712)	Yes	Yes	Approved	08-Oct-21
1 Caruso Lane, Hammond Park (Lot 714)	Yes	Yes	Yes	26-Dec-21
3 Caruso Lane, Hammond Park (Lot 715)	Yes	Yes	Approved	SETTLED
7 Caruso Lane, Hammond Park (Lot 717)	Yes	No	N/A	N/A
11 Dimago Vista, Hammond Park (Lot 719)	Yes	No	N/A	N/A
9 Dimago Vista, Hammond Park (Lot 720)	Yes	Yes	Yes	11-Dec-21
6 Pavarotti Vista, Hammond Park (Lot 727)	Yes	Yes	Yes	09-Nov-21
2 Dimago Vista, Hammond Park (Lot 734)	Yes	Yes	Yes	26-Dec-21
28 Dimago Vista, Hammond Park (Lot 747)	Yes	Yes	Yes	11-Dec-21
30 Dimago Vista, Hammond Park (Lot 748)	Yes	Yes	Yes	13-Jan-22
39 Brazier Road, Yanchep	Yes	Yes	No	12-Oct-21
56 Trichet Road, Wanneroo	Yes	Yes	No	12-Oct-21
2 Dobson Lane, Eden Hill	TBC	Yes	No	12-Oct-21
68 Austin Avenue, Kenwick	TBC	No	N/A	N/A
17A Summershill Gate, Kenwick	TBC	No	N/A	N/A
24 Corvette Way, Landsdale	Yes	No	N/A	N/A
22 Corvette Way, Landsdale	Yes	No	N/A	N/A

3.1.4.1 Ownership disputes

Despite Landgate searches confirming Miluc is the registered owner of 20 properties, the Liquidators have received competing ownership claims in respect of 4 properties. A brief overview of these is set out below:

- 21 Pavarotti Vista, Hammond Park (Lot 711)** – A party entered an unconditional contract to purchase this property and paid the purchase price in full on execution of the contract by cheque dated 22 December 2017. The Liquidators have confirmed receipt of this amount in Miluc’s pre-appointment bank account on 27 December 2017.

The Liquidators’ preliminary view is that Miluc holds the property on constructive trust for the purchaser, although their interest is subject to a first ranking mortgage registered in favour of the National Australia Bank Limited (**NAB**) and the prior ranking caveatable interests of Morekam Pty Ltd (**Morekam**) and In Front Australian Business Solutions Pty Ltd (**In Front**). 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 Liquidators are currently engaging with relevant stakeholders in an attempt to secure a commercial outcome in relation to this property.

- 2 Dobson Lane, Eden Hill** – The Liquidators have 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. If the party successfully proves their claim, Miluc may hold part of the property on constructive trust for the interested party, although their interest is subject to NAB’s mortgage.



The interested party and impacted caveat holders have consented to the sale of the property by the Liquidators. The sale proceeds (net of costs and NAB's entitlement to proceeds) will be quarantined until such time as the priority/ownership dispute is resolved between the interested party and caveat holders.

- **68 Austin Avenue, Kenwick and 17A Summershill Gate, Kenwick (Kenwick Properties)** – The Liquidators have received a claim of beneficial ownership in these two properties that was commenced at least 17 years ago, including court proceedings underway at the time of the Administrators' appointment. The Liquidators have reviewed the claim, which included a transfer of land form executed by Miluc.

The Liquidators' investigations in relation to the ownership status Kenwick Properties is ongoing.

The Liquidators are currently engaging with relevant stakeholders in an attempt to secure a commercial outcome in relation to these two properties.

3.2 *Liabilities*

Set out below is a summary of the liabilities of Miluc identified by the Liquidators to date:

Estimated liability position			
\$'000	Ref.	High	Low
First ranking mortgagee - NAB	3.2.1	(2,511)	(2,511)
Parties with registered caveats (Including In Front)	3.2.2	(12,079)	(12,079)
Unsecured creditors	3.2.3	(5,789)	(5,789)
Total estimated liabilities		(20,380)	(20,380)

3.2.1 *First ranking mortgagee – NAB*

As set out in the Administrators' Report, in addition to mortgages registered against 18 of Miluc's 20 properties, NAB holds a General Security Agreement (**GSA**) securing all assets of Miluc. The Liquidators have reviewed NAB's security registrations and consider them valid and enforceable. NAB's position as first ranking has not been disputed by any party.

NAB has reserved the right to enforce its securities against Miluc's assets, including the 20 properties.

3.2.2 *Parties with registered caveats*

As a result of numerous arrangements entered into with certain creditors over at least 17 years, 10 creditors registered a total of 57 caveats with varying priorities against properties registered to Miluc. The Liquidators understand that the competing caveats contributed to difficulties in realising certain properties prior to the Administrators' appointment, and without a formal strategy, these caveats would likely inhibit the Liquidators' ability to commercially deal with the properties. A summary of the agreement reached between the Liquidators, NAB and caveat holders to avoid further disputes and delays is set out at section 4.

Following a detailed review of documentation from each caveat holder, the Liquidators formed a preliminary view in relation to the priority of caveatable interests in each of Miluc's properties. This view remains the subject of dispute between certain parties.

The Liquidators caused lapsing notices to be issued in respect of two caveats registered against 56 Trichet Road, Wanneroo and 2 Dobson Lane, Eden Hill by a related entity of the former director, Ms Lucy Gosatti (**Former Director**). As a result of the notices, Landgate has now removed the caveats from the relevant property titles.

The Liquidators have considered the underlying documents supporting the balance of the caveats registered against the properties and have formed the preliminary view that each of the caveat holders has a valid and enforceable caveatable interest in the respective property over which they have lodged a caveat, save for three, in respect of which the Liquidators are not satisfied that the creditor has a caveatable interest. The Liquidators have reserved their rights in this regard.



A formal adjudication of claims by caveat holders will be finalised prior to any distributions being made from the proceeds of sale of properties.

3.2.3 Unsecured creditors

Claims received from unsecured creditors (excluding caveat holders) have increased to circa \$5.8 million as set out below:

Unsecured creditors				
\$'000	Note	Number of creditors	High	Low
Guarantees provided to creditors of Miluc Civil	3.2.2.1	1	(1,993)	(1,993)
Westpac Banking Corporation	3.2.2.2	1	(461)	(461)
Claims relating to property sales and transfers	3.2.2.3	8	(550)	(550)
Statutory creditors		6	(199)	(199)
Other unsecured creditors	3.2.2.4	4	(2,586)	(2,586)
Total		20	(5,789)	(5,789)

A summary of the unsecured creditors identified prior to issuing the Administrators' Report is set out at section 4.2.3 of that report. Set out below is an update to the extent the unsecured creditor position has changed following issuing the Administrators' Report.

3.2.3.1 Guarantee provided to creditor of Miluc Civil

Following further investigations by the Liquidators, it was determined one creditor with a claim of \$8.1k was not a creditor of Miluc.

3.2.3.2 Westpac

The Liquidators have confirmed that Westpac's claim relates to assets no longer owned by Miluc. Accordingly, their debt has been assessed as unsecured.

3.2.3.3 Claims relating to property sales and transfers

The Liquidators have received an additional six claims totalling \$16k in relation to boundary fencing for properties which were sold by Miluc prior to the Administrators' appointment.

Five of these claims were received from purchasers of Miluc's properties, whereby fencing was required to be constructed at Miluc's expense. The Liquidators understand that funds were withheld from settlement proceeds to fund construction of this fencing, however the funds were distributed a related entity of the Director. Further investigations are required in this regard.

A claim was also received from a trade creditor who had erected fencing on certain properties.

3.2.3.4 Other unsecured creditors

The Liquidators have received an additional two claims from creditors who provided Miluc unsecured loans totalling circa \$2.5 million.

4 Court directions – Realisation of properties and distribution of funds

As detailed at section 3.2.2, each of the 20 properties registered to Miluc are subject to competing interests which include (i) NAB's mortgages, (ii) 57 caveats registered by 10 different parties, and (iii) parties claiming beneficial ownership interests.

Prior to our appointment, certain caveat holders refused to release their caveats when Miluc attempted to complete property sales. Following our engagement with caveat holders early in our appointment, the Liquidators formed the view that, absent an agreement with NAB and the various caveat holders, it would be challenging for the Liquidators to realise the properties without creating inequitable outcomes, marshalling claims and priority disputes between caveat holders. The Liquidators were of the opinion this would cause delayed property settlements and increased



costs. For this reason, the Liquidators set about agreeing a proposal between creditors to realise the properties and distribute the funds.

4.1 *Normal process to realise properties without an alternate agreement*

In the absence of an alternate agreement, the normal process the Liquidators would undertake to realise Miluc's properties would be to:

- appoint a selling agent to market each of the properties;
- negotiate contracts for individual properties as offers were received;
- progress executed contracts towards settlement; and
- after paying realisation costs, distribute the funds in accordance with the priority claims for that property.

The outcome of this approach would see a different return to caveat holders, depending on the order of priority in which each of the properties settle (even if the properties achieved the same selling price). This occurs because in all circumstances, regardless of the order of sale, NAB is entitled to collect all proceeds from the first number of properties that complete in repayment of its debt. After NAB is repaid in full, all proceeds from subsequent property sales would then be available to the next ranking caveat holder without deduction for NAB's debt. In this scenario, caveat holders ranking after NAB would receive no funds from the sale of the first property. If that same property was instead sold last for the same price, the same caveat holders would receive a windfall gain, benefiting from substantially all of the funds after paying realisation costs.

4.2 *Process to achieve alternate strategy*

To avoid (i) an arbitrary outcome for creditors depending on the order of realisation, (ii) disputes between creditors, and (iii) marshalling claims, the Liquidators agreed an alternate strategy to realise Miluc's properties and distribute the funds. The steps taken to agree the alternate strategy are outlined below:

- The Liquidators wrote to NAB to establish if it would be inclined to participate in an alternate proposal (**Alternate Proposal**) (detailed at section 4.3) whereby NAB would agree to be repaid from a portion of each property on a pro-rated basis, rather than seeking all of its debt repaid as soon as possible from the first number of properties to complete.
- NAB supported the Liquidators' implementing the Alternate Proposal subject to (i) agreement from caveat holders, and (ii) direction from the Court confirming the Liquidators were acting reasonably in implementing the Alternate Proposal. The Alternate Proposal delays the timeframe in which NAB will be fully repaid its secured debt and represents a concession by NAB in order to allow an orderly realisation of the properties for the benefit of caveat holders.
- After NAB confirmed it was prepared to consent to the Alternate Proposal, the Liquidators wrote to each caveat holder to outline the risks associated with the "normal" approach, and detail the Alternate Proposal put forward by the Liquidators, supported by NAB. After significant correspondence with various caveat holders, all caveat holder holders with interests in 17 of Miluc's 20 properties consented to the Alternate Proposal put forward by the Liquidators. These are referred to as the "Included Properties". Should the parties to the remaining three properties agree, these three properties may be considered as Included Properties.
- Subsequent to obtaining NAB consent and caveat holder consent, the Liquidators then swore an affidavit and caused an originating process to be lodged with the Supreme Court of Western Australia. On 14 September 2021, the matter was listed before Master Sanderson and Orders were granted confirming the Liquidators are acting reasonably in implementing the Alternate Proposal.



4.3 *Alternate Proposal*

The terms of the finalised Alternate Proposal are summarised as follows:

- At the settlement of each of the Included Properties (and no matter the order of sale or settlement), NAB would discharge its relevant mortgage, receive 30% of its estimated distribution from the property, and permit the Liquidators to collect the remaining net sale proceeds (after payment of costs and expenses) on the basis that the Liquidators quarantine and hold those funds in such a way that they remain identifiable by reference to each property. The proceeds are held subject to NAB's existing securities over Miluc.
- Each of the caveat holders would, on a property-by-property basis, voluntarily withdraw caveats on the same basis (i.e. that any interest that each caveat holder has in any given property is replaced with an interest in the proceeds from the sale of that property) or that their caveats are removed from title by lapsing notice or Court order.
- At three-monthly intervals commencing three months after the settlement of the sale of the first property, the Liquidators will, at their sole discretion, pay a top up to NAB such that NAB have received 50% of its estimated distribution from the Included Properties that have settled by that time settled.
- Following the sale of the last of the Included Properties, the Liquidators would deal with and distribute the net sale proceeds held by them as follows:
 - firstly, repay the remaining secured debt owing to NAB on a pro-rata basis by reference to the gross sale proceeds attributable to each property;
 - secondly, the Liquidators' (creditor or Court-approved) remuneration, costs and expenses in relation to the administration and the liquidation of Miluc; and
 - the priority position as between caveat holders and other interest holders in relation to the remaining sale proceeds from each property will then be determined on a 'property by property' basis.

Since obtaining the Orders, the Liquidators executed 13 contracts and have completed one sale as detailed in section 3.1.4.

5 **Investigations**

The Liquidators' initial investigations into the affairs of Miluc are detailed in the Administrators' Report. Set out below is an update regarding the investigations performed by the Liquidators since issuing the Administrators' Report.

5.1 ***Books and records***

The Liquidators have secured all available books and records from Miluc's last known accountant (engaged by Miluc until 2017). The books and records include a copy of Miluc's accounting software file reconciled to June 2016 and one box of miscellaneous books and records for the periods FY14 to FY17. Noting the lack of subsequent records available after the engagement with the last known accountant ceased, the Liquidators are of the view the books and records of Miluc are unlikely to have been maintained to a sufficient standard after 30 June 2016.

In these circumstances, where the Director has failed to provide access to books and records, we conclude that Miluc has not maintained books and records sufficient to satisfy the requirements of section 286 of the Act from 1 July 2016. The Liquidators consider they are therefore entitled to rely on the presumption of insolvency pursuant to section 588E of the Act from 1 July 2016.



5.2 *Insolvent Trading*

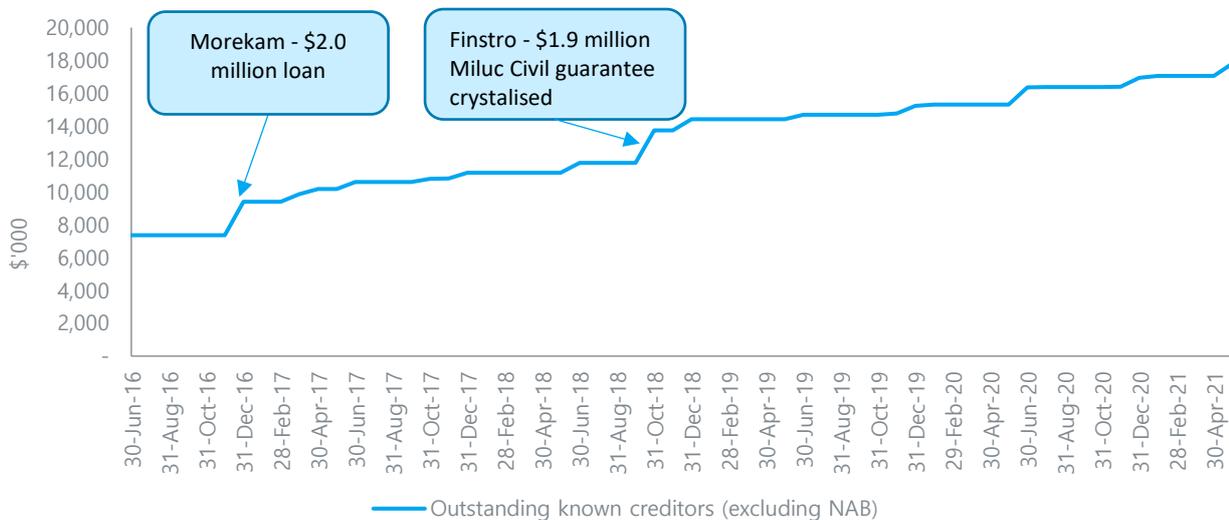
Before a Court will order that a person pay compensation in respect of insolvent trading, a liquidator must establish that:

- the person was a director of the company at the time the company incurred the debts that are the subject of the claim;
- the company was insolvent at the time the debts were incurred or became insolvent by incurring the debt;
- at that time, there were reasonable grounds for suspecting that the company was insolvent or would become insolvent by incurring the debt; and
- the debt subject of the claim was wholly or partly unsecured and the creditors to whom the debts are owed suffered loss and damage.

The lack of books and records and cooperation from the Director has restricted the Liquidators' ability to make a full and informed assessment in relation to the insolvency of Miluc.

Notwithstanding, set out below, for the purposes of illustration only, is a summary of the creditor claims received by the Liquidators to date, excluding NAB. The chart illustrates these creditors have increased from \$7.4 million to \$17.8 million between 30 June 2016 and 26 May 2021. The Liquidators' preliminary view, based on the assets and liabilities disclosed in the limited records received to date, is that it is unlikely that Miluc held unsecured assets sufficient to discharge its liabilities at any time since 30 June 2016. The Liquidators' assessment of a date of insolvency of 30 June 2016 is subject to receipt of books and records, which may materially impact this assessment.

Analysis of known creditor claims



Based on information received from creditors and an estimated date of insolvency of 30 June 2016, the Liquidators' estimate an insolvent trading claim may exist for up to \$7.4 million. The quantum of the claim is subject to change, and the Liquidators' final quantification will be impacted by, amongst other matters, adjudication of creditor claims and the identification of any further claims.

Subject to defences available, the Director may be liable for the full value of the insolvent trading claim, and the Former Director may be liable for debts incurred between 30 June 2016 and 12 March 2018 (being the date of her resignation as a director of Miluc), which totals \$3.0 million.

The Liquidators' investigations in relation to insolvent trading are ongoing. Further action may be taken subject to various considerations, including defences available to the Director and Former Director, commerciality and litigation risk.



5.3 *Voidable transactions*

5.3.1 *Uncommercial transactions*

The Liquidators wrote to the DoT requesting they provide a schedule disclosing details of parties who were transferred vehicles (i.e. purchasers) registered to Miluc in the four years prior to their appointment.

The DoT have confirmed that 23 vehicles have been transferred from Miluc to 15 different parties in the four years prior to the Liquidators' appointment. The Liquidators wrote to each of these parties to confirm (i) payment details, (ii) background of sale, and (iii) any relationship with Miluc or related parties.

The Liquidators' investigations into these transactions are ongoing, and further action may be taken should it be determined that any transfers are capable of being set aside.

5.3.2 *Unfair preference claims*

The Liquidators have reviewed Miluc's bank statements and identified certain transactions that may be preferential in nature. Noting the lack of records obtained to date, the Liquidators have requested further details which will allow for a further review of each identified transaction.

The Liquidators' investigations in relation to unfair preference claims is ongoing, and we may take further action should it be determined that any payments are capable of recovery.

5.3.3 *Director related transactions*

The Liquidators' review of Miluc's bank statements identified a history of receipts, mainly ATO refunds, being received into a Miluc account prior to being promptly withdrawn via cheque and bank cheque. Our analysis discloses 16 withdrawals exceeding \$439k in value. The Liquidators are unable to identify whom the cheques were made out to and have requested the relevant financial institution to provide copies of the cheques and we are currently awaiting a response.

Further to the above, certain parties have advised the Liquidators that, during the four years' prior to the Liquidators' appointment, they paid cash for (i) the purchase of Miluc's vehicles, and (ii) rent. The Liquidators have not identified cash deposits in Miluc's bank accounts that correspond with these payments and the Liquidators investigation of these transactions are ongoing.

In addition to the Vehicle discussed at section 3.1.2, the Liquidators' investigations have identified three vehicles transferred to related parties of the Director and/or Former Director. The Liquidators have written to these parties to seek further information in relation to these transactions.

The Liquidators' investigations in relation to these transactions are ongoing, including whether funds may have been misappropriated.

5.3.4 *Breach of Directors' duties*

As previously discussed, despite further attempts to contact Director, there has been no engagement from him. The Liquidators are liaising with the Australian Securities and Investments Commission (**ASIC**), who we expect will pursue the Director.

In addition to the breaches of the Director's duties detailed in the Administrators' Report, the Liquidators have obtained evidence of the Director exercising their power as an officer of Miluc without the Liquidators' consent, in contravention of section 471A of the Act.

The Liquidators have also written to the Former Director to request the provision of Miluc's books and records and a meeting to discuss Miluc's affairs. No response has been received to date.

The Liquidators will shortly provide a confidential report to ASIC pursuant to section 533 of the Act which will set out the breaches of the Act identified to date. It is our expectation that ASIC will require further investigations in this regard.



6 Receipts and payment to date

The below table details receipts and payments in the liquidation to 29 September 2021:

Receipts and Payments as at 29 September 2021	
	\$ (Including GST)
Receipts	
Property settlement proceeds	223,240.87
Secured creditor funding	22,031.32
Rental payments subject to dispute	9,024.81
Bond refund	500.00
Total receipts	254,797.00
Payments	
Secured creditor distribution	(28,322.00)
Property valuation	(10,540.00)
Insurance	(7,144.12)
Document search fees	(210.00)
Total payments	(46,216.12)
Closing cash balance as at 29 September 2021	208,580.88

7 Likelihood of a dividend

As at the date of this report, there has been no change in the estimated return to creditors outlined in the Administrators' Report. The estimated returns to each class of creditor are summarised as follows:

- National Australia Bank – 100 cents in the dollar;
- Caveat holders – Uncertain, subject to (i) adjudication of claims, (ii) outcome of ownership disputes (refer section 3.1.4.1), (iii) purchase prices obtained (net of costs), and (iv) the priority position of individual caveat holders; and
- Unsecured creditors – Uncertain, subject to (i) outcome of investigations, and (ii) adjudication of claims. In the event no recoveries are made from the Liquidators' investigations, no dividend will be payable to 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.

8 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 Administrators for the period from 23 June 2021 to 1 July 2021 totalling \$21,907 (excluding GST);
- retrospective remuneration of the Liquidators for the period from 11 August 2021 to 24 September 2021 totalling \$123,188 (excluding GST); and
- prospective remuneration for the period from 24 September 2021 to finalisation of the liquidation totalling \$100,000 (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 22 October 2021. 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.

9 **What happens next?**

We will proceed with the liquidation, which will include:

- realising the remaining properties, including securing and negotiating offers and attending to settlement;
- recovering any further available property;
- completing our investigations into Miluc's affairs;
- completing our investigations into Miluc's property disputes;
- pursuing any viable claims for the benefit of creditors if commercial to do so;
- completing our reporting to the corporate insolvency regulator, ASIC and subsequent engagement as required; and
- distributions to creditors.

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.

10 **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: 1 October 2021

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