

Creditor update

3 August 2015

Retail Adventures Pty Ltd (In Liquidation)

1 Key points

This update should be read in conjunction with our previous communications to creditors regarding Retail Adventures Pty Ltd (the Company), and which can be found at <http://www.deloitte.com/au/retailadventures>.

In our previous update, we advised of an application to the Supreme Court of New South Wales (**the Court**) by creditors of the Company who had previously entered into litigation funding agreements with IMF Bentham Limited (**funded creditors**) to have IMF Bentham Limited's (**IMF**) costs and funding fee paid in priority to any distribution to unsecured creditors (**S564 proceedings**).

The application was dismissed by consent of all parties on 20 July 2015 without being fully heard. This means that approximately \$1.6 million, held aside to pay IMF if the application succeeded, is available for distribution to all creditors via a further distribution (**dividend**).

We intend to pay a further dividend in late 2015 of 2.00 to 2.50 cents in the dollar of admitted claims.

2 More on the S564 proceedings

As creditors are aware, the application was filed by one of the funded creditors, Sperling Enterprises Pty Ltd (**the Plaintiff**), on 23 December 2014. In our creditor update of 20 February 2015 we advised that the proceedings had been set down for hearing on 6 May 2015.

TNW Australia Pty Ltd (**TNW**), representing non-funded creditors, contended in their submissions lodged prior to the hearing, that there may be an issue as to the proper construction of the funding agreement between IMF and the funded Creditors, and the extent to which any determination of the Court would be binding on IMF and funded creditors other than the Plaintiff. Specifically, TNW challenged whether the amounts claimed by IMF by way of reimbursement from its clients were properly due to IMF under its funding agreements with those clients. Justice Black considered that IMF may need to be joined as a party to the proceedings as its rights could be affected if the Court made findings in connection with the funding agreement.

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Consequently, the Plaintiff sought an adjournment of the proceedings to enable further consideration to be given to whether IMF should be joined as a party to the proceedings. The proceedings were adjourned a further two times until 5 June 2015 due to the complexity of issues being considered by the parties and the Court.

On 20 May 2015 CBP Lawyers (**CBP**), the solicitors representing the Plaintiff, received notice from IMF's lawyers stating that IMF would no longer be funding the application.

In correspondence dated 27 May 2015, IMF notified its clients that while neither they nor the Plaintiff agreed with TNW's contentions regarding the Funding Agreement, IMF had determined not to continue funding the application because, having further considered the prospects of success of the application, it had formed the view that it was not in the interests of any party to pursue a Court application which would take up significant additional time and resources and which, on balance, was unlikely to succeed. IMF advised it would continue to indemnify the Plaintiff for costs incurred and any adverse costs order made against them up to the date of its decision to cease funding, but not in respect of any future costs incurred.

Separately CBP wrote to all funded creditors to seek their assistance in funding the application to finality. During this period CBP also requested that we continue to fund the application.

At the directions hearing on 5 June 2015, we indicated that we would need to seek the Court's direction with regard to whether we should fund the Plaintiff for the remainder of the application. Justice Black indicated that he expected the Liquidators to give their view as to whether it would be reasonable to provide the requested funding, and the reasons for that view in their evidence for the hearing, which was set for 18 June 2015.

Ultimately, having regard to the submissions made in the proceedings, the absence of any continuing indemnity from IMF for the costs of the proceedings and our view, consistent with that of IMF, that the Plaintiff's application was unlikely to succeed, we decided that to fund the application to finality would not be in the best interests of the creditors of the Company as a whole.

CBP were not able to secure funding from another source and, as such, the parties agreed to dismiss the proceedings.

During the intervening period we negotiated a settlement with IMF with regard to the costs of the application. Settlement was agreed, with \$195,145.30 paid by IMF to us in respect of legal fees we incurred (including the costs of TNW) as a result of the application.

Following payment of the costs settlement, on 20 July 2015 Justice Black ordered that the proceedings be dismissed by consent.

Given that the proceedings were still on foot at the time of the payment of the interim dividend on 5 June 2015, we made arrangements to transfer sufficient funds from the distribution to a controlled money account held by our lawyers, Herbert Smith Freehills, to enable us to make payment to IMF in the event that application by the Plaintiff was successful. We estimated that the total amount that could be payable to IMF would be approximately \$1.6 million.

As a result of the orders being made for the proceedings to be dismissed, the funds transferred to the controlled money account have now been returned to our account and will be available to pay to creditors as part of a future dividend.

3 Further distributions to creditors

As above, we expect to pay a second dividend to creditors in late 2015, and at this stage we estimate the amount will be between 2.00 to 2.50 cents in the dollar of admitted claims.

The first dividend of 10.54 cents in the dollar on admitted claims was paid on 5 June 2015.

The amount of further distributions is dependent on future recoveries from creditors who have been identified as receiving a payment in priority of other creditors (known as **preference recoveries**).

Yours faithfully



Vaughan Strawbridge
Joint and Several Liquidator

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Abbreviation	Meaning
CBP	CBP Lawyers, representing funded creditors
Funded creditors	Creditors of the Company funded by IMF
IMF	IMF Bentham Limited
Non-funded creditors	Creditors of the Company who are not funded by IMF
Preference recoveries	Amounts recovered from creditors identified as receiving payment by the Company in preference to other unsecured creditors, during the period six months prior to the Administrators' appointment.
S564 proceedings	Application in the Supreme Court of New South Wales, matter number 2014/00376655, by Sperling Enterprises (the Plaintiff) representing creditors funded by IMF. The application under S564 of the Corporations Act 2001 sought orders that the liability owed by funded creditors to IMF under their funding agreement be paid in priority to any distributions to unsecured creditors of the Company.
The Company	Retail Adventures Pty Ltd (In Liquidation)
The Plaintiff	Sperling Enterprises Pty Ltd, plaintiff in S564 proceedings
TNW	TNW Australia Pty Ltd, third defendant in the S564 proceedings representing non-funded creditors