

## CIRCULAR TO CREDITORS

21 September 2011

Dear Sir/Madam

### **Australian Discount Retail Group Individual Entities Detailed in 'Annexure A' (All In Liquidation)**

As you would be aware, Simon John Cathro and I were appointed as Joint and Several Administrators of the ADR Group of companies (except DVG) on 20 January 2009 pursuant to Section 436A of the *Corporations Act 2001* ("the Act").

Subsequently, on 25 November 2009 at concurrent meetings of creditors of all thirty-nine ADR Group entities, Mr Cathro and I were appointed Liquidators by a resolution of the respective creditors of each of the ADR Group companies.

I advise that Mr Cathro retired as Liquidator of all thirty-nine ADR Group entities on 10 August 2011 and I, David Lombe, remain as the sole Liquidator of all ADR Group entities.

Further, by an order of the Court on 19 September 2011, I was also appointed Liquidator of Discount Variety Group Pty Ltd ("DVG"), a wholly owned subsidiary of Australian Discount Retail (Trading) Pty Ltd. In all future correspondence to creditors any reference to the ADR Group is taken to include DVG.

#### **1. Pooling of the ADR Group (including DVG)**

As previously advised I recommend pooling of creditor claims for a number of reasons including:

- Australian Discount Retail (Trading) Pty Ltd ("ADRT") is the main trading entity and accordingly has the majority of unsecured creditor claims
- The ADR Group only had one bank account with all creditor invoices being paid from this account regardless of who the invoice was addressed to
- Historically ADRT settled all liabilities, even if another group entity incurred the debt
- Seven of the entities within the ADR Group were subject to a Deed of Cross Guarantee dated 28 July 2006. The effect of this guarantee is that each entity has effectively guaranteed the debts for all other entities
- The surplus funds received to date from the Receivers and Managers, from the sale of the business and assets of the ADR Group, has been provided as a lump sum that cannot be split between the respective ADR Group entities
- Creditor claims against the ADR Group entities (other than ADRT) would result in a claim by that ADR Group company against ADRT. Pooling would mean that the creditor could claim directly against ADRT for their outstanding debt.

A diagram and further discussion of the recommendation is included in the Report to Creditors dated 30 November 2010. If any creditor does not have a copy of that Report to Creditors, contact my office at the address set out in section 5 below and a copy will be provided to you.

## **2. Inclusion of DVG in pooled ADR Group**

DVG, although a member of the ADR Group, was not placed into Receivership or Administration on 20 January 2009. However, the business and assets of DVG were sold by the Receivers and Managers as part of the ADR Group and the proceeds from the sale are included in the surplus funds received by me for the benefit of unsecured creditors.

Previously it was my understanding that all creditors of DVG had been transferred to the purchaser of the ADR Group. However, recently I have been advised of one contingent creditor claim against DVG, in the amount of \$50,000, that was not transferred as part of the sale.

Given the above, and after discussion with the Receivers and Managers of the ADR Group, I have determined that it is appropriate for DVG to be wound up so that it can be a party to the pooling application for the following reasons:

- A deed of cross guarantee existed between DVG and a number of other members of the ADR Group
- DVG and the other ADR Group entities had common Directors
- Australian Discount Retail Pty Ltd board minutes show that the strategy and direction of DVG was determined by the ultimate parent entity (Australian Discount Retail Group Pty Ltd)
- The fact that the funds I have received from the Receivers and Managers comprise surplus funds from the combined sale of the businesses of the ADR Group and DVG.

In my opinion the inclusion of DVG in the pooled ADR Group will not disadvantage creditors.

## **3. Meeting of Creditors held on 17 December 2010**

As advised in my previous correspondence dated 30 November 2010, meetings of Creditors of all ADR Group companies (excluding DVG) were held concurrently on Friday 17 November 2010. I note that at this meeting a quorum was achieved for Australian Discount Retail Pty Ltd (“ADR”) and Australian Discount Retail (Trading) Pty Ltd (“ADRT”) only.

Before creditors were asked to indicate their support or objection to the pooling proposal they were given the opportunity to ask questions of the Liquidators and their legal representative about the pooling proposal. Creditors had also previously been provided with a Report to Creditors dated 30 November 2010 which described the pooling proposal.

In addition to discussion of the reasons for pooling outlined in the Report to Creditors I noted the following points as being particularly important when considering this issue:

- The surplus received from the Receivers and Managers is an undissected sum attributable to the sale of the entities of the ADR Group as a whole rather than individually. If the pooling process was not adopted, I would be forced to attribute a value to each entity within the group. This process would require numerous assumptions and would most likely lead to me seeking the guidance of the Court as to the validity of any valuation calculations. This would be both a timely and costly process that I believe would not be in the best interests of creditors as a whole.
- In the Liquidators’ opinion the pooling of creditor claims would result in an outcome which is fair upon all creditors. This is because the nature of the operation of the ADR Group was such that the assets and liabilities for each entity cannot be dissected.

As such in a situation where the liquidator was forced to attribute a value to each entity we would effectively be trying to create something that did not exist.

After discussion of the issues I asked the meeting whether there were any objections to me seeking approval from the Court for orders to pool the creditors' claims of the ADR Group entities under section 579E of the Corporations Act. No objections were received from the floor. Further, it was made clear by the creditors in attendance that there was strong support for seeking pooling orders.

#### **4. Creditor comments on pooling proposal to date**

My Report to Creditors dated 30 November 2011 invited creditors to share their opinions regarding the pooling with me. A form was provided to Creditors for this purpose.

To date I have received 62 written responses in relation to the pooling issue. 61 were in support of the pooling application.

The basis of the sole objection received is that a creditor of ADRT is of the opinion that without pooling the entire surplus would be attributable to ADRT only, and thus by objecting, this individual expected to receive a higher dividend. However, as outlined above, should the pooling process not proceed it is not the case that the entire surplus would be distributed to creditors of ADRT but rather I would need to apportion the surplus between all ADR Group entities at considerable cost. This cost would be borne by all creditors.

#### **5. Application to Court for approval of pooling proposal**

I have considered the comments about the pooling proposal, both in support and objection, made by creditors at the meeting of creditors on 17 December 2010 and received in writing. Based on this feedback and the other factors listed above I have determined that it is appropriate to make an application to the Court for approval of the pooling proposal.

As such notice is now given to creditors of all ADR Group entities (including DVG) that the ADR Group pooling application has been listed for hearing in the Supreme Court of New South Wales on **Wednesday, 12 October 2011 at 10am**.

A copy of my Court application and supporting affidavit is available on the ADR Group webpage on the Deloitte website as follows:

[http://www.deloitte.com/view/en\\_AU/au/services/corporatereorganisation/businessesunderadmin/australiandiscountretailgroup/index.htm](http://www.deloitte.com/view/en_AU/au/services/corporatereorganisation/businessesunderadmin/australiandiscountretailgroup/index.htm)

Alternatively creditors can request a copy of the application and supporting affidavit by submitting their request in writing to:

By Mail: Mr David John Frank Lombe  
The Liquidator  
Australian Discount Retail Group (Receivers and Managers Appointed) (In Liquidation)  
PO Box N250, Grosvenor Place  
SYDNEY NSW 1220

By Email: [adr@deloitte.com.au](mailto:adr@deloitte.com.au)

#### **6. Rights of creditors in relation to the application to Court**

The Court will not approve the pooling proposal if it would cause material disadvantage to an unsecured creditor without that creditor's consent.

The Court will only approve the pooling proposal if it considers that it is just and equitable to do so. The Court will consider:

- the extent of intermingling of the business of the ADR Group
- the extent to which a company in the ADR Group, and its officers and employees, were involved in the management of the other companies in the ADR Group, and their conduct towards the creditors of the other companies
- the extent to which circumstances causing the winding up of a company in the ADR Group were attributable to other companies or officers and employees in the ADR Group
- the extent to which creditors may be advantaged or disadvantaged by the pooling order
- any other matters that the Court considers relevant and which may include the attitude of creditors to the proposed pooling application.

As indicated in the Report to Creditors dated 30 November 2010, I will include in the application to the Court any comments provided by creditors. However, any creditor who wishes to appear before the Court at the hearing of the application is entitled to do so. The details of the hearing are as follows:

**Date:** 12 October 2011  
**Time:** 10am  
**Location:** Supreme Court of NSW, Queens Square, Sydney

## **7. Feedback from creditors**

I understand that pooling is an important and complicated issue and as such I am again providing creditors with a further opportunity to provide feedback on this issue prior to the Court hearing.

A copy of the Liquidator's feedback form regarding the proposed pooling of the 40 entities within the ADR Group is included as **Annexure B** to this circular.

I request that creditors put their comments in writing, either in support or objection for the proposed pooling. Comments can be mailed or emailed to the addresses set out in section 5 above.

Any comments provided by creditors will be included as part of the application to the Court. The deadline for providing comments is **5pm on Monday, 10 October 2011**.

## **8. Submission of formal proof of debt forms and dividend to unsecured creditors**

It is our intention to declare and pay a final dividend upon receipt of the total surplus funds from the Receivers and Managers, subject to the granting of the pooling application by the Court.

Given the large number of creditors in the ADR Group and the time constraints imposed upon me once a dividend has been declared, prior to declaring the distribution, I request that creditors submit a formal proof of debt form (copy attached at **Annexure C**) together with supporting documentation to enable the majority of creditor claims to be adjudicated and admitted to rank for the dividend.

**All creditors are required to submit a formal proof of debt form in order to be eligible to participate in the dividend. Creditors who have previously submitted a formal proof of debt form will not be required to do so again.**

Please note that creditors who have previously submitted an informal proof of debt form are still required to submit a formal proof of debt form. Please contact this office if you have any questions regarding any claim that you have submitted to date.

Please provide the following supporting documents (if they have not already been provided) in relation to any creditor claim:

- the signed formal proof of debt form
- summary of the claim if it relates to a large number of invoices
- supporting invoices
- any other relevant documentation in relation to the claim (e.g. relevant correspondence, copies of purchase orders and proof of delivery documents).

Formal proof of debt forms and supporting documentation can be mailed or emailed to the addresses set out in section 5 above.

I note that I am yet to receive the final surplus funds from the Receivers and Managers of the ADR Group. The Receivers and Managers have advised me that I shall receive these funds shortly. At this stage the estimated return to unsecured creditors remains unchanged at between 6.55 and 8.77 cents for each dollar claimed.

In the event that the pooling application is granted and the final surplus funds have still not been received I will make a determination as to whether to distribute an interim dividend based on the information available at that time. All creditors will be informed of this decision shortly after the outcome of the pooling application is determined.

Should you have any further queries in relation to the pooling issue or any other matter please contact Katy Lawrence of this office on (02) 9322 3390 or email your query to [adr@deloitte.com.au](mailto:adr@deloitte.com.au) .

Yours faithfully



D J F Lombe  
Liquidator



**Australian Discount Retail Group  
(All In Liquidation)**

<b>No.</b>	<b>Company Name</b>	<b>ACN</b>
1	Angzol Pty Ltd	109 316 350
2	Armmate Pty Ltd	104 711 891
3	Arnnete Pty Ltd	104 727 924
4	Kirby Street (Holding) Pty Ltd formerly Australian Discount Retail Pty Limited	116 849 113
5	Kirby Street (Finance) Pty Ltd formerly Australian Discount Retail (Finance) Pty Limited	117 268 532
6	Kirby Street (Logistics) Pty Ltd formerly Australian Discount Retail (Logistics) Pty Ltd	103 305 700
7	Kirby Street (Trading) Pty Ltd formerly Australian Discount Retail (Trading) Pty Limited	117 238 945
8	Blue Spike Pty Ltd	092 192 204
9	Bluebend Pty Limited	098 726 526
10	Bluepeer Pty Limited	098 726 553
11	Caloundra Retail Co Pty Ltd	108 773 208
12	Cashbound Pty Ltd	095 230 407
13	Cashbuild Pty Ltd	095 241 875
14	Kirby Street – (Ipswich) Pty Ltd formerly Crazy Clark’s – Ipswich Pty Ltd	050 403 695
15	Kirby Street (Warwick) Pty Ltd formerly Crazy Clark’s – Warwick Pty Ltd	073 395 838
16	Kirby Street (Dalby) Pty Ltd formerly Crazy Clark’s (Dalby) Pty Ltd	074 910 946
17	Kirby Street (Nth Qld) Pty Ltd formerly Crazy Clark’s Nth. Qld. Pty Ltd	058 407 471
18	Kirby Street (CC Retail) Pty Ltd formerly Crazy Clark’s Retail Pty Ltd	092 197 914
19	DPCo Pty Limited	117 640 310
20	Fireright Pty Ltd	095 578 386
21	Freshfame Pty Ltd	102 337 164
22	Garden Pty Ltd	071 458 930
23	General Variety Pty Ltd	097 076 447
24	Goralin Pty Ltd	087 268 719
25	Group Variety Pty Ltd	097 076 401
26	GSCo Pty Limited	117 640 301
27	Imagewatch Pty Ltd	102 323 786
28	ITCo Pty Limited	117 640 338
29	Look Sharp Concepts Pty Ltd	003 116 621
30	Makro Cannon Park Pty Ltd	105 140 752
31	Makro Toowoomba Pty Ltd	107 491 618
32	Mallwalk Pty Ltd	102 324 569
33	Moneycure Pty Limited	098 727 596
34	O’Neills Property Company Pty Ltd	095 230 416
35	Queensland Discounters Pty Ltd	097 076 410
36	Shopping Variety Pty Ltd	097 076 367
37	State Group Pty Ltd	097 076 385
38	Sungate Pty Ltd	010 497 551
39	Youngdown Pty Ltd	003 393 548
40	Discount Variety Group Pty Ltd	096 097 719

**Australian Discount Retail Group  
("the ADR Group")  
(All In Liquidation)**

**Response to the Liquidators proposed pooling of the 40 entities within the ADR Group**

\*I/\*We.....

of.....

a creditor of.....indebted for a total amount of \$.....

\*support/\*object to an application being made to the Court to have the ADR Group entities pooled.

Other Comments:

.....  
.....  
.....  
.....  
.....  
.....  
.....

DATED this    day of    2010.

\_\_\_\_\_  
Signature

Name.....

Contact Number.....

\*     Strike out if inapplicable



FORM 535  
CORPORATIONS ACT 2001

Subregulation 5.6.49(2)

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

ACN:

To the Liquidator of ..... (In Liquidation)

1. This is to state that the company was, on 20 January 2009<sup>(1)</sup> and still is, justly and truly indebted to<sup>(2)</sup>  
.....  
..... for  
..... dollars and ..... cents.

Particulars of the debt are:

Date	Consideration <sup>(3)</sup>	Amount \$	GST included \$	Remarks <sup>(4)</sup>

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any manner of satisfaction or security for the sum or any part of it except for the following:<sup>(5)</sup>
- 3.<sup>(6)\*</sup> I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.
- 3.<sup>(6)\*</sup> I am the creditor's agent authorised in writing to make this statement in writing. I know that the debt was incurred and for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

DATED this                      day of                      2011

Signature of Signatory.....

NAME IN BLOCK LETTERS.....

Occupation.....

Address.....

Phone.....

**See Directions overleaf for the completion of this form**

**OFFICE USE ONLY**

POD No:		ADMIT - Ordinary	\$
Date Received:	/ /	ADMIT - Preferential	\$
Entered into IPS/Computer:		Reject	\$
Amount per RATA	\$	H/Over for Consideration	\$
PREP BY/AUTHORISED		<b>TOTAL PROOF</b>	\$
DATE AUTHORISED	/ /		

### Directions

- \* Strike out whichever is inapplicable.
- (1) Insert date of Court Order in winding up by the Court, or date of resolution to wind up, if a voluntary winding up.
  - (2) Insert full name and address (including ABN) of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor.
  - (3) Under "Consideration" state how the debt arose, for example "goods sold and delivered to the company between the dates of .....", "moneys advanced in respect of the Bill of Exchange".
  - (4) Under "Remarks" include details of vouchers substantiating payment.
  - (5) Insert particulars of all securities held. Where the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, specify them in a schedule in the following form:

Date	Drawer	Acceptor	Amount	Date Due
	\$	¢		

- 
- (6) If proof is made by the creditor personally, strike the two (2) paragraphs numbered 3.
- 

### Annexures

- A. If space provided for a particular purpose in a form is insufficient to contain all the required information in relation to a particular item, the information must be set out in an annexure.
- B. An annexure to a form must:
  - (a) have an identifying mark;
  - (b) and be endorsed with the words:
 

*"This is the annexure of (insert number of pages) pages marked (insert an identifying mark) referred to in the (insert description of form) signed by me/us and dated (insert date of signing); and*
  - (c) be signed by each person signing the form to which the document is annexed.
- C. The pages in an annexure must be numbered consecutively.
- D. If a form has a document annexed the following particulars of the annexure must be written on the form:
  - (a) the identifying mark; and
  - (b) the number of pages.
- E. A reference to an annexure includes a document that is with a form.