

IN THE SUPREME COURT OF NEW SOUTH WALES  
DIVISION: EQUITY  
REGISTRY: SYDNEY  
CORPORATIONS LIST

M.S.

FILED

17 MAY 2015

No 2014 / 376655



IN THE MATTER OF RETAIL ADVENTURES PTY LIMITED (IN LIQUIDATION)  
ACN 135 890 845

Sperling Enterprises Pty Ltd  
ACN 001 882 364  
Plaintiff

Retail Adventures Pty Limited (In Liquidation)  
ACN 135 890 845  
First Defendant

Vaughan Neil Strawbridge, John Lethbridge Greig and David John Frank Lombe  
in their capacities as joint and several liquidators of the First Defendant  
Second Defendant

TNW Australia Pty Limited  
ACN 072 775 529  
Third Defendant

### AFFIDAVIT OF KATHRYN JANE EVANS

On 1 May 2015, I, Kathryn Jane Evans, Chartered Accountant of Level 2, Grosvenor Place, 225 George Street, Sydney NSW 2000 say on oath:

1. I am employed by Deloitte Touche Tohmatsu as an Account Director within the Restructuring Services team. During the course of my employment I have been involved in the day to day management of the liquidation of Retail Adventures Pty Limited (In Liquidation) (**RAPL**) under the supervision of Vaughan Neil Strawbridge, John Lethbridge Greig and David Frank Lombe, each in their capacity as joint and several liquidators of RAPL (the **Liquidators**). I am authorised by Messrs Strawbridge, Greig and Lombe to make this affidavit.

---

Filed on behalf of: The First and Second Defendants  
Prepared by:  
Herbert Smith Freehills  
Lawyers  
ANZ Tower 161 Castlereagh Street Sydney NSW  
2000  
Email: mark.clifton@hsf.com

DX: 361 Sydney  
Tel: +61 2 9225 5000  
Fax: +61 2 9322 4000

Ref: MRC/82108820  
Attention: Mark Clifton

A handwritten signature in black ink, appearing to be "Mark Clifton".

A handwritten signature in black ink, appearing to be "Kathryn Jane Evans".

2. I refer to the affidavit of Vaughan Neil Strawbridge sworn in these proceedings on 27 February 2015 (**VNS Affidavit**).
3. Unless otherwise defined, capitalised terms referred to in this affidavit have the meaning given to them in the VNS Affidavit.

**Presentation of accounts and statement**

4. On or about 2 March 2015 the Liquidators caused to be lodged with ASIC a Form 524 Presentation of Accounts and Statement in respect of RAPL for the period 3 August 2014 to 2 February 2015.
5. Annexed hereto and marked "**KJE-A**" is a true copy of the ASIC Form 524 lodged on or about 2 March 2015.

**Preparation of Annual Report to Creditors**

6. On or about 1 May 2015 the Liquidators sent an Annual Report to Creditors in respect of the Liquidators' conduct of the liquidation of RAPL to the creditors of RAPL.
7. Annexed hereto and marked "**KJE-B**" is a true copy of the Annual Report to Creditors dated 30 April 2015.

AFFIRMED at Sydney  
 Signature of deponent Kathryn Evans  
 Name of witness VERONICA LOUISE MORLAND  
 Address of witness c/- 161 CASTLEREAGH ST, SYDNEY NSW 2000  
 Capacity of witness Solicitor of the Supreme Court of New South Wales

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 I saw the face of the deponent.
- 2 I have known the deponent for at least 12 months.

Signature of witness

alld

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

**Australian Securities & Investments Commission**

This and the following 11 pages forms the annexure marked "KJE-A" referred to in the affidavit of KATHRYN JANE EVANS ~~sworn~~ affirmed before me VERONICA LOUISE MORLAND this 1 day of MAY 2015 Solicitor of the Supreme Court of New South Wales  
*alaloe*

Electronic Lodgement Document No. <b>7E6763079</b> Lodgement date/time: 02-03-2015 16:16:53 Reference id: 91176163
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**Form 524**  
Corporations Act 2001  
539(1), s539(7)

## Presentation of accounts and statement

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### Liquidator details

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Registered liquidator number

**322301**

Registered liquidator name

**VAUGHAN NEIL STRAWBRIDGE**

---

### Company details

---

Company name

**RETAIL ADVENTURES PTY LIMITED**

**135 890 845**

---

### Appointment details

---

Date appointment commenced :

**03-02-2014**

Type of appointment :

Liquidator of creditors' voluntary liquidation

Are these accounts final?

**No**

---

### Account & statement details

---

Period for which the accounts and statement are made up

From

**03-08-2014**

To

**02-02-2015**

---

## Authentication

---

This form has been authenticated by  
Name VAUGHAN NEIL STRAWBRIDGE  
This form has been submitted by  
Name Tanya GEORGE  
Date 02-03-2015

---

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





## Presentation of accounts and statement

This form is to be used for the presentation of accounts and statement by an administrator, provisional liquidator; court appointed liquidator; members' voluntary liquidator; creditors' voluntary liquidator; receiver; receiver & manager; managing controller (other than receiver and manager); controller (other than receiver, receiver and manager or managing controller); deed administrator or scheme administrator under Part 5.1.

If there is insufficient space in any section of the form, you may photocopy the relevant page(s) and submit as part of this lodgement

### Company details

Company Name

Retail Adventures Pty Limited  
(In Liquidation)

ACN/ABN

135 890 845

### Lodgement details

An image of this form will be available as part of the public register.

Who should ASIC contact if there is a query about this form?

ASIC registered agent number (if applicable)

8077

Firm/organisation

Deloitte Touche Tohmatsu

Contact name/position description

Kathryn Evans

Telephone number (during business hours)

(02) 9322 7000

Email address (optional)

Postal address

Grosvenor Place  
225 George Street  
SYDNEY NSW 2000

### 1 Details of appointment

Date of commencement

03/02/2014

[D D] [M M] [Y Y]

Type of appointment  
Tick one box

- |                                     |                                                                               |                                     |
|-------------------------------------|-------------------------------------------------------------------------------|-------------------------------------|
| <input type="checkbox"/>            | Administrator                                                                 | ASIC Internal form code<br>524Y & Z |
| <input type="checkbox"/>            | Provisional liquidator                                                        | 524C & D                            |
| <input type="checkbox"/>            | Liquidator of Court liquidation                                               | 524E & F                            |
| <input type="checkbox"/>            | Liquidator of members' voluntary liquidation                                  | 524G & H                            |
| <input checked="" type="checkbox"/> | Liquidator of creditors' voluntary liquidation                                | 524J & K                            |
| <input type="checkbox"/>            | Receiver                                                                      | 524L & M                            |
| <input type="checkbox"/>            | Receiver and manager                                                          | 524N & P                            |
| <input type="checkbox"/>            | Managing controller (other than receiver and manager)                         | 524 Q & R                           |
| <input type="checkbox"/>            | Controller (other than receiver, receiver and manager or managing controller) | 524S & T                            |
| <input type="checkbox"/>            | Deed administrator                                                            | 525U & V                            |
| <input type="checkbox"/>            | Scheme administrator under Part 5.1                                           | 524W & X                            |

1 Continued... Details of appointment

Details of the accounts

The period for which the accounts and statements are made up can not be more than 6 months.

Final accounts and statements must be made up to the date on which the external administrator ceased to act.

Are the accounts final?

Yes

If yes, provide date when you ceased to act and period for which the accounts and statements are made up

Accounts and statements made up from

[D D] [M M] [Y Y]

to

[D D] [M M] [Y Y]

Date of ceasing to act

[D D] [M M] [Y Y]

No

If no, provide period for which the accounts and statements are made up

Accounts and statements made up from

[D D] [M M] [Y Y]

to

[D D] [M M] [Y Y]

Details of the appointee(s)

Date of appointment

[D D] [M M] [Y Y]

Firm name (if applicable)

Name

Address

Country (if not Australia)

Date of appointment

[D D] [M M] [Y Y]

Firm name (if applicable)

Name

Address

Country (if not Australia)

---

1 Continued... Details of appointment

---

Details of the appointee(s)

Date of appointment

03/02/2014

[D D] [M M] [Y Y]

Firm name (if applicable)

Deloitte Touche Tohmatsu

Name

David John Frank Lombe

Address

Grosvenor Place  
225 George Street  
SYDNEY NSW 2000

Country (if not Australia)

1 Continued... Details of appointment

Details of the original appointment  
Complete this section only if you are a controller

Appointment by court order  
Provide details of court

Federal Court of Australia  
State or territory registry

Family Court of Australia  
State or territory registry

Supreme Court  
State or territory

Date of obtaining order

[D D] [M M] [Y Y]

Proceeding-matter number

Year

Complete both dates.

Appointment by instrument

Date of appointment

[D D] [M M] [Y Y]

AND

Date of instrument

[D D] [M M] [Y Y]

Description of instrument

Instrument registered in the Personal Property Securities Register  
Security interest number

Instrument registered in other register  
Please specify details

Instrument not registered  
Name of appointer

Creditors' meeting or report  
Complete this section only if a voluntary liquidation by creditors

Date of last annual meeting of creditors

[D D] [M M] [Y Y]

Was a quorum present at this meeting?

Yes  No

OR

The liquidator decided not to convene a meeting of the creditors and has lodged a copy of the report with ASIC

Date report lodged with ASIC

[D D] [M M] [Y Y]



## 2 Dividend

Complete this section in full only if you are a court or creditors' voluntary liquidator or deed administrator. This section is not relevant to provisional liquidation appointments. If you are the liquidator of a members' voluntary liquidation, you need only provide information on the dividends paid to contributories.

Your estimate of total creditors in this administration at the date of this account

Category	Estimated number of creditors	Estimated value
Priority	0	0.00
Secured	0	0.00
Unsecured	1,084	165,124,776.90
Deferred	0	0.00

Dividends paid since your appointment and to the date of this account.

Category	Date(s) paid	Rate of dividend	Total paid
Priority			
Secured			
Unsecured			
Deferred			
Contributories			

## 3 Secured lenders

This section for controllers only as required by s432

Amount owing under instrument at the date of appointment/control day

Amount owing under instrument at date of this account

Estimated value of property subject to the instrument at date of this account

## 4 Summary of professional fees and completion dates

Complete this section for all appointments except provisional liquidation appointments.

Professional fees and outlays	Remuneration paid to you during the period for which this account is made up (inclusive of GST)	\$545,299.15
	Remuneration paid to you from the date of your appointment to the date to which this account is made up (inclusive of GST)	\$816,432.10
	Amount received by you in respect of expenses during the period for which this account is made up (inclusive of GST)	\$23,209.08
	Amount received by you in respect of expenses from the date of your appointment to the date to which this account is made up (inclusive of GST)	\$23,209.08

Estimated completion date

Month and year by which you expect this appointment will be completed

12/2016

[M M] [Y Y]

At the date of this account how long have you been appointed?

1

Years

0

months

#### 4 Continued... Summary of professional fees and completion dates

Include both operational and abnormal causes of delay, together with a likely date of event which may be the cause of the delay. For example:

- Collection of debtors
- terms of deed to be satisfied
- finalising litigation
- declaring a dividend.

Details of causes which may delay the termination of your appointment

Pursuing preference recoveries. Distributing dividends to creditors.

#### 5 Account of receipts and payments

This section for all appointments.

##### Receipts

(Exclude the principal component of matured investments)

Total amounts received by you before the period for which this account has been made up \$7,421,766.38

Total amounts received by you during the period for which this account has been made up (attach detailed schedule) \$16,110,450.54

---

**Total receipts** (this total carried forward to next account) **\$23,532,216.92**

---

##### Payments

(Exclude principal amounts invested or rolled over)

Total payments made by you before the period for which this account has been made up \$1,730,055.19

Payments made by you during the period for which this account has been made up (attach detailed schedule) \$1,605,894.99

---

**Total payments** (this total carried forward to next account) **\$3,335,950.18**

---

##### Reconciliation of money held

Cash in hand \$0.00

Cash at bank

Credit as per bank statement \$20,196,881.42

Less unpresented cheques (\$614.68)

Add outstanding deposits \$0.00

\$20,196,266.74

Amounts invested and not converted to cash \$0.00

---

**Total balance of money held** **\$20,196,266.74**

---

## 6 Estimated outcome

Complete this section for court and creditors' voluntary liquidations only.

Do you expect that a dividend will be paid to any class of creditor?

Yes  No (if no go to Section 7 Your verification of this account and statement)

If yes, complete the **Statement of financial position and estimated outcome of your appointment**

### Statement of financial position and estimated outcome of your appointment

Details only required for court and creditors' voluntary winding-up where it is expected that a dividend will be paid to any class of creditor.

	Total estimated future net realisable value	
	Estimated (High)	Estimated (Low)
	\$	\$
<b>Expected net asset recoveries</b>		
Total money held at date of this account (amount taken from above)	\$20,196,266.74	\$20,196,266.74
Interests in land	\$0.00	\$0.00
Sundry debtors	\$0.00	\$0.00
Stock on hand	\$0.00	\$0.00
Work in progress	\$0.00	\$0.00
Plant and equipment	\$0.00	\$0.00
Potential legal recoveries	\$6,000,000.00	\$4,000,000.00
Contingent assets	\$0.00	\$0.00
Other recoveries:		
<b>Estimated net asset recoveries at date of this account</b>	<b>\$26,196,266.74</b>	<b>\$24,196,266.74</b>
Less estimated future insolvency practitioners remuneration	(\$3,000,000.00)	(\$3,500,000.00)
Less estimated future other payments or costs incurred	(\$600,000.00)	(\$800,000.00)
<b>Estimated net asset recoveries at date of this account available for further dividends to creditors</b>	<b>\$22,596,266.74</b>	<b>\$19,896,266.74</b>
Less estimated future dividends to priority creditors	\$0.00	\$0.00
Less estimated future payments to secured creditors	\$0.00	\$0.00
Less estimated future dividends to unsecured creditors	(\$22,596,266.74)	(\$19,896,266.74)
Less estimated future dividends to deferred creditors	\$0.00	\$0.00
<b>Balance for contributories</b>	<b>\$0.00</b>	<b>\$0.00</b>

Provide details of any arrangement where assets of the company have been disposed of by you for consideration other than for cash or of any benefit that you have received directly or indirectly resulting from this appointment.

None

#### Disclaimer

The Statement of financial position and estimated outcome is an estimate only based on information available at the date of these accounts. The information included in this section should be viewed as a guide only. Many factors affect the estimated outcome to creditors. The data used in this section will change as further information becomes available and after all matters in the insolvency administration are finalised.



---

## 7 Your verification of this account and statement

This section must be completed for all appointments

---

I/we declare that the statements ticked below are correct.

### Statement

The information given in the statement is true to the best of my/our knowledge and belief at the date of signing.

### If there are receipts & payments

The account of receipts and payments set out in the annexure marked (A) of ( 1 to 2 ) pages contains a full and true account of my/our receipts and payments in this period and I/we have not, nor has any other person by my/our order or for my/our use during that period, received or paid any money on account of the company other than and except the items mentioned and specified in that account.

Dates must be provided if there are receipts or payments.

The period from

03/08/2014  
[D D] [M M] [Y Y]

to

02/02/2015  
[D D] [M M] [Y Y]

### If no receipts & payments

I/we have not, nor has any other person by my/our order or for my/our use during that period, received or paid any money on account of the company.

---

---

## Signature

This must be signed by the external administrator(s).

Name

Vaughan Neil Strawbridge

Signature

Date signed

[D D] [M M] [Y Y]

Name

Signature

Date signed

[D D] [M M] [Y Y]

---

## Lodgement

Send completed and signed forms to:  
Australian Securities and Investments Commission,  
PO Box 4000, Gippsland Mail Centre VIC 3841

**For more information**  
Web [www.asic.gov.au](http://www.asic.gov.au)  
Need help? [www.asic.gov.au/question](http://www.asic.gov.au/question)  
Telephone 1300 300 630

Or lodge the form online by visiting the ASIC website  
[www.asic.gov.au](http://www.asic.gov.au)

**Company details**

## Company Name

Retail Adventures Pty Limited  
(In Liquidation)

## ACN/ABN

135 890 845

**Account of receipts and payments for the period****Receipts**

Date	Receipts from	Nature of receipts/explanation	Amount \$0.00
05/08/2014	Jan Cameron	Legal Settlement	12,500,000.00
05/08/2014	Jan Cameron	Settlement of Preferences	1,340,813.92
13/08/2014	NSW OSR	Payroll Tax Refund	8,534.92
01/09/2014	ANZ Banking Group Ltd	Bank Interest	7,036.08
15/09/2014	Australian Taxation Office	GST Clearing Account	282.00
15/09/2014	ANZ Banking Group Ltd	GST Clearing Account	379.00
19/09/2014	Victoria SRO	Payroll Tax Refund	422.76
01/10/2014	ANZ Banking Group Ltd	Bank Interest	2,933.90
09/10/2014	Revenue SA	Payroll Tax Refund	824.03
09/10/2014	Tasmania SRO	Payroll Tax Refund	454.38
15/10/2014	Australian Taxation Office	GST Clearing Account	10,252.56
23/10/2014	Australian Taxation Office	GST Clearing Account	31,425.57
03/11/2014	ANZ Banking Group Ltd	Bank Interest	2,741.72
12/11/2014	National Australia Bank	Bank Interest	132,041.10
13/11/2014	National Australia Bank	Bank Interest	1,036.44
01/12/2014	ANZ Banking Group Ltd	Bank Interest	2,119.23
19/12/2014	Confidential settlement	Settlement of Preferences	2,000,000.00
02/01/2015	ANZ Banking Group Ltd	Bank Interest	3,204.45
29/01/2015	Confidential settlement	Settlement of Preferences	62,500.00
02/02/2015	ANZ Banking Group Ltd	Bank Interest	3,448.48
		<b>Total</b>	<b>\$16,110,450.54</b>

**Payments**

Date	Payments to	Nature of payments/explanation	Amount \$0.00
07/08/2014	Australian Securities & Investments Commission	Other Government Charges	27.00
12/08/2014	KwikKopy	Postage	3,283.37
13/08/2014	Deloitte Finance Pty Ltd	Liquidators Remuneration	341,617.65
13/08/2014	Deloitte Finance Pty Ltd	Liquidators Expenses	9,272.01
13/08/2014	Deloitte Finance Pty Ltd	Liquidators Expenses	6,790.53
29/08/2014	ANZ Banking Group Ltd	Bank Charges	2.55
23/09/2014	Deloitte Finance Pty Ltd	IT Service Suppliers	5,289.35
23/09/2014	Deloitte Finance Pty Ltd	IT Service Suppliers	5,225.55
23/09/2014	Deloitte Finance Pty Ltd	Data Room	649.77
25/09/2014	Deloitte Finance Pty Ltd	Liquidators Remuneration	203,681.50
25/09/2014	Deloitte Finance Pty Ltd	Liquidators Expenses	7,146.54
25/09/2014	Herbert Smith Freehills	Legal Fees (Taxable)	219,592.65
25/09/2014	Herbert Smith Freehills	Legal Fees (Taxable)	147,997.67
25/09/2014	Herbert Smith Freehills	Legal Fees (Non-Taxable)	635.95
30/09/2014	ANZ Banking Group Ltd	Bank Charges	1.75
02/10/2014	Institute of Chartered Accountants in Australia	Hire of Meeting Room	1,270.50
22/10/2014	Herbert Smith Freehills	Legal Fees (Taxable)	83,703.65
22/10/2014	Herbert Smith Freehills	Legal Fees (Taxable)	375,664.62
22/10/2014	Herbert Smith Freehills	Legal Fees (Non-Taxable)	16.60
22/10/2014	Deloitte Finance Pty Ltd	Data Room	13,629.15
31/10/2014	ANZ Banking Group Ltd	Bank Charges	3.05
28/11/2014	ANZ Banking Group Ltd	Bank Charges	0.50
17/12/2014	IMF Limited	Legal Settlement	153,687.05
17/12/2014	Actew AGL	Electricity	26,089.05
31/12/2014	ANZ Banking Group Ltd	Bank Charges	1.80
30/01/2015	ANZ Banking Group Ltd	Bank Charges	0.50
02/02/2015	Deloitte Finance Pty Ltd	Data Room	614.68



Payments

Date	Payments to	Nature of payments/explanation	Amount \$0.00
Total			<u>\$1,605,894.99</u>

This is annexure (A) of ( 1 to 2 ) page(s) referred to in Form 524 *Presentation of accounts and statements*

**Signature**

Name

Vaughan Neil Strawbridge

Signature

Date signed

[D D] [M M] [Y Y]

**Deloitte.**

This and the following 14 pages forms the  
annexure marked "KJEB" referred to in the  
affidavit of KATHRYN JANE EVANS  
~~sworn~~ affirmed before me  
VERONICA LOUISE MOALAND  
this 1 day of MAY 2015  
Solicitor of the Supreme Court of New South Wales



**RETAIL ADVENTURES PTY LTD  
(In Liquidation)**

**ACN 135 890 845**

**Annual Report to Creditors  
30 April 2015**



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## 1 Key Messages

The purpose of this report is to provide creditors with information on our actions and dealings from the date of our appointment as Liquidators to the date of this report and should be read in conjunction with our previous reports and circulars to creditors. These can be found at: <http://www.deloitte.com/au/retailadventures>.

### 1.1 Distribution of funds to creditors

On 7 April 2015 we wrote to creditors advising of our intention to pay an interim dividend. Based on proofs of debt received as at the date of this report, we estimate the interim dividend at approximately 11 cents in the dollar of admitted claims however this remains dependent upon the final estimate of creditors' claims and is before any amount the Court finds owed to IMF Bentham Ltd in priority to unsecured creditors.

### 1.2 Recoveries

We are currently holding \$19.2m in funds. Since our appointment we have settled the following potential legal claims:

Claim	Recoveries (\$'000s)	Report Reference
Voidable Security Claim	3,950	3.1
Insolvent Trading Claim	12,500	3.2
Preference Payments	4,789	3.3
<b>Total</b>	<b>21,239</b>	

As part of the settlements we negotiated that parties involved in the above claims agreed not to claim for a distribution in the Liquidation. This has reduced the creditor pool by \$54m.

We are continuing to pursue creditors we have identified as potentially receiving payment in priority to other creditors however due to the commercially sensitive nature of ongoing negotiations and potential litigation, an estimated recovery is not be provided at this time.

### 1.3 Application by IMF Bentham Ltd

Creditors funded by IMF Bentham Limited (Funded Creditors) have commenced an application in Court to have the costs and funding fee owed by Funded Creditors to IMF Bentham Pty Ltd to be paid in priority to any distribution to unsecured creditors. The hearing has been scheduled to be heard on 6 May 2015.

If the Court finds in favour of Funded Creditors, the pool of funds available to unsecured creditors will be reduced. We do not have the information available to us at this time to calculate the exact amount of the reduction but have estimated it could be as much as \$1.9m which would reduce the dividend to creditors by 1.4 cents in the dollar.

### 1.4 Next steps

Future work to be undertaken by us includes:

- Pursuit of creditors identified as receiving preference payments, including public examinations and legal action
- Attend the hearing for the S564 Application and await the judgment
- Finalise adjudication of creditor claims and payment of a dividend
- Finalise recoveries and payment of final dividend.

Based on the above we anticipate the Liquidation will continue for a further 12 months.

## 2 Introduction

### 2.1 Appointment

We, Vaughan Neil Strawbridge, David John Frank Lombe and John Lethbridge Greig were appointed Joint and Several Liquidators of Retail Adventures Pty Ltd (the Company or RAPL) on 3 February 2014.

This followed our appointment as Administrators on 26 October 2012.

Our appointment as Liquidators followed an application by a group of creditors funded by IMF Bentham Ltd (Funded Creditors) to the Supreme Court of New South Wales (the Court). They sought orders to set aside the resolution executing a Deed of Company Arrangement that was passed at a meeting of creditors held on 2 September 2013 (Section 600A Proceedings). The Funded Creditors were successful in their application and effective 3 February 2014 the Company was placed into Liquidation and we were appointed as the Liquidators.

### 2.2 Purpose of Report

This report has been prepared in accordance with Section 508(3) of the *Corporations Act 2001* (the Act). The purpose of this report is to provide creditors with information on our actions and dealings from the date of our appointment as Liquidators to the date of this report and should be read in conjunction with our previous reports and circulars to creditors.

Pursuant to Section 508(1)(b)(ii) of the Act, we have decided to preserve costs and prepare an annual report to update creditors on the status of the Liquidation rather than convene a meeting of creditors.

A copy of this report will be lodged with the Australian Securities and Investments Commission (ASIC).

## 3 Liquidators' actions to date

### 3.1 Voidable Security Claim pursuant to Section 588FE of the Act

In June 2014 we recovered \$3.95m under a Deed of Settlement with Bicheno Investments Pty Ltd (Bicheno), DSG Holdings Australia Pty Ltd (DSG) and the Director. As part of the settlement negotiations we also received \$1.05m in satisfaction of the costs order relating to the S600A proceedings and \$1.05m from a supplier who received payments from RAPL we had identified as potentially preferential in nature (Preference Payment).

The settlement arose out of a potential voidable security claim we had identified during our investigations during the Voluntary Administration period. In the period May 2010 to May 2012 Bicheno as trustee of the Jan Cameron Trust and DSG provided loans to RAPL via Retail Adventures Holdings Pty Ltd (In Liquidation) (RAHPL). Our investigations indicated that \$49.77m of this amount could be voidable or invalid under Section 588FE of the Act due to the loans being granted on an unsecured basis and then later secured at a time when we believe RAPL may have been insolvent.

Under the business sale agreement with DSG, part of the sale price paid by DSG was offset against these secured loans. If the security was found voidable under Section 588FE of the Act, the amount payable to RAPL by DSG could be approximately \$13.8m.

In our S439A Report to Creditors dated 19 August 2013 we estimated the recovery between \$0 and \$13.8m.

As part of the negotiations for the sale of the business to DSG, DSG and Bicheno provided a first ranking general security agreement (GSA) over the assets of DSG up to \$13m. This security originally expired on 30 June 2014, however this was extended initially until 31 July 2014 and then until 31 October 2014.



On 1 April 2014 our lawyers filed an affidavit in Court in proceedings against RAHPL under Section 471B of the Act. Orders allowing leave to proceed were made on 10 April 2014 and the statement of claim was lodged with the Court on that day (S588FE Proceedings). At the time of lodging the claim we received advice that DSG intended to apply to the Court for DSG to seek leave to be joined to the action. This would enable DSG to defend the action in circumstances where the Liquidators of RAHPL had no funds to defend the claim. At a directions hearing on 8 May 2014 the registrar made Orders that DSG be granted leave to be joined to the proceedings as the second defendant.

Due to the considerable risk and cost associated with commencing litigation to resolve this claim and other claims against the Director and related parties, we sought to negotiate a settlement with Ms Cameron and related parties outside a legal process.

Following a period of negotiations, we received an offer through Ms Cameron's legal advisors from DSG and Bicheno to enter into a deed of settlement regarding the S588FE Proceedings and the GSA held by RAPL over DSG. This also included the proposed settlement of a Preference Payment claim against a supplier.

The offer received was discussed with the Committee of Inspection (COI or Committee). Following approval from RAPL's COI a Deed of Settlement was signed on 11 June 2014 on the following terms:

- Immediate payment of \$3.95 million to the Liquidators
- DSG, Jan Cameron and Bicheno withdrew all proofs of debt and released RAPL from their claims in the Liquidation of RAPL (totalling c.\$36m)
- The Liquidators were not prevented from pursuing insolvent trading claims against the Director and former Directors of RAPL
- The Liquidators agreed not to pursue DSG for insolvent trading
- The Liquidators agreed not to pursue Bicheno for insolvent trading. This was agreed to on the basis of a warranty provided by Bicheno and Jan Cameron that at all times since October 2010, Bicheno held the shares in DSG, and was required to exercise all powers in respect of those shares, in a fiduciary capacity as trustee of the Jan Cameron Trust. This enabled the Liquidators to be satisfied that Bicheno was not a holding company for the purposes of Section 588V of the Act and would not therefore be liable for an insolvent trading claim
- DSG's debt in RAHPL and security over RAHPL to be assigned to RAPL
- Bicheno agreed to pay a total of \$1.05 million to the Liquidators and Funded Creditors who brought the application to set aside the deed of company arrangement in satisfaction of the cost orders relating to the S600A Proceedings
- The GSA held by RAPL over DSG to be assigned to Bicheno or its nominee
- The Liquidators agreed to discontinue the S588FE Proceedings against RAHPL and DSG.

## 3.2 Insolvent Trading Claim and Related Party Preferences

In August 2014 we recovered \$13.84m as a result of entering into a settlement with the Director and former Directors of the Company in respect of a potential claim we had against them for trading the Company while it was insolvent (Insolvent Trading Claim) and against related entities of the Director for Preference Payments.

Our investigations during the Administration and Liquidation identified a potential claim pursuant to Section 588G of the Act against the Director and former Directors of the Company for trading the Company while it was insolvent. The claim was estimated to total \$48.284m in the S439A Report, with the estimated realisation in a liquidation scenario to be between \$19.314m and \$31.385m, before costs associated with the recovery.

Following unsuccessful mediation with Ms Cameron on 1 July 2014, a Statement of Claim was in the process of being prepared for lodgement with the Court to begin legal action against the Director and former Directors for

trading the Company while it was insolvent. Despite the unsuccessful mediation, we continued discussions with the Director regarding the possible settlement of all claims against them.

As part of our ongoing investigations we had obtained orders from the Court for production of documents against 10 parties. We had also scheduled public examinations for 4 August 2014 of the Director and former Director, Bruce Irvine.

On 29 and 30 July 2014, the terms of a proposed settlement of the insolvent trading claim and related party preferences were tabled to the Committee. The terms of the settlement were approved by the Committee. We agreed to settle the claims having regard to:

- The inherent risks in any litigation
- The cost and time it would take to successfully prosecute the claims to a final conclusion
- Our assessment of the ability of the Director and former Directors' to satisfy any judgement if successful based on information received from the Directors and former Directors including documents produced to the Court as part of the examination process
- The potential time, cost and uncertainty associated with steps that would be required to enforce a judgement
- Legal advice received including Senior Counsel.

The settlement was as follows:

- \$12.5m settlement for the Insolvent Trading Claim
- \$1.34m settlement for the related party Preference Payments (refer to Section 3.3 below).

The settlement funds were received in full on 5 August 2014 and resolved all claims against the Director, former Directors and related entities of the Director. All parties agreed not to participate in any distribution in the Liquidation of the Company. Together with the Voidable Security Settlement this results in the estimated reduction in total creditor claims by \$36m.

As a consequence of the settlement the public examinations did not proceed.

### 3.3 Other Preference Payments

We have negotiated settlements to recover Preference Payments totalling \$4.789m. This includes \$4.519m recovered to date with a further \$270k due as part of negotiated settlements. It also includes the supplier payment of \$1.05m mentioned above in Section 3.1 and \$1.34m in related party party payments mentioned in Section 3.2.

During the Voluntary Administrations our investigations identified \$50m in payments made by RAPL to creditors identified by the Liquidators as potentially preferential in nature pursuant to S588FA of the Act. The result of these payments is the creditors received more than they would have received from the Company if the payments were set aside and the creditor were to prove in the Liquidation. The Act empowers Liquidators to take legal action to recover these payments.

Since the commencement of the Liquidation, our investigations into the possible recovery of Preference Payments have continued and include the following activities:

- Further investigations to obtain evidence to support the claims
- Writing to those creditors we have identified as receiving potential Preference Payments
- Engaging lawyers to provide advice on the strength of claims and communicate and negotiate with creditors' lawyers
- Conducting public examinations and the commencement of legal action to recover the Preference Payments.



The table below provides an updated position on the preferences that the Liquidators are continuing to investigate and pursue if appropriate.

Category	No.	Estimated preference value (\$'000s)	No. Settled	Amount settled (\$'000s)
Unsecured Creditors	56	41,187	5	3,448
Related Party	4	2,345	4	1,341
Total	60	43,532	9	4,789

All but one of the settled claims (\$41k) include a clause that states that the creditor will not participate in any dividend distribution. This results in an overall reduction of total creditor claims by approximately \$18.7m.

The estimated preference value of \$43.532m should **not** be interpreted as the amount the Liquidators expect to recover from Preference Payment recoveries. The final value realisable will be dependent upon:

- The ability of the creditors to successfully defend the allegations made by the Liquidators that they have received a Preference Payment (in part or in full). We note the majority of creditors contacted to date have denied receiving Preference Payments and have engaged lawyers to act for them
- Any settlement negotiations
- Costs of litigation and pursuing the claims. We may seek litigation funding to offset the costs of litigation however their success fee would reduce the amount recoverable for creditors.

Given the above factors and the commercially sensitive nature of ongoing negotiations and potential litigation we are not providing an estimate of future recoveries at this time.

### 3.4 Application by IMF Bentham Ltd

In December 2014 Funded Creditors made an application under Section 564 of the Act to the Court to have IMF Bentham Ltd's costs and funding fee paid in priority to any distribution to unsecured creditors.

We took steps to have the interests of non-Funded Creditors represented at the hearing. TNW Australia Pty Ltd, a former member of the Committee of Creditors in the Voluntary Administration, agreed to be appointed as a representative defendant in the proceedings to represent the interest of non-Funded Creditors. Orders have been made by the Court for the legal costs incurred by TNW Australia Pty Ltd be paid from the Liquidation.

The proceedings have been set down for hearing on 6 May 2015. The Liquidators do not currently believe that this timetable will impact the timing of the dividend distribution. All creditors will be notified accordingly once an outcome on the application is known.

If the Court finds in favour of Funded Creditors, the pool of funds available to unsecured creditors will be reduced. We do not have the information available to us at this time to calculate the exact amount of the reduction but have estimated it could be as much as \$1.9m which would reduce the dividend to creditors by 1.4 cents in the dollar.

Our involvement in this application includes the swearing of two affidavits. Copies of these affidavits as well as copies of the application, submissions and affidavits of all parties can be found on our website: <http://www.deloitte.com/au/retailadventures>.

## 4 Estimated statement of position

Below is the estimated statement of position as at 31 March 2015:

\$	Notes	Current Position	Estimated Future Recoveries & Costs		Estimated Total	
			High estimate	Low estimate	High estimate	Low estimate
<b>ESTIMATED RECOVERIES</b>						
Cash at bank		948,004			948,004	948,004
Proceeds from sale of business/S588FE Proceedings		3,950,000	-	-	3,950,000	3,950,000
Preference recoveries	a.	4,519,495	270,404	270,404	4,789,899	4,789,899
Insolvent trading		12,500,000	-	-	12,500,000	12,500,000
Other realisations		623,911	-	-	623,911	623,911
<b>Total realisations</b>		<b>22,541,410</b>	<b>270,404</b>	<b>270,404</b>	<b>22,811,813</b>	<b>22,811,813</b>
<b>ESTIMATED COSTS</b>						
Liquidators' remuneration	b.	(1,692,211)	(2,468,980)	(2,593,980)	(4,161,191)	(4,286,191)
Liquidators' disbursements		(52,073)	(211,478)	(217,728)	(263,551)	(269,801)
Other costs		(455,022)	(200,000)	(500,000)	(655,022)	(955,022)
Legal fees and disbursements	c.	(1,581,171)	(433,315)	(580,815)	(2,014,486)	(2,161,986)
600A application costs		(603,687)	-	-	(603,687)	(603,687)
Recovery of legal fees		1,050,000	-	-	1,050,000	1,050,000
<b>Total costs</b>		<b>(3,334,164)</b>	<b>(3,313,773)</b>	<b>(3,892,523)</b>	<b>(6,647,937)</b>	<b>(7,226,687)</b>
<b>Surplus available to distribute</b>		<b>19,207,246</b>	<b>(3,043,369)</b>	<b>(3,622,119)</b>	<b>16,163,876</b>	<b>15,585,126</b>
Priority creditors	d.				(100,000)	(150,000)
<b>Surplus available to distribute to all creditors</b>		<b>19,207,246</b>	<b>(3,043,369)</b>	<b>(3,622,119)</b>	<b>16,063,876</b>	<b>15,435,126</b>
<b>Creditor claims</b>	e.					
Unsecured creditors					55,000,000	60,000,000
Landlord claims					75,000,000	82,000,000
Statutory creditors					4,500,000	5,000,000
Related party creditors						
Preference payment creditors					41,181	41,181
<b>Total creditor claims</b>					<b>134,541,181</b>	<b>147,041,181</b>
<b>Dividend to unsecured creditors (¢ in \$)</b>	f.				<b>11.94</b>	<b>10.50</b>
<b>Further Estimated Preference Recoveries</b>	a.					
Recoveries						
Less: costs to recover					Withheld	Withheld
<b>Net preference recoveries</b>					<b>Not quantified</b>	<b>Not quantified</b>
<b>Dividend to unsecured creditors (¢ in \$)</b>	f.				<b>Not quantified</b>	<b>Not quantified</b>

### Notes:

- Preference recoveries:** \$4.5m has been recovered to date with a further \$262k due as part of negotiated settlements. Future estimated amounts recoverable have been withheld as discussed in Section 3.3. We note that future costs associated with recovering preference payments (beyond the commencement of public examinations) have also been excluded.
- Estimated Liquidators' remuneration:** The amount included represents the estimated cost to complete the payment of the interim dividend, estimated cost associated with tasks required to commence public examinations of preference creditors and estimated costs to complete the ongoing statutory tasks required in the Liquidation. This amount excluded Liquidators' remuneration for competing tasks associated with pursuing preferences through litigation.
- Estimated legal fees and disbursements:** The estimated legal costs and disbursements represent the estimated value to June 2015. The legal fees and disbursements beyond this time period will be dependent upon the action required to continue to pursue preference creditors.



- d. Priority Creditors: This amount represents estimated legal costs of TNW Australia Pty Ltd in the S564 Application.

It does not include an estimate of any amounts the Court may find to be owed to IMF Bentham Limited in priority to other creditors.

- e. Other Creditors: The estimate of creditors consists of creditors whose claims have been adjudicated and claims lodged by creditors yet to be adjudicated. The final estimate will be determined once all formal proofs of debt have been adjudicated. As at the date of this report 584 formal proofs of debt had been received from creditors and over 460 claims had been adjudicated. The deadline for submission of proofs to participate in the interim dividend to creditors was 28 April 2015.

The increase in estimated creditor claims compared to the estimated provided in the S439A report is predominately due to the quantum of landlord claims and an adjustment to the amount outstanding to the ATO.

The books and records of RAPL listed 217 landlords with outstanding debts of \$7.8m owing as at the date of our appointment. The \$7.8m consists mainly of outstanding rent. In our S439A report we estimated \$10m was owed in outstanding rent and \$26m in contingent claims. The claims lodged by landlords are far in excess of this amount and include claims for unexpired lease terms, make good and/or damages. This is partly due to DSG's failure to negotiate new leases with landlords after the sale of RAPL's business to DSG in 2013 and also the subsequent failure of DSG in 2014 which has resulted in additional landlord claims against RAPL.

The ATO has lodged a formal proof of debt in the amount of \$3.5m. We are required to make an adjustment to their claim based on the portion of GST in admitted formal proofs of debt. The estimated provided of \$4.5m to \$5.0m represents the adjustment however the final amount owed to the ATO will be dependent upon the final calculation of GST on admitted unsecured formal proofs of debt.

- f. Dividend to Unsecured Creditors: The final dividend is expected to be between 10.49 to 11.93 cents in the dollar of admitted claims. This amount is before any further Preference Payment recoveries and before any amount the Court finds owed to IMF Bentham Ltd in priority to unsecured creditors.

The final amount payable is subject to the following factors which cannot be quantified with a high degree of accuracy at this point in time:

- i. Final amount of creditor claims: A significant number of creditors who submitted informal claims during the Voluntary Administration have not submitted formal proofs of debt in the Liquidation. If these creditors are to submit claims before payment of a final dividend, they would be entitled to receive 'catch-up' payments for interim dividends previously paid to other creditors.

In addition, given the complexity of some of the claims we have received, particularly claims from landlords, there is a possibility that some creditors are unwilling to accept our adjudication and commence action to appeal our decision in court.

- ii. Preference payment recoveries: As discussed above.
- iii. Outcome of the S564 Application: If the Funded Creditors are successful in their application, an amount would be payable to IMF Bentham Limited in priority to unsecured creditors. This amount is unable to be quantified at this time as it is calculated based on IMF Bentham Limited's costs and the final amount admitted as owing to the Funded Creditors.

On 7 April 2015 we declared an interim dividend would be paid before 5 June 2014. This is further discussed in Section 7.



## 5 Receipts and Payments

Detailed below is a summary of the receipts and payments for the Company from the date of liquidation to 31 March 2015 inclusive:

\$	
<b>Receipts</b>	
Transfer balance from Voluntary Administration	1,214,217
Bank Interest	346,595
DSG Licence Fee	574
Insolvent trading claim	12,500,000
Recovery of legal costs from S600A Proceedings	1,050,000
Payroll Tax Refund	10,236
Voidable Security Claim/S588FE Proceedings	3,950,000
Settlement of Preferences	4,519,495
Sundry Refunds - Electricity	28,258
GST Payable	2,883
GST Clearing Account	351,059
<b>Total Receipts</b>	<b>23,973,317</b>
<b>Payments</b>	
Administrators' Remuneration	96,537
Liquidators' Remuneration	1,692,211
Liquidators' Expenses	52,073
Bank Charges	80
Electricity	11,479
Gas & Water	1,554
Hire of Meeting Room	1,155
IT Service Suppliers	99,382
Legal Fees	1,784,917
Legal Settlement	8,010
Postage	27,978
Rent Paid	11,848
S600A Proceeding Costs	603,687
Sundry Expenses	307
GST Receivable	374,855
<b>Total Payments</b>	<b>4,766,071</b>
<b>Cash at Bank</b>	<b>19,207,246</b>

We have lodged with ASIC copies of our receipts and payments reports, in accordance with Section 539 of the Act, at each six monthly interval of our appointment. Copies may be viewed, by prior appointment, at our office or through the ASIC register.

## 6 Statutory Reporting

Liquidators are required to prepare a detailed report to ASIC pursuant to Section 533 of the Act advising whether there have been any contraventions of the Act by the Director. This includes amongst other things the conduct of the Director, her duties and whether any offences have been committed, whether the Company traded whilst insolvent, whether there has been any fraud by officers of the Company, and whether proper books and records were maintained by the Company. The report was lodged with the ASIC on 3 July 2014.

ASIC have responded to the Section 533 Report advising that they did not intend to carry out further investigations into the affairs of the Company and the conduct of its officers.

## 7 Distribution of funds to creditors

On 7 April 2015 we wrote to creditors advising of our intention to pay an interim dividend. Based on proofs of debt received as at the date of this report, we estimate the interim dividend at approximately 11 cents in the dollar of admitted claims however this remains dependent upon the final estimate of creditors' claims and is before any amount the Court finds owed to IMF Bentham Ltd in priority.

We had previously advised a range of between 9-14 cents in the dollar. We had also previously advised we would be making a distribution of \$17m. This figure was based on funds held in the Liquidation, estimated future costs and estimated future recoveries from Preference Payments. However, the amount to be distributed has been reduced to \$16m for the following reasons:

- Higher than anticipated costs in adjudicating proofs of debt, in part due to the complexity and quantum of landlord claims
- Holding back funds against the possibility that some creditors are unwilling to accept our adjudication and commence action to appeal our decision in Court
- The difficulty in providing a reliable estimate for expected recoveries of Preference Payments as discussed above.

Creditors should refer to the circular to creditors dated 7 April 2015 to determine what action they need to take in relation to their claim against the Company.

## 8 Committee of Inspection

At a meeting of creditors held on 11 March 2014, a resolution was passed appointing the creditors listed in the table below to be on the Committee of Inspection. Three members have subsequently resigned and three members remain.

Meetings were held on 27 March 2014, 15 May 2014, 11 June 2014, 29-30 July 2014 and 27 February 2015. Minutes of the meetings have been uploaded to our website: <http://www.deloitte.com/au/retailadventures>.

We thank Committee Members for their attendance and support.

Creditor	Representative	Status
Helenic Pty Ltd ATF Mastrantonis Family Trust	Nick Mastrantonis	Current
JFK Group Company Limited	Fiona Goh	Current
PMP Print Pty Ltd T/A PMP Distribution	Verica Pavlovska	Current
Bicheno Investments Pty Ltd	Wendy Jacobs (subsequently replaced by Dominic Calabria of Bridges Lawyers)	Resigned June 2014
Gummie Pty Ltd T/A Group Building	Michael Giannak	Resigned September 2014
Mr. Fothergill's Seeds Pty Ltd	Tina Shur	Resigned January 2015

## 9 Liquidators' Remuneration

To date, the Liquidator's remuneration has been approved by the Committee. The table below provides a summary of the periods and amounts previously approved.

Period	Remuneration Report Date	Date approved by COI	\$
3 February -14 March 2014	20 March 2014	27 March 2014	246,484.50
15 March – 30 April 2014	25 July 2014	30 July 2014	310,561.50
1 May – 31 May 2014	25 July 2014	30 July 2014	185,165.00
1 June 2014 – 31 January 2015	24 February 2015	27 February 2015	1,157,325.00
<b>Total approved remuneration</b>			<b>1,899,536.00</b>

The key tasks undertaken during the period include:

- Further investigation into the Voidable Security Claim and preparation to take legal action
- Investigations into insolvent trading and preparation to commence public examinations and lodge a statement of claim
- Further investigations and pursuit of creditors identified as receiving Preference Payments
- Adjudication of creditors' claims.

Copies of our Remuneration Reports dated 20 March 2014, 25 July 2014 and 24 February 2015, which contain details regarding our remuneration previously approved by the Committee of Inspection are available from our office.

## 10 Next steps

Future work to be undertaken by us includes:

- Pursuit of creditors identified as receiving preference payments, including public examinations and legal action
- Attend the hearing for the S564 Application and await the judgment
- Finalise adjudication of creditor claims and payment of a dividend
- Finalise recoveries and payment of final dividend.

Based on the above we anticipate the Liquidation will continue for a further 12 months.

## 11 Further information

Should you have any queries concerning the above matters, please contact us on (02) 9322 3834 or by email at [retailadventures@deloitte.com.au](mailto:retailadventures@deloitte.com.au). If you wish to receive future correspondence via electronically, please send an email to [retailadventures@deloitte.com.au](mailto:retailadventures@deloitte.com.au) detailing the email address to which you would like future communications from us to be sent.

Previous copies of our reports and circulars can be found on our website:  
<http://www.deloitte.com/au/retailadventures>.

Yours faithfully



Vaughan Strawbridge  
For and on behalf of  
VN Strawbridge, JL Grieg and DJF Lombe  
Joint Liquidators



## Definitions

Administrators/Liquidators	Vaughan Neil Strawbridge, David John Frank Lombe, and John Lethbridge Greig
ARITA	Australian Restructuring, Insolvency and Turnaround Association
ASIC	The Australian Securities & Investments Commission
ATO	Australian Taxation Office
Bicheno	Bicheno Investments Pty Ltd as trustee of the Jan Cameron Trust
Committee or COI	Committee of Inspection
Company or RAPL	Retail Adventures Pty Ltd (In Liquidation)
Deloitte	Deloitte Touche Tohmatsu
Director	Janet Heather Cameron
DSG	Discount Superstore Group/DSG Holdings Australia Pty Ltd (Subject to Deed of Company Arrangement)
Former Directors	Penny Jane Moss (resigned 10 September 2012) Bruce Robertson Irvine (resigned 22 July 2012)
Funded Creditors	Creditors funded by IMF Bentham Pty Ltd
GSA	General Security Agreement
k/\$'000s	Thousand
m	Million
No.	Number
POD	Form 535 Formal proof of debt or claim
Preference payment	Payments made by RAPL to a creditor identified by the Liquidators as potentially preferential in nature pursuant to S588FA of the Corporations Act. This means the creditor received more than they would have received from the Company if the payments were set aside and the creditor were to prove in the Liquidation.
RAHPL	Retail Adventures Holdings Pty Ltd (In Liquidation)
RATA	Report as to Affairs
Relation back day	The date of appointment of the Administrators, 26 October 2012
S439A Report	Report to creditors dated 19 August 2013
S564 Application	Application filed on 23 December 2014 by Sperling Enterprises Pty Ltd on behalf of Funded Creditors pursuant to Section 564 of the Corporations Act 2001
S600A Proceedings	Application by a group of creditors funded by IMF Bentham Ltd (Funded Creditors) to the Supreme Court of New South Wales (the Court) seeking orders to set aside the resolution executing a Deed of Company Arrangement that was passed at a meeting of creditors held on 2 September 2013
The Act	Corporations Act 2001
The Court	Supreme Court of New South Wales
The Regulations	Corporations Regulations 2001





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