

SECOND MEETING OF THE 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 Tuesday, 13 May 2014 at 12:00pm (AEST)**

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:

Dominic Calabria - in person
Nick Mastrantonis – by telephone
Fiona Goh – by telephone
Tina Shur – by telephone
Verica Pavlovksa – by telephone
Michael Giannak – by telephone (joined at 12.28pm)

Opening of meeting:

Mr Strawbridge declared the meeting open at 12:05pm.

He introduced himself as one of the three Joint and Several Liquidators of the Company. The other liquidators, David Lombe and John Greig and Mr Strawbridge passed on their apologies.

He stated that this was the second 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 Mark Clifton of Herbert Smith Freehills and Kathryn Evans, also in attendance at the meeting.

Mr Strawbridge noted that Ms Jacobs of Russells Lawyers is no longer representing Bicheno. Mr Calabria of Bridges Lawyers, who is present at the meeting, has been authorised by Bicheno to represent it on the Committee. Written authority from Bicheno confirming Mr Calabria's representation has been received.

He noted all members except Mr Calabria are attending by teleconference and would be taken as having signed the attendance register. Mr Calabria has signed the attendance register.

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.

Purpose:

The Chairperson advised the purpose of the meeting was to:

1. Receive an update on matters relating to the liquidation;
2. Fix the Liquidators' current remuneration for the period 15 March 2014 to 30 April 2014; and
3. Consider any other business.

Tabling of documents:

The following documents were tabled by the Chairperson:

- Notice of the Meeting of the Committee of Inspection dated 7 May 2014; and
- Remuneration Report dated 7 May 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 is 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 were 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 all motions are to be resolved on the voices.

When a motion is called, could those who are in favour of the motion call yes and those against no.

Update of the Liquidation

The Chairperson provided an update on the liquidation.

1. Minutes of first meeting of the Committee of Inspection on 27 March 2014

The Chairperson advised the minutes of the first meeting of the Committee of Inspection have been lodged with ASIC and also placed on the Deloitte website.

2. Public examinations and notices to produce

On 14 April 2014 our lawyers applied to the Supreme Court seeking orders for production and examination summonses.

Orders for production were issued against the following parties:

1. Lawler Draper Dillon - personal accountant to Jan Cameron
2. KPMG - former auditor and adviser on the purchase of the RAPL business, turnaround of the RAPL business
3. Watson Mangioni Lawyers - prepared the security documents subject to S588FE action
4. DEM Australasia Pty Ltd and Damien Hodgkinson - restructuring adviser to Jan Cameron
5. Insurers
6. Penny Moss - former director, COO and in-house counsel
7. Bruce Irvine - former director
8. DSG Holdings Australia Pty Ltd ('DSG') – related entity
9. Bicheno Investments Pty Ltd as trustee of the Jan Cameron Trust - related entity
10. Jan Cameron – former director

Some documents from these parties have been receipted into court.

The Chairperson advised that he had also sought examination summonses to be issued against Bruce Irvine and Jan Cameron. As advised previously to the Committee, the original intention was to conduct the examinations on 2, 5 and 6 May however the dates had to be changed to 3 and 4 June due to:

- the time taken by the Registrar to view the application;
- minimum notice we have to give to the examinees; and
- the 21 days notice imposed by the Registrar for overseas examinees.

The Chairperson advised the notices to produce and examination summonses have to be served in person on individuals (rather than by mail). He was currently waiting on confirmation that Mr Irvine has been served. The Chairperson advised that Ms Cameron

currently had not been served however process servers had been engaged to serve her.

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

The Chairperson referred to discussions at the last meeting where he advised a statement of claim had been drafted in respect to the S588FE claim against Retail Adventures Holdings Pty Ltd (In Liquidation) ('RAHPL'), which related to the voidable security.

He confirmed that on 1 April 2014 his lawyers lodged an affidavit in the Supreme Court of NSW seeking leave to proceed in lodging a claim against RAHPL under S471B of the Corporations Act. Orders allowing leave to proceed were made on 10 April 2014 and the statement of claim was lodged with the court on that day. At the time of lodging the claim, the Liquidators' lawyers received an indication from Russells Lawyers they intended to apply to court for DSG to seek leave to be joined to the action. This would DSG to defend the action in circumstances where the Liquidators of RAHPL have no funds to defend the claim.

At a directions hearing on 8 May 2014 the registrar made orders:

- That DSG be granted leave to be joined to the proceedings as the second defendant.
- That DSG file and serve any points of defence on or before 19 May 2014.
- That the matter be listed for further directions and case management on Monday, 26 May 2014.

4. Intentions to enter settlement discussions

The Chairperson advised the Committee he had been having discussions with Jan Cameron and her advisers regarding settlement of the various actions against the directors and related parties.

He referred to the statements he made in the Section 439A report to creditors regarding the considerable risks and costs associated with embarking on certain actions and in particular an action for insolvent trading.

- Costs – given the expected costs of conducting public examinations, the 588FE action and insolvent trading the Liquidators have been in discussions with IMF to fund these costs. If successful a significant portion of any recovery would be taken by the litigation funder, estimated in this case to be 35%
- Timing – an action for insolvent trading can take significant time, possibly greater than 12 months
- Risks – there are risks around whether the actions will be successful and the parties having the capability to meet any favourable judgement.

The Chairperson confirmed that these risks and costs were outlined in the report and were considered by the Liquidators when framing their conclusion.

The Chairperson advised that discussions were progressing with IMF regarding litigation funding, but before finalising he sought to explore the possibility of a settlement of the Liquidators claims against Jan Cameron and her related entities. Any litigation funding agreement once signed would include a percentage recovery of any settlement being payable to the litigation funder, therefore we would be requiring a higher amount in order to return the same return to creditors.

During the first week of April 2014 the Chairperson confirmed he contacted Jan Cameron to discuss if she would be willing to enter into settlement discussions in respect to the claims we have against her and her related entities. This was slowed in part by a change in her legal advisors.

This has now progressed into an agreement which is subject to formal documentation to seek to settle the:

- 588FE claim

- Insolvent trading actions we have against the director, former directors and related companies;
- Preference claim against related entities; and
- Costs orders.

The Chairperson stated this agreement means the Liquidators have agreed to attend a formal mediation process to seek to resolve the matters in dispute to be completed by 13 June 2014.

To enable to mediation to happen the Chairperson advised he had agreed to the following:

- Adjournment of the S588FE proceedings to 30 June 2014
- Adjournment of the dates when the orders for the production of documents are due to 4 July 2014 and agree not to inspect any produced documents until this date, with the exception of the orders for production made on the insurers
- Reschedule the dates for the public examination of Jan Cameron and Bruce Irvine until the week commencing 4 August 2014
- The Liquidators will not enter into a funding agreement with any litigation funder prior to 14 June 2014.

Ms Cameron has agreed:

- Bridges Lawyers will be instructed to receive service on her behalf for any documents
- DSG/Bicheno/RAHPL agree to extend the Liquidators first ranking security over DSG by three months until 31 October 2014
- Neither she, DSG or Bicheno will make any donations totalling more than \$10,000 prior to the earlier of a settlement or 31 August 2014.

The Chairperson advised that his lawyers have circulated a draft agreement, the amendment to the security agreement and a draft mediation agreement for execution.

The Chairperson stated the effect of the agreement is that the Liquidators had agreed to delay the S588FE proceedings and public examinations by two months and Ms Cameron has agreed to extend the Liquidators' security over DSG by three months.

The Chairperson asked if Committee members had any questions at this point.

Mr Mastrantonis asked the Chairperson to confirm that neither Russells Lawyers nor Wendy Jacobs were acting for Bicheno. The Chairperson confirmed this was correct and Mr Calabria confirmed he had originally been instructed by Ms Cameron, DSG and Bicheno on the S588 proceedings but it had now broadened to cover the settlement discussions. Mr Mastrantonis then asked which lawyer is acting for DSG/Bicheno regarding the costs of the S600A application and the appeal. Mr Clifton confirmed that Russells appeared in court today regarding the orders made on the appeal costs however Mr Calabria clarified that whilst Russells are still the solicitors on record the intention is that he would take over.

Mr Mastrantonis asked whether any settlement would be part of a scheme of company arrangement. The Chairperson advised no - any recoveries from a settlement would come back into the liquidation for distribution to creditors. Mr Clifton stated that settlement discussions involved direct claims against DSG and directors and any settlement would be on the basis that related parties would not prove in the liquidation.

Mr Giannak asked about the timeframe on signing the settlement discussion documents. The Chairperson advised that drafts had been circulated on Friday and over the weekend and that if the documents were not signed this week, he would proceed with the public examinations, notices to produce documents and S588FE claim.

Mr Giannak asked if the Committee would receive any information prior to any settlement being entered into. The Chairperson confirmed that it was his intent to hold another Committee meeting before agreeing to any settlement.

Mr Mastrantonis asked if the mediation agreement was binding. The Chairperson stated that if the mediation does not result in a settlement, then the timetable is still in place. Mr Clifton confirmed the mediation agreement was non-binding however for parties to negotiate in good faith, the status quo would need to be maintained. If settlement was not possible the Liquidators would continue the actions it had commenced and would have a three month extension to the first ranking security over DSG.

Mr Mastrantonis asked if the Liquidators had a range in mind regarding a settlement figure, given the range previously provided in the Liquidators' S439A report to creditors and as part of the S600A application. The Chairperson confirmed that he had done some work on this but that it was inappropriate to discuss at this stage. If discussions progress to a point where there is a potential settlement, then he will outline his views to the Committee on an acceptable level. Mr Clifton confirmed that the information provided in the S439A report regarding potential recoveries will be considered when the Liquidators form their view however it was not appropriate to pre-empt negotiations.

5. Confidentiality Agreement

The Chairperson referred to the revised confidentiality agreements sent to Committee members with the notice. He confirmed he had not required that members sign them and return to us before the meeting.

The purpose of the confidentiality agreement is as follows:

- Ensure that information that goes to the Liquidators' strategy regarding recoveries is not revealed to the parties in question either deliberately or inadvertently
- To preserve confidentiality regarding information that may be subject to legal professional privilege.

The Chairperson advised that in circumstances where the revealing of information may negatively impact the Liquidators ability to recover money, it is appropriate to ask Committee members to withhold this information from creditors.

He confirmed that he will require the confidentiality agreements to be signed and returned prior to discussing any confidential matters. If a Committee member does not feel comfortable with signing the agreement then he will not be able to disclose or discuss confidential information with the COI. The Chairperson also confirmed that insurers usually have strict requirements regarding information being kept confidential.

Mr Clifton confirmed that there will be some information members will be unable to disclose to creditors and that a Committee members role is to form a view on matters put before them but this does not mean they have to consult with creditors in coming to that view.

The Chairperson advised that anything put in the minutes of the Committee meeting can be disclosed to creditors as that information is in the public domain.

The Chairperson asked if there were any questions on the confidentiality agreement. Mr Mastrantonis asked when the signed agreements are required to be returned. The Chairperson confirmed he would like the signed agreements within seven days.

6. Litigation funding

The Chairperson advised that litigation funding will be on hold through this mediation process. This has been communicated to IMF.

7. Costs orders

The Chairperson advised that information had been provided to the costs assessor and his lawyers expect to receive the bill of costs in about three weeks. DSG/Bicheno will then have 21 days to confirm whether they accept the costs. If they do not the information is

referred to court where a court appointed costs assessor reviews the information and makes a determination of the costs.

The Chairperson confirmed the Court of Appeal made orders that morning that DSG and Bicheno pay the Liquidators' costs of the appeal. This will now be included in the costs assessment process.

8. Leases

The Chairperson referred to discussions at the last meeting where it was agreed that a proposal was to 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 (approximately 40 in number) until the end of April 2014.

DSG was informed of these conditions following the meeting. They initially advised they wished to assign two leases however they never provided funding. As a result all leases were disclaimed in early April 2014.

Questions

The Chairperson asked Committee members if there were any other matters they wished to discuss.

The Committee then asked further questions relating to litigation funding, the settlement discussions and the legal actions. Mr Calabria was asked to leave the room given his role as legal adviser to Ms Cameron, DSG and Bicheno.

A confidential discussion was held during this period.

Liquidators' remuneration

It was noted that Mr Calabria re-joined the meeting at this point.

The Chairperson referred to the remuneration report sent to the Committee with the notice. He stated that unless there are any questions of the content of the remuneration report he would propose the resolution regarding the Liquidators' fees for the period 15 March 2014 to 30 April 2014.

Mr Giannak stated that he had problems understanding the fees and was of the view that more detail should be provided.

The Chairperson stated that remuneration report had been prepared in accordance with the template provided by ARITA (Australian Restructuring Insolvency and Turnaround Association) and in accordance with guidelines from ASIC. He stated that this was the normal level of detail that would usually be provided. Mr Clifton noted the bulk of the time related to the litigation and claims and there would be issues with disclosing too much detail.

Mr Giannak stated the information was cursory and asked if they could access the detail of what was given to IMF. The Chairperson confirmed this information would not be provided.

Mr Mastrantonis stated that 566 hours was spent on investigations but he was unable to determine the weight of time within the different investigation activities. He questioned whether this work had not already been done during the voluntary administration period. Mr Clifton stated there are different information requirements for investigations for the purposes of a S439A report compared to putting information into evidence relating to legal claims. The Chairperson advised further books and records had been obtained to confirm the investigations that had already been done.

The Chairperson advised they would look at providing a greater breakdown of the hours spent on the different activities, such as settlement discussions, in the future.

There being no further questions, the Chairperson proposed the following resolution for the Company:

“That the remuneration of the Liquidators, their partners and staff, for the period of the Liquidation from 15 March to 30 April 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 7 May 2014 of fees equalling \$310,561.50 plus GST and disbursements, and that the Liquidators can draw the remuneration as required.”

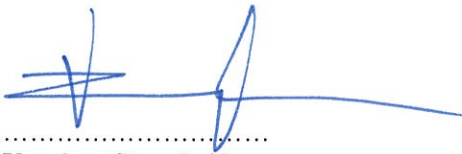
There were two votes in favour of the resolution and 4 abstentions.

As Section 549(3) of the Corporations Act requires a resolution of the Committee to be passed by a majority of the members present the resolution failed.

Any other business The Chairperson asked if there was any other business the Committee members wanted to discuss. No further matters were raised.

If the mediation proceeds the Chairperson advised he expected the next meeting will be held mid June. If DSG seeks to sell the business, a meeting may be called sooner than this.

Closure of meeting The Chairperson thanked those in attendance and closed the meeting at 1.40pm.



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Vaughan Strawbridge
Chairperson
Dated: 11 June 2014