

## FIRST MEETING OF THE COMMITTEE OF INSPECTION

### Retail Adventures Pty Ltd (In Liquidation) ("The Company")

Held at the Offices of Deloitte Touche Tohmatsu  
Level 9 Grosvenor Place, 225 George Street, Sydney NSW 2000  
On Thursday, 27 March 2014 at 12:30pm (AEDT)

- In Attendance:** Vaughan Strawbridge Liquidator, Deloitte Touche Tohmatsu  
Kathryn Evans Deloitte Touche Tohmatsu  
Mark Clifton Herbert Smith Freehills
- Present:** The following Committee members were in attendance:
- Wendy Jacobs - in person  
Nick Mastrantonis – by telephone  
Fiona Goh – by telephone  
Tina Shur – by telephone  
Verica Pavlovksa – by telephone  
Michael Giannak – by telephone
- Opening of meeting:** Mr Strawbridge declared the meeting open at 12:35pm.
- He introduced himself as one of the three Joint and Several Liquidators of the Company.
- He stated this was the first Committee of Inspection meeting of Retail Adventures Pty Limited (In Liquidation) and it will be referred to as RAPL or the Company for the period of the meeting.
- He then introduced Kathryn Evans of his staff and Mark Clifton of Herbert Smith Freehills, also in attendance at the meeting.
- He noted that all members in attendance were attending by teleconference and would be taken as having signed the attendance register. He advised that Wendy Jacobs of Russells Lawyers advised she would try and attend the meeting but may be delayed.
- Appointment of Chairperson:** Mr Strawbridge advised that pursuant to Regulation 5.6.17(1) of the Corporations Regulations, that as Joint and Several Liquidator he would occupy the Chair.
- The Chairperson asked if there were any objections to him occupying the Chair. There were no objections.
- Purpose:** The Chairperson advised that the meeting was convened for the following purposes:
1. Receive an update on matters relating to the liquidation and potential legal actions available to the Liquidators;
  2. Approve the Liquidators' execution of Deeds of Assignment for store leases currently held in the name of the Company to DSG Holdings Australia Pty Ltd (DSG);
  3. To consider and if thought fit approve the Liquidators' remuneration; and
  4. Any other business.
- Tabling of documents:** The following documents were tabled by the Chairperson:
- Notice of the Meeting of the Committee of Inspection dated 20 March 2014; and
  - Remuneration Report dated 20 March 2014;

He stated that if there were no objections to the tabling of these documents he will take them as being read. There were no objections.

**Time and place of meeting:**

The Chairperson stated he had not received any objections that the time and place was not convenient to the Committee members. Therefore pursuant to Regulation 5.6.14 of the *Corporations Act 2001*, he declared that the meeting was held at a time and place most convenient for the majority of persons entitled to receive notice of the meeting.

**Quorum:**

As a majority of members of the Committee are present the Chairperson declared in accordance with Regulation 5.6.16 of the *Corporations Act 2001*, that a quorum is present for this Committee of Inspection Meeting.

**Voting on resolutions:**

The Chairperson advised that all motions are to be resolved on the voices.

When a motion is called, the Chairperson will request those in favour of the motion call yes and those against call no.

**Confidentiality:**

The Chairperson noted that confidentiality agreements were sent out with the notice of meeting however confirmed the agreements would not be required for this meeting as no confidential matters were scheduled to be discussed.

**Electronic correspondence:**

The Chairperson proposed the following resolution regarding receiving correspondence electronically:

*"That the Committee of Inspection, being the recipients of the Committee correspondence resolve and thus nominate that correspondence provided to them by the Liquidators in accordance with their membership of the Committee of Inspection be sent to them by electronic means".*

The Chairperson declared motion carried unanimously.

**Update of the Liquidation**

The Chairperson provided an update on the liquidation.

1. Minutes of last meeting of creditors on 11 March 2013

The Chairperson advised the minutes of the meeting of creditors has been lodged with ASIC and also placed on the Deloitte website.

2. Voidable security claim pursuant to section 588FE of the Corporations Act 2001

The Chairperson stated this claim concerns a portion of the \$77.6m in loans to RAPL by Bicheno Investments Pty Ltd ('Bicheno') and DSG via Retail Adventures Holdings Pty Ltd (In Liquidation) ('RAHPL'). The Liquidators' investigations indicate that \$49.77m of this amount could be voidable or invalid. This is because these loans were granted on an unsecured basis and then later secured. The Liquidators are of the view the security was given at a time that RAPL may have been insolvent and is therefore voidable.

Under the business sale agreement with DSG, part of the sale price paid by DSG was offset against these secured loans. If the security is found voidable under s 588FE of the *Corporations Act*, the amount payable to RAPL by DSG could be approximately \$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 has been extended until 31 July 2014. During the period from the judgement being handed down and the appeal being heard, the Chairperson advised he had sought to further extend the expiry date however DSG refused.

The claim has been drafted and it is the Liquidators' intention to lodge as soon as possible.

It was noted that Ms Jacobs joined the meeting at this point.

3. Preferential payments claim

The Chairperson advised a number of preference letters have been sent. It is intended the balance of letters to approximately 40 other creditors will be sent in the course of the next week. This includes payments to related parties identified to be preferential.

4. Public examinations

The Chairperson advised he was waiting on a proposed timetable and costing from his legal advisers on public examinations. The purpose of the public examinations will be to obtain further information on the company's financial position prior to the Administrators' appointment and the actions of the directors.

He also advised that a number of interviews had been conducted with former management to assist with the Liquidators' investigations.

5. Insolvent trading claim

This claim is currently being drafted. The priority is to initiate the voidable security claim and the public examinations.

6. Litigation funding

The Chairperson advised that once he had received a timetable and costing of the actions from his legal advisers he will progress discussions with Bentham IMF. He advised it was his intention to seek the approval of the Committee to enter into a funding agreement. The terms of the proposed funding will be provided to Committee members once discussions are progressed.

7. Costs orders

The Chairperson advised that at the meeting of creditors on 11 March 2014 he confirmed that DSG and Bicheno were required to pay his costs as a result of the application to set aside the resolution approving the deed of company arrangement. He confirmed a cost assessor has been contacted who will make an assessment of the costs before being claimed from DSG and Bicheno. He advised that he was pushing for this to be completed as soon as possible but it is likely to take six to eight weeks. The Committee will be provided an update at the next meeting.

8. Retail Adventures Holdings Pty Ltd (In Liquidation) (RAHPL)

The Chairperson referred to his statement at the meeting of creditors concerning an application to court to seek his replacement as Liquidator of RAHPL pursuant to Section 503 of the *Corporations Act*. This was because the Liquidators of RAPL intended to commence proceedings against RAHPL in relation to the voidable security claim. If that claim is successful it will result in part of the security held by RAHPL over RAPL's assets being set aside and impose an obligation on DSG to make a cash payment to RAPL under the Sale of Business Deed between DSG and RAPL.

The Chairperson advised if he was to pursue this action in his capacity as Liquidator of RAPL he cannot remain as Liquidator of RAHPL as it would present a conflict of interest.

He confirmed that the application was made in the Federal Court of Australia on 19 March 2014. As a consequence of that application the court made orders that he, David Lombe and John Greig be replaced as Liquidators and Todd Gammel and Andrew Needham of HLB Mann Judd be appointed as the Joint and Several Liquidators.

**Approval of deeds of assignment**

The Chairperson advised that section of 477(2B) of the *Corporations Act* states that except with the approval of the Court, the Committee of Inspection or a resolution of creditors, a Liquidator must not enter into an agreement on the company's behalf (for example an lease agreement) if the agreement goes for more than three months.

He stated by way of background, as part of the sale of the RAPL business, the Administrators agreed to assist DSG in executing deeds to assign store leases from RAPL to DSG. Under the voluntary administration, approval of creditors to enter into these agreements is not required. However, section 477 of the Act specifically applies to Liquidators and captures these deeds of assignment.

Approximately 40 leases were assigned during the voluntary administration period and a number of other leases were disclaimed and stores returned to the landlords. The Chairperson stated they had continued to work with DSG in their negotiations with landlords to either assign the existing leases or for RAPL to surrender or disclaim the lease to allow DSG to enter into a new lease. There were approximately 40 leases still remaining to be assigned.

The Liquidators undertook to hold a Committee meeting prior to the end of March to facilitate the approval of any lease assignments. The Chairperson noted the benefits in assigning the leases included limiting the amount landlords can claim in the liquidation of RAPL plus ensuring there was no remaining liability to RAPL or the Liquidators once the lease had been assigned.

The key terms of the deeds of assignment are as follows:

- RAPL assigns all rights, titles and interest in the lease to DSG or another nominated entity
- The assignment releases both RAPL and the liquidators from any obligations under the lease
- The landlord acknowledges waives all rights, titles and interests in any defaults under the lease
- DSG agrees to perform all the obligations under the lease and be bound by the lease
- DSG indemnifies RAPL for any claim that may arise from DSG breaching its obligations
- The liquidators incur no personal liability under the lease or the assignment deed.

The Chairperson advised that he could provide committee members with a copy of the deed assignment template if they wish to review it.

Ms Jacobs asked which stores were to be assigned and if the assignment documents were available to review.

Mr Clifton and Ms Evans confirmed no lease assignments had been received from DSG. DSG were informed last week that the deeds of assignment in a form agreed by all parties would need to be provided to the Liquidators by midday prior to the day of the Committee meeting.

The Chairperson advised three leases had been identified by DSG to be assigned, namely: Lutwyche; Beenleigh; and Cessnock. It was intended copies of the assignments would be circulated prior to the meeting. He noted that all of the assignments had similar terms.

The Chairperson stated that given the lease assignments were not available for the Committee to review, the alternatives were for the Committee to pass a resolution for the Liquidators to enter into the assignments when they become available if they contained the clauses he had outlined earlier, or alternatively to disclaim all remaining leases on 31 March 2014.

Ms Shur asked what the impact was of not approving a resolution regarding the assignments. Mr Clifton advised there was no direct impact however the longer this process continues the more money is being spent by the Liquidators and their lawyers in dealing with issues regarding the assignments.

There was a discussion regarding Committee members' concerns approving a resolution for the Liquidators to enter into assignments when they had not sighted the documents and the ongoing costs of continuing to deal with the assignments.

Mr Mastrantonis asked if the 40 leases yet to be transferred pertained to the stores for which the 180 days extension to the second convening period was obtained. The Chairperson confirmed this was correct.

It was proposed by the Chairperson and agreed by Committee members that a proposal would be put to DSG whereby if they agreed to pay the costs of the Liquidators and their legal advisers in continuing to assist in the deeds of assignment, then the Liquidators would delay disclaiming the balance of the leases still in the name of RAPL until the end of April. It was noted that strict time periods for DSG to respond would be imposed and if this was not met, the balance of the leases would be disclaimed. DSG would also be required to fund up-front any work to be undertaken on the assignments by the Liquidators or their legal advisers.

## Questions

Mr Mastrantonis asked for confirmation that the costs of the application to replace the Liquidators of RAHPL would not be borne by the creditors of RAPL. The Chairperson confirmed this to be correct.

The Committee then asked a number of questions relating to the legal actions intended to be launched by the Liquidators against DSG and other related entities. Ms Jacobs was asked to step out of the meeting given her role as DSG's legal adviser.

A confidential discussion was held during this period.

## Liquidators' remuneration

It was noted that Ms Jacobs re-joined the meeting.

The Chairperson referred to the remuneration report sent to the Committee with the notice. He proposed that unless there are any questions on the content of the remuneration report he would put the first resolution regarding the Liquidators' actual fees for the period 3 February 2014 to 14 March 2014.

Ms Jacobs asked whether any further information would be provided on the fees. The Chairperson advised the information provided was in accordance with the guidelines established by ARITA (Australian Restructuring Insolvency and Turnaround Association). There being no further questions, the Chairperson therefore proposed the following resolution for the Company:

*"That the remuneration of the Liquidators, their partners and staff, for the period of the Liquidation from 3 February 2014 to 14 March 2014 is fixed at a sum equal to the cost of time spent by the Liquidators and the Liquidators' partners and staff, calculated at the hourly rates as detailed in the Remuneration Report of 20 March 2014 of fees equalling \$246,484.50 plus GST and disbursements, and that the Liquidators can draw the remuneration as required."*

The resolution was carried unopposed with Ms Jacobs abstaining from voting.

The Chairperson then put a resolution regarding the Liquidators' prospective fees for the period 15 March 2014 to 2 May 2014.

*"That the remuneration of the Liquidators, their partners and staff, for the period of the Liquidation from 15 March 2014 to 2 May 2014 is fixed at a sum equal to the cost of time spent by the Liquidators and the Liquidators' partners and staff, calculated at the hourly rates as detailed in the Remuneration Report of 20 March 2014 of fees equalling \$326,420.00, plus GST and disbursements, and that the Liquidators can draw the remuneration as incurred. Should a lesser amount be actually incurred, only the lesser amount will be drawn. Should the fees be a greater amount then that amount will be subject to a separate fee approval and will not be drawn until approved."*

Mr Mastrantonis advised that he opposed the resolution as it was approving fees prior to being incurred. The Chairperson advised the fees were capped and only incurred fees would be drawn. Ms Jacobs noted that the fees would be drawn prior to the information being provided to the Committee.

The Chairperson asked for votes in favour of the resolution. Two committee members voted in favour. Three committee members voted against the resolution and Ms Jacobs abstained.

The Chairperson declared the resolution was not carried.

**Any other business** Is there any other business the Committee members wanted to discuss?

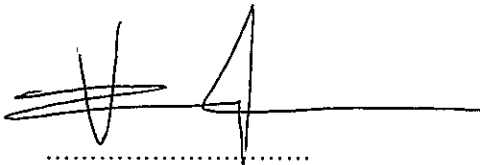
Ms Jacobs asked if the minutes of the meeting would be put on the website. The Chairperson advised the minutes would be put on the website however no confidential information would be disclosed. Ms Jacobs requested that draft minutes be circulated to Committee members. The Chairperson proposed that draft minutes would be circulated to Committee members in the week prior to being lodged. If Committee members had any comment they were to respond prior to the due date for lodgement with ASIC.

Ms Jacobs enquired about the confidentiality agreement. The Chairperson advised discussion on the confidentiality agreement would be stood over until the next meeting.

Mr Mastrantonis enquired whether it was the intention to commence litigation on the preference actions if they were defended by creditors. The Chairperson advised he would seek to avoid litigation in the first instance however it may happen.

There was a general discussion regarding the date of insolvency of the company and the requirement to prove insolvency for the preference actions. Mr Clifton advised it will have to be proved the company was insolvent at the date the payment was made to the creditor.

**Closure of meeting** There being no further business the Chairperson thanked the Committee members for their attendance and declared the meeting closed at 1.30pm.



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**Vaughan Strawbridge**  
Chairperson  
Dated: 24 April 2014