

# Meltzer Mason Heath

Chartered Accountants practising as insolvency specialists

Refer to: Lloyd Hayward

## Liquidators' First Report

### ART Apartments Limited (In Liquidation) ("the Company")

#### 1. Appointment

We advise that Jeffrey Philip Meltzer, Arron Leslie Heath and Lloyd James Hayward were appointed joint and several Liquidators of the above company on 8 February 2008 by special resolution of shareholders.

Jeff Meltzer, Arron Heath and Lloyd Hayward are Chartered Accountants and full time Insolvency Practitioners. They have not previously acted in any capacity for the Company or the officers and shareholders of the Company.

#### 2. Background

<i>Date of Incorporation:</i>	17 February 2006	
<i>Trading Address:</i>	191 Queen Street, Auckland	
<i>Type of Business:</i>	Property Leasing	
<i>Date Ceased Trading:</i>	8 February 2008	
<i>Shareholder:</i>	Lancewood Limited	100 shares
<i>Directors:</i>	Neil Constantine Bell Rikki Allan Flowerday	
<i>Share Capital:</i>	100 ordinary shares	
<i>Date of Liquidation:</i>	8 February 2008	

#### 3. Events Leading to Appointment

During August 2007 the New Zealand operations of Blue Chip became part of a Master Franchise. The present directors were appointed and the operation continued to trade as previously. New companies were formed for trading, underwriting and franchise purposes.



From October 2007 the New Zealand franchise group began to experience cash flow problems mainly stemming from a funder withholding underwriting fees due on a property development in Auckland. The new directors also became aware that Bribanc Property Group Limited (“Bribanc”) was experiencing significant operational issues. For example Bribanc’s accounts and processes had not been maintained since the end of March 2007.

Media articles contributed to a fall in sales to investors and a consequent reduction in group income. The Group Directors attempted to raise additional capital and to sell assets but were largely unsuccessful in this endeavour.

Also the property portfolio managed by the Group experienced increased vacancy rates, putting additional pressure on cash flows.

As a result of these issues the Group Directors made the decision to appoint independent providers, Harcourts Real Estate and First Street Property Management Limited, to manage the portfolio. This decision would also enable the business to resolve the inaccuracies with crucial property data.

The issues combined to create a cash flow shortfall and interruption to client rental payments and investor payments.

As a consequence of the cash shortfall, non-completion of asset sales and downturn in new sales, the Group Directors determined that 19 of the group companies should be placed into voluntary liquidation and the Liquidators were consequently appointed.

#### **4. Proposals for Conducting the Liquidation**

The Company as part of the business known as Blue Chip acted as the lessee taking leases on short stay apartments from investors. In turn the Company via Bribanc Property Group Limited (in liquidation) (“Bribanc”), acting as property manager, sub-leased the properties on a short term basis.

The Company had continuing rental obligations to investors. It was not able to meet these obligations from on average December 2007. Since that time investors have been terminating their lease and taking control of the property directly. To date more than half the investors have terminated however the Company has a continuing obligation in relation to those investors who have yet to terminate their lease.

Funding for the payment of the lease obligations of the Company was by way of the rental income from sub-tenancies managed by Bribanc. We understand that not all rentals received by Bribanc have been passed to the Company and that there are receivables from other companies in the New Zealand franchise group, however as a result of the issues regarding the books and records of the Company referred to in point 3 above we cannot at this time be certain what the level of this receivable might be.

Having regard for the state of the financial records referred to in 3 above the Liquidators intend to undertake such analysis and reconciliations that are possible in the circumstances to confirm the existence and quantum of assets and liabilities.

### ***Realisation of Assets***

The major assets of the Company are amounts receivable from tenants and from Mide Limited (in liquidation) (“Mide”). Mide is insolvent and in liquidation, therefore any recovery of an amount due by Mide to the Company is uncertain.

In relation to receivables, normal debt recovery procedures will be implemented to recover unpaid rentals.

### ***Examination of Books and Records***

The Liquidators will examine the Company’s available books and records and conduct a review of the Company’s affairs. In particular the Liquidators intend to review:

- (a) Cashflows in the period prior to liquidation to ascertain the cash received from rental income and how that cash was disbursed.
- (b) The circumstances regarding the creation of “New Zealand Private Group” of which the Company is a part and the arrangements regarding the Blue Chip franchise contracted to the New Zealand Private Group.
- (c) Transactions with related parties. A consequence of the incomplete processing of transactions and reconciliations is that we have not yet been able to confirm the amounts that may be due from or payable to related party entities. Therefore the Estimated Statement of Position excludes any related party amount.
- (d) Assess whether the directors (or any previous director) have breached any duty to the Company as set out in the Companies Act 1993.

### ***Knowledge of Information Relevant to the Liquidation***

Should investors, creditors and other parties possess any information that may be relevant to the liquidation, or may lead to realisations for the benefit of creditors, please advise the Liquidators in writing and provide them with copies of supporting documents.

## **5. Statement of Affairs**

The Liquidators have prepared an Estimated Statement of Affairs based on the books and records of the Company. At the date of liquidation the books and records of the Company were not up to date in terms of processing transactions and reconciliations. We therefore have considerable doubt as to the accuracy and reliability of the financial records and the assets and liabilities disclosed therein. We have nevertheless prepared the Estimated Statement of Affairs based on extracts from the Company’s records so as to give creditors a preliminary view of the financial position of the Company. The attached copy of the Estimated Statement of Assets and Liabilities must therefore be read having regard for this and the disclaimer.

## **6. List of Creditors**

A list of all known creditors has been compiled by the Liquidators. Ordinarily this list must accompany the Liquidators First Report. The Liquidators applied to the High Court to vary the Companies Act 1993 requirement to deliver a list to every creditor. The High Court approved the variation and directed that the list of creditors be available on the Meltzer Mason Heath website and by post if requested.

The list of creditors is available on our website at [www.mmh.co.nz](http://www.mmh.co.nz). Any creditor who wishes to have a copy posted to them, please phone 09 357 6150 or email [lloyd@mmh.co.nz](mailto:lloyd@mmh.co.nz) to request a copy.

## **7. Creditor's Claim Form**

Creditors should complete and return a creditor's claim form. Our first communication with investors and creditors on 15 February 2008 included a claim form and asked creditors to complete this and return to our office by 18 March 2008. Creditors who do not make a claim within the period may be excluded from any distribution that may be made.

If you do not have a claim form and require one, the form is available on our website at [www.mmh.co.nz](http://www.mmh.co.nz) or by post. Please phone 09 357 6150 or email [lloyd@mmh.co.nz](mailto:lloyd@mmh.co.nz) to request a copy.

## **8. Retention of Title Claims/Security Interests**

Please note, if you believe you have a valid retention of title claim or security interest over goods or equipment supplied to ART Apartments Limited (In Liquidation), and you have not yet contacted the Liquidators, please contact us immediately.

## **9. Initial Creditors Meeting**

The Liquidators intend to hold a creditors meeting. Attached to this report is a notice of meeting, agenda and other documents related to the meeting.

## **10. Liquidation Committee**

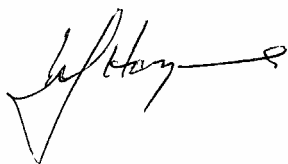
In the notice of meeting referred to above the Liquidators have called for nominations for the Liquidation Committee to be elected at the creditors meeting. If you wish to make a nomination for the Liquidation Committee please ensure you have your nomination with the Liquidators 48 hours before the meeting.

A Liquidation Committee has certain powers set out in s315 of the Companies Act 1993, including to assist the Liquidators as appropriate in the conduct of the liquidation.

## **11. Estimated Date of Completion of Liquidation**

It is not practicable to estimate the date of completion of the liquidation at this stage.

Enquiries should be directed to: Lloyd Hayward

A handwritten signature in black ink, appearing to read 'L J Hayward', with a long horizontal flourish extending to the right.

L J Hayward  
**Liquidator**

Dated this 6<sup>th</sup> day of March 2008

Attach:

**Estimated Statement of Affairs of  
ART Apartments Limited (In Liquidation)  
As at the date of the Appointment of Liquidators  
Being 8 February 2008**

	<i>Book Value</i>	<i>Estimated realisable Value</i>
	\$	\$
<b>Assets:</b>		
Debtors	1,250,000	Unknown
Intercompany Receivables	1,900,000	<u>Unknown</u>
<b>Estimated Total Assets Available for Creditors</b>		Unknown
<b>Liabilities:</b>		
<i>Less</i> – Unsecured Creditors	4,600,000	<u>4,600,000</u>
<b>Estimated Total Deficiency as regards Unsecured Creditors</b>		<u><u>\$4,600,000</u></u>

**Note:** The above estimates are subject to the costs of realisation, including Liquidators' fees.

Having regard for the information available at this time the Liquidators are not able to give meaningful estimates of the realisable value of assets and liabilities.

**Disclaimer of Liability:**

We have prepared the Estimated Statement of Affairs as at the date of liquidation being 8 February 2008.

The Estimated Statement of Affairs has been prepared based on information from the books and records of the Company together with information supplied by the Director. This information has not been verified. The Liquidators have not carried out an audit or reviewed the information supplied and therefore they do not accept any responsibility for the accuracy of the information from which the Estimated Statement of Affairs has been prepared. Further, the Estimated Statement of Affairs has been prepared for the purpose of the liquidation only, and the Liquidators do not accept any responsibility on any ground whatever, including liability in negligence, to any other person.

L J Hayward  
**Liquidator**

6 March 2008