

## TO ALL CREDITORS

4 August 2014

Dear Sir/Madam

### **Retail Adventures Pty Limited ABN 37 135 890 845 (In Liquidation) ('RAPL') ('the Company')**

I refer to my last update to creditors dated 1 July 2014. A copy of this circular is saved on the Deloitte website: <http://www.deloitte.com/au/retailadventures>.

#### Summary

The purpose of this circular is to advise of a settlement which has occurred today with the Director and former Directors of the Company in respect to a potential claim we had against them for trading the Company while it was insolvent ('Insolvent Trading Claim') and against related entities of the Director for preference payments. Funds of **\$13.84 million** have been received as a result of this settlement.

This settlement brings the total funds recovered to date to a total of \$19.9 million (including the amounts previously received from the settlements referred to in my circular dated 1 July 2014).

I intend to distribute the \$13.84 million as an interim distribution as soon as possible. Further correspondence will be sent to creditors shortly to advise you what you need to do to be eligible to participate in the dividend. Our current estimate is that the dividend will be around 15 cents in the dollar assuming creditor claims of approximately \$88 million.

#### 1. Summary of position prior to settlement

Prior to entering into this settlement the current position in the liquidation can be summarised as follows:

- On 11 June 2014 we received \$3.95 million to settle our claim lodged in the Supreme Court of New South Wales under S588FE of the Corporations Act ('S588FE Proceedings'). The nature of this claim is detailed in my circular dated 1 July 2014.
- As a result of the settlement DSG, Ms Cameron and Bicheno agreed to withdraw all claims in the liquidation (c. \$38.4 million) and not prove in any distributions made by the Liquidators to creditors.
- As part of the settlement of the S588FE Proceedings we also received \$1.05 million to settle a preference claim against a creditor. This creditor has also agreed not to prove in any distribution to creditors.
- Public examinations of Ms Cameron and one of the other Directors, Mr Bruce Irvine, were scheduled for the week commencing 4 August 2014.
- A large volume of information had been received and reviewed from a number of parties under the orders for production of documents that were issued in April 2014. These parties were outlined in my circular dated 1 July 2014.
- A large portion of the documentation received included information relating to Ms Cameron's financial position.
- Mediation with Ms Cameron was held on 1 July 2014, however, this was unsuccessful in achieving a settlement with regard to the claim for insolvent trading.

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- A statement of claim against the Directors for trading the Company while it was insolvent was in the process of being prepared for lodgement with the Supreme Court of New South Wales for the purposes of commencing legal action against the Directors and former Directors for the loss suffered by creditors.
- Although the mediation was unsuccessful I continued discussions with Ms Cameron's advisers regarding a possible settlement of all potential claims against her, the former Directors and related parties to Ms Cameron.

## 2. Claim against the Director and former Directors for trading the Company while it was insolvent ('Insolvent Trading Claim')

As referred to above we were in the process of drafting a statement of claim to be lodged with the court to commence action against the Director and former Directors of the Company for trading the Company while it was insolvent. This claim is further detailed in section 9.7.1 of my report to creditors dated 19 August 2013 ('S439A Report').

As outlined in the S439A Report and my most recent circular to creditors, there are considerable risks and costs associated with embarking upon litigation. These include:

- Costs – running litigation is expensive and may have required funding from a litigation funder. If successful a significant portion of any recovery would be taken by the funder as a fee, estimated in this case to be 35%.
- Timing – legal actions can take significant time to resolve, possibly greater than 12-24 months
- Risks – there are risks around whether the actions would be successful and most importantly, the parties having the ability to meet any favourable judgment.

These risks and costs were outlined in the report and were considered by the Liquidators when framing our conclusions.

It was for these reasons I initiated settlement discussions with Ms Cameron earlier this year and agreed to attend mediation on 1 July 2014. Although the mediation was unsuccessful in achieving a settlement on that day I continued to have discussions with her advisers with the objective of negotiating an offer at a level which I considered would be appropriate to be put to the Committee of Inspection for consideration.

## 3. Terms of settlement

The settlement sum of \$13.84 million is made up as:

- \$12.5 million settlement for the insolvent trading claim
- \$1.34 million settlement for related party preference claims.

The terms of the settlement were approved by the Committee of Inspection following meetings on 29 and 30 July 2014. In recommending that the Committee approve the settlement, I took into account:

- the inherent risks in any litigation
- the cost and time which it would take to successfully prosecute the claims to a final conclusion
- my assessment of the ability of the Director and former Directors' to satisfy any judgment if successful based on information received from the Directors and former Directors including documents produced to the Court as part of the examination process referred to in my circular to creditors of 1 July 2014. I was permitted to disclose this information to the Committee on a confidential basis
- the potential time, cost and uncertainty associated with steps that would be required to enforce a judgment
- legal advice received including from Senior Counsel.

The settlement resolves all claims against the Director and former Directors and related entities of the Director all of whom have also agreed not to participate in any distribution in the liquidation of the Company.

As a consequence of the settlement, the public examinations referred to in my Notice to Creditors dated 1 July 2014 and which were scheduled to commence from 4 August 2014 will no longer proceed.

#### 4. Estimated current financial position in the liquidation

The following settlements have been achieved (before costs) in the liquidation:

	\$ 000's
S588FE Proceedings	3,950
Costs of S600A application	1,050
Insolvent trading claim	12,500
Related party preferences	1,340
Other preferences	<u>1,050</u>
Total	\$19,890

The current position in the liquidation is tabled below. The column titled 'Current Position' represents the funds held by the Liquidators after current costs of the liquidation but prior to receiving the settlement funds for today's settlement.

\$000's	Current Position	Insolvent Trading Settlement	Total
<b>REALISATIONS</b>			
Cash at bank (prior to settlement proceeds)	964		964
Proceeds from sale of business/S588FE Proceedings	3,950		3,950
Preference payment	1,050	1,340	2,390
Insolvent trading	-	12,500	12,500
Other income	190		190
<b>Total realisations</b>	<b>6,154</b>	<b>13,840</b>	<b>19,994</b>
<b>ESTIMATED COSTS</b>			
Liquidators remuneration	(829)		(829)
Liquidator disbursements	(110)		(110)
Other disbursements and costs	(244)		(244)
Legal fees and disbursements	(936)		(936)
600A application costs	(450)		(450)
Recovery of legal fees	1,050		1,050
<b>Total costs</b>	<b>(1,519)</b>		<b>(1,519)</b>
<b>Surplus available to distribute to all creditors</b>	<b>4,635</b>	<b>13,840</b>	<b>18,475</b>
<b>DISTRIBUTIONS</b>			
Creditor claims			
Trade creditors	48,284	48,284	48,284
Contingent landlord claims	26,000	26,000	26,000
Landlord rent arrears	10,070	10,070	10,070
Statutory creditors	3,530	3,530	3,530
Related party creditors	-	-	-
Preference payment creditors	-	-	-
<b>Total creditor claims</b>	<b>87,885</b>	<b>87,885</b>	<b>87,885</b>
<b>Total potential funds available for a dividend to unsecured creditors (¢ in \$) (before costs and future recoveries and subject to final determination of creditor claims)</b>	<b>5.27</b>	<b>15.75</b>	<b>21.02</b>

Please note the total dividend estimate of 21.02 cents does not include:

1. Any future additional recoveries from other creditors identified as receiving preference payments; or
2. The costs of making the distribution and other costs of the liquidation from July 2014 onwards.

We do expect further recoveries from payments identified as preferential in nature and on this basis we expect in time the total dividend payable to creditors to exceed 21 cents in the dollar (based on creditors' claims of \$87.9m).

Please note the actual amount of future preference payment recoveries is dependent on a number of factors including whether legal action is required to recover the funds and the strength of any defences put forward by the creditor. We will provide an update to creditors in due course of any further recoveries received.

Funds received from this and earlier settlements are more than 3.5 times the amount offered under the Deed of Company Arrangement ('DOCA') proposed by Ms Cameron in August 2013. Creditors will recall the DOCA did not proceed as a result of action taken by two creditors (Helenic Pty Ltd as trustee of the Mastrantonis Family Trust and JFK Group Company Limited) as representatives of a larger body of creditors funded by IMF Bentham Limited in commencing legal action to have the resolution approving the DOCA set aside by the court. Without the actions of those parties and funding provided by IMF Bentham Limited, we would not have been able to achieve the estimated returns to creditors referred to above.

To note is the actual rate of return to creditors (cents in the dollar) will depend on the ultimate value of creditors' claims admitted to participate in any dividend:

- Trade creditor claims of \$48.3 million is taken from the books and records of the Company and may differ from the actual amount submitted by creditors and admitted as valid claims in the liquidation
- Final value of landlord contingent claims and rental arrears. This was estimated at \$26 million and \$10.07 million respectively. Substantial work will be required to determine the exact quantum of claims based on the information which we will require the landlords to submit to us to assess their claims.

## 5. Distribution to creditors

I intend to pay the full proceeds of the insolvent trading claim of \$13.84 million as in interim dividend. This is currently estimated as 15.75 cents in the dollar on creditor claims. As noted above the final cents in the dollar to be received by creditors may change as it will depend on the level of actual claims admitted by the Liquidators as eligible to receive a dividend.

Further information will be sent to creditors shortly regarding the dividend process. I note that we recently called for creditors to submit proofs of debt for the purposes of calculating the insolvent trading claim. In order to adhere to statutory requirements we will need to issue notices again to creditors. Further instructions will accompany that that notice.

If you have any queries in relation to the above, please contact Teresa Chan of my office on (02) 9322 3834 or by email at [terchan@deloitte.com.au](mailto:terchan@deloitte.com.au).

Yours faithfully



**Vaughan Strawbridge**  
Joint and Several Liquidator