

TO ALL CREDITORS

24 February 2014

Dear Sir/Madam

Retail Adventures Pty Limited (In Liquidation) ACN 135 890 845 (“the Company”)

I refer to the appointment of David Lombe, John Greig and I as Joint and Several Liquidators of the Company on 3 February 2014.

1. Meeting of creditors

A meeting of creditors of the Company is convened pursuant to sections 506(1)(b) and 479(2) of the *Corporations Act 2001*, to be held as follows:

Date	Tuesday 11 March 2014	
Times & Locations	1.00pm AEDT Sydney:	Institute of Chartered Accountants Australia, Level 1, 33 Erskine Street, Sydney NSW 2000
	1.00pm AEDT Melbourne:	Melbourne Marriott Hotel, Ground Floor, Cnr Exhibition and Lonsdale Streets, Melbourne VIC 3000
	12 noon AEST Brisbane:	Novotel Brisbane, Level 2, 200 Creek Street, Brisbane QLD 4000

Attached at **Annexure A** is a copy of Form 529 Notice of Meeting.

Attendance at this meeting is not compulsory. Telephone conference facilities will not be available at the meeting.

2. Purpose of the meeting of creditors

a. Provide an update of events that have occurred since the last meeting of creditors on 2 September 2013

I refer creditors to my last four circulars sent in September and October 2013 and January and February 2014 for a summary of matters that have taken place since the last meeting of creditors held on 2 September 2013. At the forthcoming meeting I will be providing an update of these matters, including any developments on the appeal by DSG Holdings Australia Pty Ltd, which is due to be heard in court on Friday 7 March 2014. I will also be outlining my immediate actions in the liquidation.

A copy of the circulars mentioned above can be found on the Deloitte website: <http://www.deloitte.com/au/retailadventures>.

b. Seek approval of the Administrators’ remuneration

At the meeting I will be seeking approval of the outstanding fees of the Administrators for the period 1 December 2013 to 3 February 2014, when the Company was placed into liquidation. Enclosed at **Annexure B**

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is a remuneration report which provides a breakdown of the fees incurred during the period. The following resolution will be proposed at the meeting:

“That the remuneration of the former Administrators, their partners and staff, for the period of the Administration from 1 December 2013 to 5.00pm 3 February 2014 is fixed at a sum equal to the cost of time spent by the former Administrators and the former Administrators’ partners and staff, calculated at the hourly rates as detailed in the Remuneration Report of 24 February 2014 of fees equalling \$96,537.00 plus GST and disbursements, and that the former Administrators can draw the remuneration as required.”

c. To consider appointing a committee of inspection

As stated in my last circular, the committee of creditors formed in the voluntary administration does not automatically continue when a company is placed into liquidation.

It is my view it is appropriate that a committee of inspection is formed as there will be a number of matters requiring approval for which it would be more efficient and less costly to do so by convening meetings of a committee rather than calling multiple general meetings of creditors. A committee of inspection will also be useful for the Liquidators to discuss the direction of the liquidation and the various actions which are expected to be undertaken.

The role of the committee of inspection in a liquidation is to assist and advise the Liquidators in a manner similar to a committee of creditors of a company in voluntary administration. The committee has the power to approve the Liquidators’ remuneration and to approve the Liquidators’ actions in compromising debts owed to the Company or entering into agreements where obligations under the agreement extend for more than three months.

A person is entitled to be a member of a committee if:

- i. They are a creditor of the Company; or
- ii. An attorney of a creditor of the Company by virtue of a power of attorney given by the creditor; or
- iii. A person authorised in writing by a creditor of the Company to be a member of the committee of inspection.

Any creditor wishing to nominate for the committee of inspection are requested to submit their nomination in writing to this office by **12 noon (AEDT) on the day prior to the meeting**. Their nomination should outline the reasons why they are seeking to be on the committee. These nominations will be tabled at the forthcoming meeting and nominees may be requested to address the meeting.

3. Submitting proof of debt forms and proxies prior to the meeting

Creditors may attend the meeting and vote in person, by proxy or by attorney. The appointment of proxy must be made in accordance with Form 532 (*Annexure C*).

Proxy forms or facsimiles thereof must be lodged with the Liquidators by **12 noon (AEDT) on the day prior to the meeting**. Where a facsimile copy of a proxy is sent, the original must be lodged with the Liquidators within 72 hours after receipt of the facsimile. An attorney of the creditor must show the instrument by which he or she is appointed to the Chairman of the meeting, prior to the commencement of the meeting.

A specific proxy can be lodged showing approval or rejection of each resolution. Any general proxies received nominating the Chairperson as proxy holder will be used for voting purposes in accordance with the Liquidators recommendation.

To be entitled to vote at the meeting, a creditor is required to provide particulars of their claim prior to the commencement of the meeting. An informal proof of debt form for the purposes of voting is attached (*Annexure D*). **If you have previously submitted an informal proof of debt in the admission of the Company you are not required to submit the attached form unless the particulars or amount of your claim has changed.**

4. To receive future notices electronically

The *Corporations Act 2001* provides for notices to be sent electronically to creditors, instead of posting. To allow us to send future notices electronically, creditors must complete and return the attached form at **Annexure E**.

5. Declaration of Independence, Relevant Relationships and Indemnities

Attached at **Annexure F** is a copy of the Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) that was annexed to the Administrators' report to creditors dated 19 August 2013. I confirm there has been no change to this DIRRI.

6. Further information

Attached at **Annexure G** is the ASIC Information Sheet 45 "*Liquidation: a guide for creditors*" which provides information on the liquidation process for creditors.

Should you have any further queries in relation to the meeting of creditors or the liquidation generally, please contact Matthew Carter of this office on (02) 9322 5179 or at matcarter@deloitte.com.au.

Yours faithfully



Vaughan Strawbridge
Joint and Several Liquidator

List of Annexures

Annexure A Form 529 Notice of Meeting

Annexure B Remuneration Report

Annexure C Form 532 Appointment of Proxy

Annexure D Informal Proof of Debt

Annexure E Election to receive correspondence electronically

Annexure F Copy of Declaration of Independence, Relevant Relationships and Indemnities attached to the report to creditors dated 19 August 2013

Annexure G ASIC Information Sheet 45 *Liquidation: a guide for creditors*

FORM 529

Section 506(1)(b) and 479(2)
Subregulation 5.6.12 (6)

CORPORATIONS ACT 2001

NOTICE OF MEETING OF CREDITORS

RETAIL ADVENTURES PTY LIMITED
(IN LIQUIDATION)
ACN 135 890 845
("the Company")

1. Notice is given that a meeting of the creditors of the Company will be held on Tuesday 11 March 2014 at the following times and locations:
 - 1.00pm AEDT Sydney: Institute of Chartered Accountants Australia, Level 1, 33 Erskine Street, Sydney NSW 2000
 - 1.00pm AEDT Melbourne: Melbourne Marriott Hotel, Ground Floor, Cnr Exhibition and Lonsdale Streets, Melbourne VIC 3000
 - 12 noon AEST Brisbane: Novotel Brisbane, Level 2, 200 Creek Street, Brisbane QLD 4000
2. The purpose of the meeting is to:
 - a. receive and update on matters relating to the liquidation;
 - b. fix the former Administrators' remuneration to date;
 - c. determine whether to appoint a Committee of Inspection; and
 - d. if so, who are to be the Committee's members;
 - e. any other business that may be lawfully brought forward.

Proxies to be used at the meeting should be lodged at the office of the Liquidators by 12 noon (AEDT) on the day prior to the meeting. A creditor can only be represented by proxy or by an attorney pursuant to corporations Regulations 5.6.28 and 5.6.32 (inclusive) and if a body corporate by a representative appointed pursuant to Section 250D.

In accordance with Regulation 5.6.23(1) of the Corporations Regulations, creditors will not be entitled to vote at this meeting unless they have lodged particulars of their claim against the company in accordance with the Corporations Regulations and that claim has been admitted wholly or in part for voting purposes.

DATED this 24th day of February 2014



Vaughan Strawbridge
Joint and Several Liquidator

Deloitte Touche Tohmatsu
Grosvenor Place
225 George Street
SYDNEY NSW 2000

Telephone: (02) 9322 7000

Remuneration Report – 24 February 2014

Initial advice to creditors - remuneration

Remuneration Methods

There are four basic methods that can be used to calculate the remuneration charged by an insolvency practitioner. They are:

Time based / hourly rates

This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.

Fixed Fee

The total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration. Sometimes a practitioner will finalise an administration for a fixed fee.

Percentage

The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.

Contingency

The practitioner's fee is structured to be contingent on a particular outcome being achieved.

Method chosen

Given the nature of this liquidation we propose that our remuneration be calculated on time based/hourly rates basis. This is because:

- I will only be paid for work done, subject to sufficient realisations of the company assets.
- It ensures creditors are only charged for work that is performed. Our time is recorded and charged in six minute increments and staff are allocated to duties according to their relevant experience and qualifications.
- I am required to perform a number of tasks which do not relate to the realisation of assets, e.g. responding to creditor enquiries, reporting to the ASIC, distributing funds in accordance with the provisions of the Corporations Act 2001.
- I am unable to estimate with certainty the total amount of fees necessary to complete all tasks required in this liquidation.

Explanation of Hourly Rates

The rates for our remuneration calculation are set out in the following table together with a general guide showing the qualifications and experience of staff engaged in the liquidation and the role they take in the liquidation. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.

Title	Description	Hourly Rate (exc GST)
Appointee	Registered liquidator. Brings his or her specialist skills to the administration or insolvency task.	\$625.00
Partner	Registered liquidator. Brings his or her specialist skills to the administration or insolvency task.	\$625.00
Director	Typically CA or CPA qualified with in excess of 8 years' experience on insolvency matters with a number of years at manager level. Answerable to the appointee but otherwise responsible for all aspects of an administration. Capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in his/her own right.	\$525.00
Manager	Typically CA or CPA qualified with 6 to 8 years' experience working on insolvency matters. Will have experience conducting administrations and directing a number of staff.	\$420.00
Senior Analyst	Typically completed or near completion of CA or CPA qualifications with 4 to 6 years insolvency experience. Assists in planning and control of smaller matters as well as performing some more difficult tasks on larger matters.	\$320.00
Analyst	Typically studying towards CA or CPA qualification with 2 to 4 years insolvency experience. Works under supervision of more senior staff in performing day-to-day fieldwork.	\$250.00
Graduate	Junior staff member who has completed a university degree with less than one year's experience working on insolvency matters. Works under supervision of more senior staff in performing day-to-day fieldwork.	\$195.00
Secretary	Advanced secretarial skills	\$185.00
Other Junior	Junior staff member who has not yet completed a university degree with less than one year's experience working on insolvency matters. Works under supervision of more senior staff in performing day-to-day fieldwork.	\$185.00

Our best estimate for the cost of the liquidation is \$3 million (excluding GST and disbursements), as explained in the Administrators' report to creditors dated 19 August 2013.

Disbursements

Disbursements are divided into three types:

- Externally provided professional services - these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- Externally provided non-professional costs such as travel, accommodation and search fees - these are recovered at cost.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

We are not required to seek creditor approval for disbursements, but must account to creditors. Details of the basis of recovering internal disbursements in this liquidation are provided below. Full details of any actual costs incurred will be provided with future reporting.

Basis of disbursement claim

Internal Disbursements	Rate (Exc GST)
Advertising	At cost – based on commercial rates charged by ASIC and state and national newspapers
Courier	At cost – based on commercial rates charged by major
Photocopying – external	At cost – based on commercial rates as offered by commonly used external providers
Postage	Australia Post rates

Internal Disbursements	Rate (Exc GST)
Staff vehicle use	\$0.70 per km
Stationery, printing, photocopying, telephone & data, flights, accommodation, per diem & staff amenities	2.5% of incurred insolvency fees

Scale applicable for financial year ending 30 June 2014

Remuneration Request Approval Report

Part 1: Declaration

We, Vaughan Neil Strawbridge, David John Frank Lombe and John Lethbridge Greig of Deloitte Touche Tohmatsu, have undertaken a proper assessment of this remuneration claim for my appointment as Administrators of the Company in accordance with the law and applicable professional standards. We are satisfied that the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of the Administration.

Part 2: Executive Summary

To date, remuneration during the voluntary administration period totalling \$5,911,526 has been incurred and paid. Approval for a higher amount was received, however only remuneration incurred as been paid.

Past Remuneration Periods	Approval Sought \$ (exc GST)	Remuneration Paid \$ (exc GST)
Insolvency Services		
26 October - 24 November 2012	1,143,712.50	1,143,712.50
25 November - 31 December 2012	1,122,095.00	823,262.00
1 January - 31 January 2013	1,142,385.00	727,432.50
1 February – 28 February 2013	975,450.00	609,609.50
1 March – 31 March 2013	334,098.50	334,098.50
1 April – 30 April 2013	335,425.00	292,572.50
1 May – 24 May 2013	206,216.50	206,216.50
25 May – 30 June 2013	284,747.50	281,101.50
1 July - 31 July 2013	248,666.50	248,666.50
1 August - 10 August 2013	79,263.00	79,263.00
11 August - 2 September 2013	450,075.00	400,703.50
3 September - 11 October 2013	150,000.00	150,000.00
3 September - 31 October 2013	392,161.50	392,161.50
1 November - 30 November 2013	199,250.00	186,462.00
Non-insolvency services – OH&S Deloitte Risk Services		
26 October 2012 - 24 November 2012	12,500.00	12,500.00
26 November 2012 - 14 January 2013	15,465.50	15,465.50
15 January 2013 – 27 April 2013	8,298.50	8,298.50
Total Past Remuneration	7,099,810.00	5,911,526.00

Current remuneration approval sought:

Current Remuneration Period	Approval Sought \$ (exc GST)	Report Reference
1 November 2013 – 3 February 2014	96,537.00	3.1

Please refer to report section references detailed in the above table for full details of the calculation and composition of the remuneration approval sought.

In our role as Voluntary Administrators, in our first circular to creditors we provided an estimate of fees until the second meeting of creditors of fees of \$200,000 per week plus GST and disbursements. Our actual costs for the period is less than this estimate. At the time the initial estimate was provided it could not be foreseen the administration period would be extended until September 2013.

Part 3: Description of work completed

Resolution 1 for the period 1 December 2013 to 3 February 2014

Task Area	General Description	Includes
Assets 57.70 hours \$13,117.50	Sale of Business as a Going Concern	Dealing with residual sale of business including effecting documentation to transfer assets to the purchaser
	Debtors	Communication with parties who owe funds to the Company
	Leasing	Receiving and following up landlord enquiries via telephone, email and facsimile Finalisation of lease assignments, disclaimers and other lease matters Discussions with landlords regarding rent payment and lease assignments Reconciliation of outgoings Liaising with owners / lessors
Creditors 31.20 hours \$8,673.00	Creditor Enquiries	Receive and follow up creditor enquiries via telephone, email and facsimile Maintaining creditor enquiry register Review and prepare correspondence to creditors and their representatives via facsimile, email and post Correspondence with committee of creditors members
	Creditor reports	Preparing circulars to creditors dated 13 th and 30 th of January 2014
	Dealing with proofs of debt	Receipting and filing informal proofs of debt and claims
Employees 11.5 hours \$3,286.00	Employees enquiries	Receive and follow up employee enquiries via telephone
	Payroll tax	Liaising with OSR and calculating and lodging payroll tax returns
Trade On 84.80 hours \$23,078.50	Trade On Management	Finalising accounts with suppliers Liaising with management regarding finalisation Preparing and authorising receipt and payment vouchers
	Processing receipts and payments	Entering receipts and payments into accounting system
	Budgeting and financial reporting	Reconciling and monitoring cash flow Meetings to discuss reconciliation
Investigation 39.50 hours \$23,925.00	Conducting investigation	Reviewing company's books and records
	Litigation / Recoveries	Internal meetings to discuss status of litigation Meetings, correspondence and telephone calls with lawyers Preparation for court and attendance at court

Task Area	General Description	Includes
Administration 97.50 hours \$24,457.00	Correspondence	General correspondence with stakeholders
	Document maintenance/file review/checklist	First month, then six monthly administration review Filing of documents File reviews Updating checklists
	Insurance	Correspondence with public liability insurers regarding ongoing claims Correspondence with previous brokers
	Bank account administration	Requesting bank statements Bank account reconciliations Correspondence with bank regarding specific transfers
	ASIC Form 524 and other forms	Preparation of ASIC forms including 505 and 524
	ATO and other statutory reporting	Preparing BAS
	Finalisation	Preparation for notifying ATO of finalisation of administration Completing checklists Finalising WIP for administration
	Planning / Review	Discussions regarding status of administration Preparing checklist of activities to finalise administration
	Books and records / storage	Box listings for files and books and records
Total 333.20 hours \$96,537.00		

Part 4: Resolution 1 - Calculation of Remuneration

Please see the table at *Attachment 1*.

Part 5: Statement of remuneration claim

Statement of remuneration claim – Current remuneration 1 December 2013 to 3 February 2014

The following resolution in relation to the Administrators' current remuneration will be proposed to the creditors of Retail Adventures Pty Limited (In Liquidation):

“That the remuneration of the former Administrators, their partners and staff, for the period of the Administration from 1 December 2013 to 5.00pm 3 February 2014 is fixed at a sum equal to the cost of time spent by the former Administrators and the former Administrators’ partners and staff, calculated at the hourly rates as detailed in the Remuneration Report of 24 February 2014 of fees equalling \$96,537.00 plus GST and disbursements, and that the former Administrators can draw the remuneration as required.”

Part 6: Disbursements

Disbursements are divided into three types:

- Externally provided professional services - these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- Externally provided non-professional costs such as travel, accommodation and search fees - these are recovered at cost.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

I have undertaken a proper assessment of disbursements claimed for the Company, in accordance with the law and applicable professional standards. I am satisfied that the disbursements claimed are necessary and proper.

The following disbursements have been paid by the Administration to my firm for the period from 26 October 2012 to 3 February 2014. Where amounts have been paid to my firm for externally provided services and costs, those payments are in reimbursement of costs previously paid by my firm, either due to a lack of funds in the Administration at the time the payment was due, or the direct invoicing of my firm by the supplier. Of the amount below \$146,881.56 has been drawn and appears in the receipts and payments listing attached to this report as Administrators disbursements. The balance of the \$245,277.08 has not been paid.

Where payments to third parties are paid directly from the Administration bank account, they are only included in the attached listing of receipts and payments.

Disbursements 26 October 2012 to 3 February 2014	Basis	Total \$ (exc GST)
External non-professional disbursements		
Advertising	At cost	3,280.60
Search & Filing Fees	At cost	1,164.98
Venue costs for Creditor Meetings	At cost	27,382.91
Internal disbursements		
Data Imaging, Backup & Storage	At cost	4,166.71
Stationery & External Printing & Copying	At cost	3,366.43
Travel - Taxi / Train / Tolls / Parking / Mileage	At cost, mileage \$0.70 per km	59,033.90
Stationery, printing, photocopying, telephone & data, flights, accommodation, per diem & staff amenities	2.5% of incurred insolvency fees	146,881.55
Total		245,277.08

Part 7: Report on Progress of the Administration

Please refer to the Circular to Creditors included with this report.

Part 8: Summary of Receipts and Payments

Attached is a summary of receipts and payments as at 3 February 2014. It is noted the Balance in Hand in the table below is zero because the balance of the administration account, being \$1,214,217, has been transferred into the bank account held by the Liquidators.

Receipts and Payments as at 3 February 2014	Total
Receipts	
Bank Interest	149,402
Cash at Bank (Pre Appointment)	1,849,913
DSG Licence Fee	153,718,763
Employee Entitlement Funding	5,195,937
GST Payable	15,911,031
Land Tax Funding	11,092
Plant & Equipment	2,273
Pre-appointment sale proceeds	3,010,000
Sale of Business	52,543,045
Sale of Business (Adjustment for Employee Entitlements)	2,600,000
Sale of Business (Adjustment for Stock)	3,800,000
Sales	1,589,280
Sundry Refunds and Income	404,422
Total Receipts	240,785,158

Receipts and Payments as at 3 February 2014	Total
Payments	
Administrators Remuneration	5,875,262
Administrators Disbursements	146,882
Agents/Valuers Fees	24,290
Bank Charges	1,114
Electricity	5,036,585
Employee Entitlements	9,919,169
Freight Charges	2,683,927
Gas & Water	15,242
GST Clearing Account	15,749,437
GST Receivable	9,377,295
Hire of Equipment	227,391
Hire of Meeting Room	19,552
Insurance	8,972
IT Service Suppliers	2,326,836
Land Tax	11,092
Lease payments	1,067,606
Legal Fees	2,287,992
OH&S - Deloitte Risk Services	39,000
Other Government Charges	1,144
Payroll Tax	3,265,375
Postage	75,476
Purchases	25,000
Rates (Council)	212,055
Rent Paid (Commercial)	72,371,249
Repairs & Maintenance	151,071
Sale Adjustment - Employee Entitlements	8,367,020
Secured Creditor (Sale of Business)	44,176,025
Security / Cash Collections	45,048
Stationery & Printing	134,206
Stock	180,284
Sundry Expenses	38,498
Superannuation	4,396,267
Telephone & Fax	63,088
Transport / Courier	334,039
Vehicle Running Costs	257,691
Wages & Salaries	57,363,936
Waste disposal / cleaning	1,287,777
Water	39,247
Withholding Tax (PAYG)	-9,145,646
Workers Compensation	1,114,449
Transfer balance to CVL/DEED	1,214,217
Total payments	240,785,158
Balances in Hand	0.00

Part 9: Queries

At the Meeting of Creditors scheduled to be held on 11 March 2014, we will provide an opportunity for creditors to vote on the proposed agreements above.

Part 10: Information Sheet

Refer to *Attachment 2* ASIC Information sheet 85 *Approving fees: a guide to creditors*.

Actual Remuneration 1 December 2013 to 3 February 2014

Employee	Position	\$/hour (ex GST)	Total actual hours	Total (\$)	Task Area																	
					Assets		Creditors		Employees		Trade On		Investigations		Administration							
					Hours	Total (\$)	Hours	Total (\$)	Hours	Total (\$)	Hours	Total (\$)	Hours	Total (\$)	Hours	Total (\$)						
Lombe, David	Partner	625	0.50	312.50	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.50	312.50	
Strawbridge, Vaughan	Partner	625	49.00	30,625.00	1.50	937.50	3.00	1,875.00	-	-	5.50	3,437.50	36.00	22,500.00	3.00	1,875.00	-	-	-	-	3.00	1,875.00
Evans, Kathryn	Director	525	8.10	4,252.50	2.10	1,102.50	1.40	735.00	-	-	0.10	52.50	2.00	1,050.00	2.50	1,312.50	-	-	-	-	-	-
Allen, Scott	Manager	420	1.10	462.00	-	-	-	-	1.10	462.00	-	-	-	-	-	-	-	-	-	-	-	-
George, Tanya	Manager	420	1.30	546.00	-	-	-	-	-	-	1.30	546.00	-	-	-	-	-	-	-	-	-	-
Parbery, Amy	Manager	420	10.60	4,452.00	-	-	-	-	-	-	10.60	4,452.00	-	-	-	-	-	-	-	-	-	-
Bennett, Paul	Senior Analyst	320	5.90	1,888.00	-	-	-	-	3.20	1,024.00	2.70	864.00	-	-	-	-	-	-	-	-	-	-
Carter, Matt	Senior Analyst	320	11.50	3,680.00	-	-	-	-	-	-	5.40	1,728.00	-	-	6.10	1,952.00	-	-	-	-	6.10	1,952.00
Clark, Carol	Senior Analyst	320	2.20	704.00	-	-	-	-	-	-	-	-	-	-	2.20	704.00	-	-	-	-	2.20	704.00
Rashidi, Johnny	Senior Analyst	320	3.00	960.00	-	-	-	-	-	-	-	-	-	-	3.00	960.00	-	-	-	-	3.00	960.00
Spowart, Nady	Senior Analyst	320	5.10	1,632.00	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5.10	1,632.00
Chan, Teresa	Analyst	250	66.00	16,500.00	9.60	2,400.00	17.00	4,250.00	-	-	11.70	2,925.00	-	-	-	-	-	-	-	-	27.70	6,925.00
Lombe, Laura	Analyst	250	8.70	2,175.00	-	-	-	-	7.20	1,800.00	-	-	1.50	375.00	-	-	-	-	-	-	-	-
De Paoli, Elizabeth	Graduate	195	74.60	14,547.00	44.50	8,677.50	-	-	-	-	28.60	5,577.00	-	-	1.50	292.50	-	-	-	-	-	-
Bloom, Mike	Vacationer	185	6.00	1,110.00	-	-	-	-	-	-	-	-	-	-	6.00	1,110.00	-	-	-	-	6.00	1,110.00
Hanrahan, Will	Vacationer	185	68.50	12,672.50	-	-	-	-	9.80	1,813.00	-	-	18.90	3,496.50	-	-	-	-	-	-	39.80	7,363.00
Dolan, Arlene	Support	185	0.10	18.50	-	-	-	-	-	-	-	-	-	-	0.10	18.50	-	-	-	-	0.10	18.50
TOTAL			322.20	96,537.00	57.70	13,117.50	31.20	8,673.00	11.50	3,286.00	84.80	23,078.50	39.50	23,925.00	97.50	24,457.00						
GST				9,653.70																		
TOTAL (including GST)				106,190.70																		
<i>Average hourly rate</i>				299.62		227.34		277.98		285.74		272.15		605.70		250.84						



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 85

Approving fees: a guide for creditors

If a company is in financial difficulty, it can be put under the control of an independent external administrator.

This information sheet gives general information for creditors on the approval of an external administrator's fees in a liquidation of an insolvent company, voluntary administration or deed of company arrangement (other forms of external administration are not discussed in this information sheet). It outlines the rights that creditors have in the approval process.

Entitlement to fees and costs

A liquidator, voluntary administrator or deed administrator (i.e. an 'external administrator') is entitled to be:

- paid reasonable *fees*, or remuneration, for the work they perform, once these fees have been approved by a creditors' committee, creditors or a court, and
- reimbursed for out-of-pocket *costs* incurred in performing their role (these costs do not need creditors' committee, creditor or court approval).

External administrators are only entitled to an amount of fees that is reasonable for the work that they and their staff properly perform in the external administration. What is reasonable will depend on the type of external administration and the issues that need to be resolved. Some are straightforward, while others are more complex.

External administrators must undertake some tasks that may not directly benefit creditors. These include reporting potential breaches of the law and lodging a detailed listing of receipts and payments with ASIC every six months. The external administrator is entitled to be paid for completing these statutory tasks.

For more on the tasks involved, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors* and INFO 74 *Voluntary administration: a guide for creditors*.

Out-of-pocket costs that are commonly reimbursed include:

Important note: This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

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- legal fees
- valuer's, real estate agent's and auctioneer's fees
- stationery, photocopying, telephone and postage costs
- retrieval costs for recovering the company's computer records, and
- storage costs for the company's books and records.

Creditors have a direct interest in the level of fees and costs, as the external administrator will, generally, be paid from the company's available assets before any payments to creditors. If there are not enough assets, the external administrator may have arranged for a third party to pay any shortfall. As a creditor, you should receive details of such an arrangement. If there are not enough assets to pay the fees and costs, and there is no third party payment arrangement, any shortfall is not paid.

Who may approve fees

Who may approve fees depends on the type of external administration: see Table 1. The external administrator must provide sufficient information to enable the relevant decision-making body to assess whether the fees are reasonable.

Table 1: Who may approve fees

	Creditors' committee	Creditors	Court
Administrator in a voluntary administration	✓ ¹	✓	✓
Administrator of a deed of company arrangement	✓ ¹	✓	✓
Creditors' voluntary liquidator	✓ ¹	✓ ⁵	✗ ³
Court-appointed liquidator	✓ ¹	✓ ^{4, 5}	✓ ²

¹ If there is one.

² If there is no approval by the committee or the creditors.

³ Unless an application is made for a fee review.

⁴ If there is no creditors' committee or the committee fails to approve the fees.

⁵ If insufficient creditors turn up to the meeting called by the liquidator to approve fees, the liquidator is entitled to be paid up to a maximum of \$5000, or more if specified in the Corporations Regulations 2001.

Creditors' committee approval

If there is a creditors' committee, members are chosen by a vote of creditors as a whole. In approving the fees, the members represent the interests of all the creditors, not just their own individual interests.

There is not a creditors' committee in every external administration. A creditors' committee makes its decision by a majority in number of its members present at a meeting, but it can only act if a majority of its members attend.

To find out more about creditors' committees and how they are formed, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors*, INFO 74 *Voluntary administration: a guide for creditors* and INFO 41 *Insolvency: a glossary of terms*.

Creditors' approval

Creditors approve fees by passing a resolution at a creditors' meeting. Unless creditors call for a poll, the resolution is passed if a simple majority of creditors present and voting, in person or by proxy,

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indicate that they agree to the resolution. Unlike where acting as committee members, creditors may vote according to their individual interests.

If a poll is taken, rather than a vote being decided on the voices or by a show of hands, a majority in *number* and *value* of creditors present and voting must agree. A poll requires the votes of each creditor to be recorded.

A separate resolution of creditors is required for approving fees for an administrator in a voluntary administration and an administrator of a deed of company arrangement, even if the administrator is the same person in both administrations.

A proxy is where a creditor appoints someone else to represent them at a creditors' meeting and to vote on their behalf. A proxy can be either a *general* proxy or a *special* proxy. A general proxy allows the person holding the proxy to vote as they wish on a resolution, while a special proxy directs the proxy holder to vote in a particular way.

A creditor will sometimes appoint the external administrator as a proxy to vote on the creditor's behalf. An external administrator, their partners or staff must not use a general proxy to vote on approval of their fees; they must hold a special proxy in order to do this. They must vote all special proxies as directed, even those against approval of their fees.

Calculation of fees

Fees may be calculated using one of a number of different methods, such as:

- on the basis of *time spent* by the external administrator and their staff
- a quoted *fixed fee*, based on an upfront estimate, or
- a percentage of asset realisations.

Charging on a time basis is the most common method. External administrators have a scale of hourly rates, with different rates for each category of staff working on the external administration, including the external administrator.

If the external administrator intends to charge on a time basis, you should receive a copy of these hourly rates soon after their appointment and before you are asked to approve the fees.

The external administrator and their staff will record the time taken for the various tasks involved, and a record will be kept of the nature of the work performed.

It is important to note that the hourly rates do not represent an hourly wage for the external administrator and their staff. The external administrator is running a business—an insolvency practice—and the hourly rates will be based on the cost of running the business, including overheads such as rent for business premises, utilities, wages and superannuation for staff who are not charged out at an hourly rate (such as personal assistants), information technology support, office equipment and supplies, insurances, taxes, and a profit.

External administrators are professionals who are required to have qualifications and experience, be independent and maintain up-to-date skills. Many of the costs of running an insolvency practice are fixed costs that must be paid, even if there are insufficient assets available to pay the external administrator for their services. External administrators compete for work and their rates should reflect this.

These are all matters that committee members or creditors should be aware of when considering the fees presented. However, regardless of these matters, creditors have a right to question the external administrator about the fees and whether the rates are negotiable.

It is up to the external administrator to justify why the method chosen for calculating fees is an appropriate method for the particular external administration. As a creditor, you also have a right to question the external administrator about the calculation method used and how the calculation was made.

Report on proposed fees

When seeking approval of fees, the external administrator must send committee members/creditors a report with the notice of meeting setting out:

- information that will enable the committee members/creditors to make an informed assessment of whether the proposed fees are reasonable
- a summary description of the major tasks performed, or to be performed, and
- the costs associated with each of these tasks.

Committee members/creditors may be asked to approve fees for work already performed or based on an estimate of work yet to be carried out.

If the work is yet to be carried out, it is advisable to set a maximum limit ('cap') on the amount that the external administrator may receive. For example, future fees calculated according to time spent may be approved on the basis of the number of hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X. If the work involved then exceeds this figure, the external administrator will have to ask the creditors' committee/creditors to approve a further amount of fees, after accounting for the fees already incurred.

Deciding if fees are reasonable

If asked to approve an amount of fees either as a committee member or by resolution at a creditors' meeting, your task is to decide if that amount of fees is reasonable, given the work carried out in the external administration and the results of that work.

You may find the following information from the external administrator useful in deciding if the fees claimed are reasonable:

- the method used to calculate fees
- the major tasks that have been performed, or are likely to be performed, for the fees
- the fees/estimated fees (as applicable) for each of the major tasks
- the size and complexity (or otherwise) of the external administration
- the amount of fees (if any) that have previously been approved
- if the fees are calculated, in whole or in part, on a time basis:
 - the period over which the work was, or is likely to be performed
 - if the fees are for work that has already been carried out, the time spent by each level of staff on each of the major tasks
 - if the fees are for work that is yet to be carried out, whether the fees are capped.

If you need more information about fees than is provided in the external administrator's report, you should let them know before the meeting at which fees will be voted on.

What can you do if you think the fees are not reasonable?

If you do not think the fees being claimed are reasonable, you should raise your concerns with the external administrator. It is your decision whether to vote in favour of, or against, a resolution to approve fees.

Generally, if fees are approved by a creditors' committee/creditors and you wish to challenge this decision, you may apply to the court and ask the court to review the fees. Special rules apply to court liquidations.

You may wish to seek your own legal advice if you are considering applying for a court review of the fees.

Reimbursement of out-of-pocket costs

An external administrator should be very careful incurring costs that must be paid from the external administration—as careful as if they were dealing with their own money. Their report on fees should also include information on the out-of-pocket costs of the external administration.

If you have questions about any of these costs, you should ask the external administrator and, if necessary, bring it up at a creditors' committee/creditors' meeting. If you are still concerned, you have the right to ask the court to review the costs.

Queries and complaints

You should first raise any queries or complaints with the external administrator. If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ASIC at www.asic.gov.au/complain, or write to:

ASIC Complaints
PO Box 9149
TRARALGON VIC 3844

ASIC will usually not become involved in matters of commercial judgement by an external administrator. Complaints against companies and their officers can also be made to ASIC. For other enquiries, email ASIC through infoline@asic.gov.au, or call ASIC's Infoline on 1300 300 630 for the cost of a local call.

To find out more

For an explanation of terms used in this information sheet, see ASIC's information sheet INFO 41 *Insolvency: a glossary of terms*. For more on external administration, see ASIC's related information sheets at www.asic.gov.au/insolvencyinfosheets:

- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 75 *Voluntary administration: a guide for employees*
- INFO 45 *Liquidation: a guide for creditors*
- INFO 46 *Liquidation: a guide for employees*
- INFO 54 *Receivership: a guide for creditors*
- INFO 55 *Receivership: a guide for employees*
- INFO 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*

These are also available from the Insolvency Practitioners Association (IPA) website at www.ipaa.com.au. The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.

CERTIFICATE OF WITNESS

This certificate is to be completed only if the person giving the proxy is blind or incapable of writing. The signature of the creditor, contributory, debenture holder or member must not be witnessed by the person nominated as proxy.

I, of
certify that the above instrument appointing a proxy was completed by me in the presence of and at the request of the person appointing the proxy and read to him or her before he or she signed or marked the instrument.

Dated:

Signature of Witness:

Description:

Place of Residence:

* Strike out if inapplicable

- (1) If a firm, strike out "I" and set out the full name of the firm.
- (2) Insert the name, address and description of the person appointed.
- (3) If a special proxy add the words "to vote for" or the words "to vote against" and specify the particular resolution.

INFORMAL PROOF OF DEBT FORM

Regulation 5.6.47

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

Name of creditor:.....

Address of creditor:

.....

ABN:.....

Amount of debt claimed:\$.....

(see note)

Amount of GST included:\$.....

Consideration for debt:

Whether debt secured or
unsecured:

If secured, give details of security including dates, etc:

.....

.....

.....

Balance, if any, after deducting value of security (see note):

.....

.....

.....

.....

Creditor
(or person authorised by creditor)

Note:

Under the Corporations Regulations, a creditor is not entitled to vote at a meeting unless (Regulation 5.6.23):

- a. his claim has been admitted, wholly or in part, by the Joint Liquidators; or
- b. he has lodged with the Joint Liquidators particulars of the debt or claim, or if required, a formal proof of debt.

A secured creditor may vote (Regulation 5.6.24):

- a. for the whole of his debt provided that he surrenders his security;
- b. for the deficiency if the value of the security is less than the amount of the debt.

Proxies must be made available to the Joint Liquidators.

CORPORATIONS ACT 2001

Section 600G

ELECTION TO RECEIVE CORRESPONDENCE ELECTRONICALLY

Creditor Name: _____

Creditor ACN: _____

To the Liquidator of Retail Adventures Pty Ltd (In Liquidation) ACN 135 890 845

1. This is to state that the Creditor consents to the receipt of all correspondence as deemed by the Liquidator as appropriate by electronic means.
2. The email address for delivery of correspondence is as follows:

3. This authority will remain in effect unless rescinded in writing.

DATED this day of 2014

Signature of Signatory

NAME IN BLOCK LETTERS.....

Occupation.....

Address.....

Declaration of Independence, Relevant Relationships and Indemnities

Retail Adventures Pty Limited (ACN 135 890 845) ('RAPL')
Retail Adventures Holdings Pty Limited (ACN 136 178 839 ('RAHPL')
(*"the Companies"*)

This document requires the Practitioners appointed to an insolvent entity to make declarations as to:

- A. their independence generally;
- B. relationships, including
 - (i) the circumstances of the appointment;
 - (ii) any relationships with the Insolvent and others within the previous 24 months;
 - (iii) any prior professional services for the Insolvent within the previous 24 months;
 - (iv) that there are no other relationships to declare; and
- C. any indemnities given, or up-front payments made, to the Practitioner.

This declaration is made in respect of ourselves, our partners and Deloitte Touche Tohmatsu ("Deloitte").

A. Independence

We, Vaughan Neil Strawbridge, David John Frank Lombe and John Lethbridge Greig of Deloitte had undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Administrators of the Companies in accordance with the law and applicable professional standards. That assessment identified no real or potential risks to our independence. We were not aware of any reasons that would prevent us from accepting this appointment.

Since the last assessment, our investigations have identified 2 professional relationships that need to be disclosed to creditors. These relationships do not affect our assessment and would not have prevented us from taking this appointment. These are disclosed below.

B. Declaration of Relationships

i. Circumstances of appointment - RAPL

On 24 October 2012, the Company's lawyer, Dibbs Barker, contacted Mr Vaughan Strawbridge requesting a Consent to Act in the capacity as voluntary administrators on behalf of RAPL.

Vaughan Strawbridge met with Mr Hodgkinson, an independent advisor to RAPL, and Wendy Jacobs of Dibbs Barker, on 28 September, 8 October, 18 October and 24 October 2012. These meetings were in the nature of a pre-appointment discussions and were limited to discussing the financial position of RAPL. During these meetings no advice was given, discussions were limited to the potential options available. Prior to these meetings, we had no dealings with RAPL or its directors.

It is our opinion that these meetings do not present a conflict or impediment as we do not consider ourselves to be bound to provide services to this entity in relation to this matter or in any way obligated to deliver a favourable outcome to any party, nor will the advice provided be subject to review and challenge during the course of the voluntary administration. The Courts and the IPA's Code of Professional Practice specifically recognise the need for practitioners to provide advice on the insolvency process and the options available and do not consider that such advice results in a conflict or is an impediment to accepting the appointment.

We held discussions with RAPL's advisor and lawyers between 19 October 2012 and 26 October 2012 regarding a licence agreement to enable a company associated with the Director of RAPL and RAHPL to operate a portion of the Company's stores. Certain triggers were contained in the licence agreement to allow the Administrators to terminate the licence to operate without cause at certain times and at any time with cause. This was to safe guard the interests of creditors.

We received no remuneration for attending these meetings or discussing the licence to operate.

ii. Circumstances of appointment – RAHPL

Since our appointment as Administrators of the Company's subsidiary, RAPL, we become aware that RAHPL, has given a number of corporate guarantees in respect of property leases held by its subsidiary.

On 5 November 2012, an independent advisor to RAHPL, Mr Hodgkinson, contacted Mr Vaughan Strawbridge requesting a Consent to Act in the capacity as voluntary administrators on behalf of the Company.

Vaughan Strawbridge met with Mr Hodgkinson on 6 November 2012. The meeting was in the nature of pre-appointment discussions and was limited to discussing the financial position of RAHPL. During these meetings no advice was given, discussions were limited to the potential options available.

It is our opinion that this meeting does not present a conflict or impediment as we do not consider ourselves to be bound to provide services to this entity in relation to this matter or in any way obligated to deliver a favourable outcome to any party, nor will the advice provided be subject to review and challenge during the course of the voluntary administration. The Courts and the IPA's Code of Professional Practice specifically recognise the need for practitioners to provide advice on the insolvency process and the options available and do not consider that such advice results in a conflict or is an impediment to accepting the appointment.

We received no remuneration for attending this meeting.

iii. Relevant Relationships (excluding Professional Services to the Companies)

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

Name	Nature of relationship	Reasons why not an impediment or conflict
Previously disclosed relationships		
Damien Hodgkinson	Independent adviser to the Companies and referrer of the appointment	We do not have any referral arrangement with Mr Hodgkinson. No commissions, inducements or benefits have been obtained by Mr Hodgkinson in respect to this appointment. There is no arrangement with Mr Hodgkinson that we will provide any referral work to him. There is no relationship with Mr Hodgkinson which in our view would restrict us from properly exercising our judgment and duties in relation to the appointment.
Dibbs Barker	Lawyers for the Companies	We have undertaken a number of appointments which have been referred to us by Dibbs Barker in the usual course of business. We are not paid any commissions, inducements or benefits by Dibbs Barker to undertake any appointments. There is no arrangement between us and Dibbs Barker that we will give any work arising out of the Administration to Dibbs Barker. There is no relationship with Dibbs Barker which in our view would restrict us from properly exercising our judgment and duties in relation to the appointment.

<p>ANZ Fiduciary Services Pty Ltd ("the Bank") part of the ANZ banking group</p>	<p>The Bank hold a fixed and floating charge over the whole of the property of the Retail Adventure Holdings Pty Limited</p> <p>We have undertaken a number of formal insolvency and advisory engagements on behalf of the ANZ banking group in the usual course of business.</p> <p>Deloitte and its staff have provided and continue to provide a range of services to the ANZ banking group including consulting, taxation, risk mitigation, audit and assurance, valuation and forensic services.</p>	<p>We have never undertaken any work for the Bank in respect of the Companies.</p> <p>We do not consider previous formal insolvency and advisory engagements accepted on behalf of the ANZ banking group to present a conflict as there is no connection between these engagements and the Companies.</p> <p>The provision of consulting, taxation, risk mitigation, audit and assurance, valuation and forensic services to the ANZ banking group brings about a commercial relationship that in our opinion does not present a conflict or impediment as it does not impact upon the position of the Companies.</p> <p>We are not paid any commissions, inducements or benefits to undertake any engagements with the ANZ banking group and do not consider ourselves to be bound or in any way obligated to deliver a favourable outcome to any party.</p> <p>Therefore there is no relationship with the ANZ Banking group which in our view would restrict us from properly exercising our judgment and duties in relation to the appointment.</p>
<p>New relationship disclosures</p>		
<p>Mr Bruce Irvine</p>	<p>Former director of RAPL. Mr Irvine was a former partner of the Deloitte Member Firm in New Zealand (Deloitte New Zealand).</p>	<p>We do not consider Mr Irvine's connection to Deloitte New Zealand to present a conflict as:</p> <ul style="list-style-type: none"> • Mr Irvine had retired as a partner of Deloitte New Zealand in May 2009 prior to taking the appointment as a director of RAPL on October 2009. • Deloitte New Zealand is a legally separate entity and independent of Deloitte (Australia). • There are no relationships with Mr Irvine which in our view would restrict us from properly exercising our judgement and duties in relation to the appointment.

iii. Prior Professional services to the Insolvent

Neither we, nor our firm, have provided any professional services to the Companies in the previous 24 months.

iv. No other relevant relationships to disclose

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with the Company, an associate of the Company, a former insolvency practitioner appointed to the Company or any person or entity that has a charge on the whole or substantially whole of the Company's property that should be disclosed.

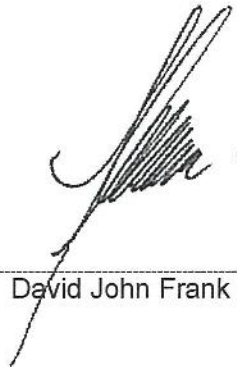
C. Indemnities and up-front payments

We have not been indemnified in relation to this administration, other than any indemnities that we may be entitled to under statute and we have not received any up-front payments in respect of our remuneration or disbursements.

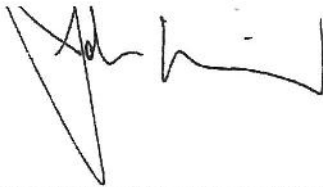
Dated:



Vaughan Neil Strawbridge



David John Frank Lombe



John Lethbridge Greig

Note:

1. If circumstances change, or new information is identified, we are required under the Corporations Act and the IPA Code of Professional Practice to update this Declaration and provide a copy to creditors with my/our next communication as well as table a copy of any replacement declaration at the next meeting of the insolvent's creditors.
2. Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.


ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 45

Liquidation: a guide for creditors

If a company is in financial difficulty, its shareholders, creditors or the court can put the company into liquidation.

This information sheet provides general information for unsecured creditors of companies in liquidation.

Who is a creditor?

You are a creditor of a company if the company owes you money. Usually, a creditor is owed money because they have provided goods or services, or made loans to the company.

An employee owed money for unpaid wages and other entitlements is a creditor.

A person who may be owed money by the company if a certain event occurs (e.g. if they succeed in a legal claim against the company) is also a creditor, and is sometimes referred to as a 'contingent' creditor.

There are generally two categories of creditor: secured and unsecured.

- A secured creditor is someone who has a security interest (as defined in s12 of the *Personal Property Securities Act 2009*), such as a charge or a mortgage, over some or all of the company's assets, to secure a debt owed by the company. Lenders usually require a security interest over company assets when they provide a loan.
- An unsecured creditor is a creditor who does not have a security interest over the company's assets.

Employees are a special class of unsecured creditors. In a liquidation, some of their outstanding entitlements are paid in priority to the claims of other unsecured creditors. If you are an employee, see ASIC's information sheet INFO 46 *Liquidation: a guide for employees*.

All references in this information sheet to 'creditors' relate to unsecured creditors unless otherwise stated.

The purpose of liquidation

The purpose of liquidation of an insolvent company is to have an independent and suitably qualified person (the liquidator) take control of the company so that its affairs can be wound up in an orderly and fair way for the benefit of all creditors.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

LIQUIDATION: A GUIDE FOR CREDITORS

There are two types of insolvent liquidation:

- creditors' voluntary liquidation, and
- court liquidation.

The most common type is a creditors' voluntary liquidation, which usually begins in one of two ways:

- creditors vote for liquidation following a voluntary administration or a terminated deed of company arrangement, or
- an insolvent company's shareholders resolve to liquidate the company and appoint a liquidator. Within 11 days of being appointed by shareholders, the liquidator must call a meeting of creditors who may confirm the liquidator's appointment or appoint another liquidator of the creditors' choice.

In a court liquidation, a liquidator is appointed by the court to wind up a company, following an application, usually by a creditor. Others, including a director, a shareholder and ASIC, can also make a winding-up application.

After a company goes into liquidation, unsecured creditors can no longer commence or continue legal action against the company, unless the court permits.

It is possible for a company in liquidation to also be in receivership: see ASIC information sheet INFO 54 *Receivership: a guide for creditors*.

The liquidator's role

When a company is being liquidated because it is insolvent, the liquidator has a duty to all the company's creditors. The liquidator's role is to:

- collect, protect and realise the company's assets
- investigate and report to creditors about the company's affairs, including any unfair preferences which may be recoverable, any uncommercial transactions which may be set aside, and any possible claims against the company's officers
- enquire into the failure of the company and possible offences by people involved with the company and report to ASIC
- after payment of the costs of the liquidation, and subject to the rights of any secured creditor, distribute the proceeds of realisation—first to priority creditors, including employees, and then to unsecured creditors, and
- apply for deregistration of the company on completion of the liquidation.

Except for lodging documents and reports required under the *Corporations Act 2001* (Corporations Act), a liquidator is not required to do any work unless there are enough assets to pay their costs.

If the company is without sufficient assets, one or more creditors may agree to reimburse a liquidator's costs and expenses of taking action to recover further assets for the benefit of creditors.

In this case, if additional assets are recovered, the liquidator or particular creditor can apply to the court for the creditor to be compensated for the risk involved in funding the liquidator's recovery action.

If a liquidator suspects that people involved with the company may have committed offences and the liquidator reports this to ASIC, the liquidator may also be able to apply to ASIC for funding to carry out a further investigation into the allegations.

Recoveries from creditors

A liquidator has the ability to recover, for the benefit of all creditors, certain payments (known as unfair preferences) made by the company to individual creditors in the six months before the start of the liquidation.

Broadly, a creditor receives an unfair preference if, during the six months prior to liquidation, the company is insolvent, the creditor suspects the company is insolvent, and receives payment of their debt (or part of it) ahead of other creditors. To be an unfair preference, the payment must put the creditor receiving it in a more favourable position than other unsecured creditors.

Not all payments from the company to a creditor in the six months before liquidation are unfair preferences. The Corporations Act provides various defences to an unfair preference claim.

If a liquidator seeks to recover a payment that has been made to you, you may wish to obtain independent legal advice on the merits of the liquidator's claim before repaying any money.

Creditors' meetings

A liquidator may call a creditors' meeting from time to time to inform creditors of the progress of the liquidation, to find out their wishes on a particular matter or seek approval of the liquidator's fees.

You may also use a creditors' meeting to ask questions about the liquidation and inform the liquidator about your knowledge of the company's affairs.

Meetings during a court liquidation

In a court liquidation, the liquidator is not required to call a creditors' meeting unless a matter requires creditor approval.

The only exception is that if the creditors pass a resolution requiring a creditors' meeting to be called, or at least one-tenth in value of all the creditors request the liquidator in writing to do so, the liquidator must call a creditors' meeting. However, it is unusual for this to happen, as those who make the request or pass the resolution must pay the costs of calling and holding the meeting.

Meetings during a creditors' voluntary liquidation

In a creditors' voluntary liquidation, the liquidator may choose to hold an annual meeting of the creditors or lodge a report with ASIC on the progress in the administration. If they choose not to hold the meeting, the liquidator must tell creditors that the report has been prepared and give them a copy free of charge if asked. The report must set out:

- an account of the liquidator's acts and dealings and the conduct of the winding up in the preceding year
- a summary of the tasks yet to be done in the liquidation, and
- an estimate of when the liquidation is expected to be finalised.

The liquidator in a creditors' voluntary winding up must also hold a joint meeting of the creditors and members at the end of the winding up. Creditors can require the liquidator to call a creditors' meeting at other times, the same as in a court liquidation, as long as they pay the associated costs.

Minutes of meetings

The chairperson of a creditors' meeting (usually the liquidator or one of their senior staff) must prepare minutes of the meeting and a record of those who were present at the meeting and lodge them

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with ASIC within one month. A copy may be obtained from any ASIC Business Centre on payment of the relevant fee.

Voting at a creditors' meeting

To vote at a creditors' meeting you must lodge details of your debt or claim with the liquidator. Often, the liquidator will provide you with a form called a 'proof of debt' to be completed and returned before the meeting. Proofs of debt are discussed further below.

The chairperson of the meeting decides whether or not to accept the debt or claim for voting purposes. The chairperson may decide that a creditor does not have a valid claim or the amount of the debt cannot be determined with any certainty at the date of the meeting. In this case, they may not allow the creditor to vote at all, or only to vote for a debt of \$1. This decision is only for voting purposes. It is not relevant to whether a creditor will receive a dividend.

An appeal against a decision by the chairperson to accept or reject a proof of debt or claim for voting purposes may be made to the court within 14 days after the decision.

Voting by proxy

You may appoint a proxy to attend and vote at a meeting on your behalf. A proxy can be any person who is at least 18 years old. Creditors who are companies will have to nominate a person as proxy so that they can participate in the meeting. This is done using a form sent out with the notice of meeting. The completed proxy form must be provided to the liquidator before the meeting. You can fax the proxy form to the liquidator, but must lodge the original within 72 hours of sending the faxed copy.

An electronic form of proxy may be used if the liquidator allows electronic lodgement provided there is a way to authenticate the appointment of the proxy (e.g. by scanning and emailing a signature or using a digital signature).

You can specify on the proxy form how the proxy is to vote on a particular resolution and the proxy must vote in accordance with that instruction. This is called a 'special proxy'. Alternatively, you can leave it to the proxy to decide how to vote on each of the resolutions put before the meeting. This is called a 'general proxy'.

You can appoint the chairperson to represent you either through a special or general proxy. The liquidator or one of their partners or employees must not use a general proxy to vote in favour of a resolution approving payment of the liquidator's fees.

Manner of voting

A vote on any resolution put to a creditors' meeting may be taken by creditors stating aloud their agreement or disagreement, or by a show of hands. Sometimes a more formal voting procedure called a 'poll' is taken.

If voting is by show of hands or by verbally signalling agreement, the resolution is passed if a majority of those present indicate agreement. It is up to the chairperson to decide if this majority has been reached.

After the vote, the chairperson must tell those present whether the resolution has been passed or lost.

The chairperson may decide to conduct a poll, or a poll can be demanded by at least two people present who are entitled to vote, or someone who holds more than 10% of the votes of those entitled to vote at the meeting. The chairperson will determine how this poll is taken.

If you intend to demand that a poll be taken, you must do so before, or as soon as, the chairperson has declared the result of a vote taken by show of hands or voices.

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When a poll is conducted, a resolution is passed if:

- more than half the number of creditors who are voting (in person or by proxy) vote in favour of the resolution, and
- those creditors who are owed more than half of the total debt owed to creditors at the meeting vote in favour of the resolution.

This is referred to as a 'majority in number and value'. If no result is reached, the chairperson has a casting vote.

Chairperson's casting vote

When a poll is taken and there is a deadlock, the chairperson may use their casting vote either in favour of or against the resolution. The chairperson may also decide not to use their casting vote.

The chairperson must inform the meeting of the reasons why they cast the vote a particular way or why they chose not to use their casting vote. They must also include these reasons in the written minutes of meeting that are lodged with ASIC.

If you are dissatisfied with how the chairperson exercised their casting vote or failed to use their casting vote, you may apply to court for a review of the chairperson's decision. The court may vary or set aside the resolution or order that the resolution is taken to have been passed.

Votes of related creditors

Directors and shareholders, their spouses and relatives and other entities controlled by them are entitled to attend and vote at creditors' meetings if they are creditors of the company.

If a resolution is passed, or defeated, based on the votes of these related creditors, and you are dissatisfied with the outcome, you may apply to court for the resolution to be set aside and/or for a fresh resolution to be voted on without related creditors being entitled to vote. Certain criteria must be met before the court will make such an order (e.g. the original result of the vote being against the interests of all or a class of creditors).

Committee of inspection

In both types of liquidation, the liquidator may ask creditors if they wish to appoint a committee of inspection and, if so, who will represent the creditors on the committee.

A committee of inspection assists the liquidator, approves fees and, in limited circumstances, approves the use of some of the liquidator's powers, on behalf of all the creditors.

Committee meetings can be arranged at short notice, which allows the liquidator to quickly obtain the committee's views on urgent matters. Shareholders may also be members of the committee.

At the first meeting in a creditors' voluntary liquidation, creditors can decide to appoint a committee of inspection.

Creditors in both types of liquidation can also request at any time that the liquidator call separate meetings of shareholders and creditors to decide whether a committee of inspection should be appointed and, if so, who will represent the shareholders and creditors on the committee. This doesn't usually happen, as the creditor making the request must pay the costs of calling and holding these meetings.

A member of the committee of inspection must not, without permission from the court, accept a gift or benefit from the company or any other person, including another creditor, or purchase any of the company's property.

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A committee of inspection acts by a majority in number of its members present at a meeting, but it can only act if a majority of its members attend.

A liquidator must consider any directions given by the committee of inspection, but is not bound to follow them.

Minutes of committee of inspection meetings must be prepared and lodged with ASIC within one month. A copy may be obtained from any ASIC Business Centre on payment of the relevant fee.

Approval of liquidator's fees

A liquidator is entitled to be paid for the work carried out on the liquidation, but only if there are assets available. The liquidator cannot be paid until the amount of fees has been approved by one of the methods set out in the Corporations Act.

In a court liquidation, the amount of fees is approved by:

- agreement with a committee of inspection (if there is one), or
- a resolution passed at a creditors' meeting, or
- the court.

The liquidator must try to get approval by each of these methods, in turn.

In a creditors' voluntary liquidation, a committee of inspection or creditors may approve the fees.

If no fees have been approved in a court liquidation or a creditors' voluntary winding up, the liquidator may draw fees to a maximum of \$5000 where they have called a meeting of creditors but not obtained approval for their fees because the meeting did not have a quorum.

The court has the power to review the amount of fees approved.

If you are asked to approve fees, either at a meeting of a committee of inspection or in a general meeting of creditors, the liquidator must give you, at the same time as the notice of the meeting, a report that contains sufficient information for you to assess whether the fees claimed are reasonable. This report should be in simple language and set out:

- a description of the major tasks performed
- the costs of completing these tasks, and
- such other information that will assist in assessing the reasonableness of the fees claimed.

For further information, see Information Sheet 85 *Approving fees: a guide for creditors* (INFO 85).

If you are in any doubt about how the fees were calculated, ask the liquidator for more information.

In a court liquidation, the liquidator must also send creditors a statement of all receipts and payments for the liquidation.

Apart from fees, the liquidator will also be entitled to reimbursement for out-of-pocket expenses that have arisen in carrying out the liquidation. This reimbursement does not require committee, creditor or court approval. However, creditors have a right to know what funds were spent on these costs and why they were spent.

Payment of dividends

If there are funds left over after payment of the costs of the liquidation, and payments to other priority creditors, including employees, the liquidator will pay these to unsecured creditors as a dividend. Generally, the order in which funds are distributed is:

1. costs and expenses of the liquidation, including liquidators' fees
2. outstanding employee wages and superannuation
3. outstanding employee leave of absence (including annual leave, sick leave—where applicable—and long service leave)
4. employee retrenchment pay, and
5. unsecured creditors.

Each category is paid in full before the next category is paid. If there are insufficient funds to pay a category in full, the available funds are paid on a pro rata basis (and the next category or categories will be paid nothing).

Proving your debt

Before any dividend is paid to you for your debt or claim, you will need to give the liquidator sufficient information to prove your debt.

The liquidator will notify you if there are likely to be funds available for distribution and must call for formal proof of debt forms to be lodged. At least 14 days notice of the deadline for lodging the proof must be given.

This notice must be given to each person claiming to be a creditor whose debt or claim has not already been admitted by the liquidator. It must also be published in a daily newspaper in the states where the company carried out its business. A copy of the formal proof of debt form will be sent to you with the notice.

You should attach copies of any relevant invoices or other supporting documents to the proof of debt form, as your debt or claim may be rejected if there is insufficient evidence to support it.

If a creditor is a company, the proof of debt form must be signed by a person authorised by the company to do so.

The completed proof of debt form must be delivered or posted to the liquidator. When submitting your claim, ask the liquidator to acknowledge receipt of your claim and advise if any further information is needed.

The liquidator must notify you within seven days if they reject your claim. If you are dissatisfied with the decision, your first step should be to promptly contact the liquidator to see if you can resolve the matter.

If you can't resolve the matter with the liquidator, you may wish to seek your own legal advice, as you have a limited time to appeal to the court. The liquidator will notify you of this time in the notice of rejection. It must be at least 14 days after you receive the notice. The court has the power to extend the time to appeal. If you don't appeal within this time, the liquidator's decision on your claim is final.

If you have a query regarding the calculation of your claim, or the timing of the payment, discuss this with the liquidator.

Other creditor rights

As well as the various rights involving meetings and participation in dividends discussed above, the other rights of unsecured creditors include the right to:

- receive written reports to creditors about the liquidation
- inspect certain books of the liquidator
- inform the liquidator about your knowledge of matters relevant to the affairs of the company in liquidation, and
- complain to ASIC or the court about the liquidator's conduct in connection with their duties.

Written reports

The number of written reports a liquidator sends to creditors about the liquidation varies. If there are no funds at all available in the liquidation, it is possible that no written report will be sent, although many liquidators will send creditors a brief report even if there are no funds.

Liquidator's books

Liquidators must keep sufficient books to give a complete and correct record of their administration of the company's affairs. These include minutes of meetings and details of all the receipts and payments for the liquidation. These books must be available at the liquidator's office for inspection by creditors and shareholders.

Copies of minutes of meetings and six-monthly detailed lists of receipts and payments, as well as a number of other documents, must also be lodged with ASIC. Copies may be obtained from any ASIC Business Centre on payment of the relevant fee.

Creditors are unable to access the company's books and records without court permission.

Informing the liquidator

The liquidator must report to ASIC if they suspect that anyone connected to the company may have committed an offence. If you have any information that might assist in preparing such a report, you should let the liquidator know.

These reports are not available for inspection. ASIC reviews these reports and decides whether to take further action, such as banning a person from acting as a company director for a period of time or charging the person with a criminal offence.

Applications to the court

Creditors can apply to the court if they are dissatisfied with an act, omission or decision of a liquidator. This includes if a creditor seeks:

- to challenge the liquidator's decision not to admit a proof of debt or claim, either for voting or dividend purposes, and
- a review of the liquidator's fees, in certain circumstances.

Making an application to the court can be costly. You should attempt to resolve any problems with the liquidator and only go to court if this fails.

Liquidators, ASIC and other people can also make applications to the court. For example, a liquidator might apply to have questions decided or powers exercised in a liquidation.

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Complaining to ASIC about a liquidator's conduct is discussed below.

Secured creditors' rights

If a company fails to meet its obligations under a security interest (e.g. a charge or a mortgage), a secured creditor can appoint an independent and suitably qualified person (a receiver) to take control of and realise some or all of the secured assets, in order to repay the secured creditor's debt. This right continues after the company goes into liquidation. For more on receivership, see Information Sheet 54 *Receivership: a guide for creditors* (INFO 54).

Another option available to a secured creditor is to ask the liquidator to deal with the secured assets for them and account to them for the proceeds and costs of collecting and selling those assets.

A secured creditor is entitled to vote at creditors' meetings for the amount the company owes them that exceeds the amount they are likely to receive from realisation of the secured assets. The secured creditor can participate in any dividend to unsecured creditors on a similar basis.

Directors and liquidation

Directors cannot use their powers after a liquidator has been appointed. They have an obligation to assist the liquidator by:

- advising the liquidator of the location of company property and delivering any such property in their possession to the liquidator
- providing the company's books and records to the liquidator
- advising the liquidator of the whereabouts of other company records
- providing a written report about the company's business, property and financial circumstances within 14 days of the appointment of the liquidator by the court or within 7 days of the appointment of a liquidator in a creditors' voluntary liquidation
- meeting with, or reporting to, the liquidator to help them with their enquiries, as reasonably required, and
- if required by the liquidator, attending a creditors' meeting to provide information about the company and its business, property, affairs and financial circumstances.

A liquidator has the power to apply to the court to conduct a public examination, under oath, of a director (or other person with information about the company).

Compensation proceedings for amounts lost by creditors as a result of the company trading while insolvent can be initiated against a director personally by ASIC, a liquidator or, in certain circumstances, a creditor.

Conclusion of liquidation

A liquidation effectively comes to an end when the liquidator has realised and distributed all the company's available property and made their report to ASIC.

In a creditors' voluntary liquidation, the liquidator must hold a final joint meeting of the creditors and members to give an account of how the liquidation has been conducted and how company property has been disposed of. After the final meeting is held, the company is automatically deregistered by ASIC three months after a notice of the holding of the meeting is lodged.

In a court liquidation, the liquidator is not required to hold a final meeting of creditors. After the liquidator decides that the company's affairs are fully wound up, they may:

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- seek an order for release from the court
- seek an order for release and that ASIC deregister the company, or
- if there are insufficient assets to obtain a court order for the company's deregistration, request that ASIC deregister the company.

A company ceases to exist after it has been deregistered.

Queries and complaints

You should first raise any queries or complaints with the liquidator. If this fails to resolve your concerns, including any concerns about the liquidator's conduct, you can lodge a complaint with ASIC at www.asic.gov.au/complain, or write to:

ASIC Complaints
PO Box 9149
TRARALGON VIC 3844

ASIC will usually not become involved in matters of commercial judgement by a liquidator. Complaints against companies and their officers can also be made to ASIC. For other enquiries, visit www.asic.gov.au/question, or call ASIC on 1300 300 630 for the cost of a local call.

To find out more

For an explanation of terms used in this information sheet, see Information Sheet 41 *Insolvency: a glossary of terms* (INFO 41). For more on external administration, see ASIC's related information sheets at www.asic.gov.au/insolvencyinfosheets:

- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 75 *Voluntary administration: a guide for employees*
- INFO 46 *Liquidation: a guide for employees*
- INFO 54 *Receivership: a guide for creditors*
- INFO 55 *Receivership: a guide for employees*
- INFO 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*
- INFO 85 *Approving fees: a guide for creditors*

These are also available from the Insolvency Practitioners Association (IPA) website at www.ipaa.com.au. The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.

Important note

This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.