



## SUPPLEMENTARY SECOND REPORT TO CREDITORS

AFAR RETAIL EF PTY LTD  
(ADMINISTRATORS APPOINTED)  
ACN: 105 772 978 ("COMPANY")

9 December 2024

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## GLOSSARY OF COMMON ACRONYMS & ABBREVIATIONS

ABN	Australian Business Number
ACN	Australian Company Number
Act	Corporations Act 2001 (Cth)
Afar Holdings	Afar Holdings Pty Ltd
ARITA	Australian Restructuring Insolvency and Turnaround Association
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
Committee	Committee of Inspection
Company	Afar Retail EF Pty Ltd
Directors	Joseph Shalala and Peter Shalala
DIRRI	Declaration of Independence, Relevant Relationships & Indemnities
DOCA	Deed of Company Arrangement
DOCA Proposal	Deed of Company Arrangement Proposal from the Directors dated 5 November 2024
FEG	Fair Entitlements Guarantee
Firm	BRI Ferrier NSW
IPR	Insolvency Practice Rules (Corporations) 2016
IPS	Insolvency Practice Schedule (Corporations)
POD	Proof of Debt
PPSR	Personal Property Securities Register
ROCAP	Report on Company Activities and Property
Second Report	Second Report to Creditors in this Administration dated 29 October 2024
SPV	Special Purpose Vehicle
VA	Voluntary Administration
Westfield	Westfield Shopping Centres as part of the Scentre Group

## 1. QUICK SHEET

KEY QUESTIONS	ANSWERS
<b>When is the Resumption of Second Meeting of Creditors?</b>	<p>The Resumption of Adjourned Second Meeting of Creditors will be held on <b>Monday, 16 December 2024 at 3:00PM AEDT</b>.</p> <p>Held in person, with virtual facilities also available.</p>
<b>What information is included in this report?</b>	<p>This is a supplementary report issued to reconvene the adjourned second creditors meeting. Creditors should read this supplementary report in conjunction with the Second Report dated 29 October 2024.</p>
<b>Are there any claims against the Directors in a Liquidation scenario?</b>	<p>There is a potential breach of duty/contract claims against the Directors and Afar Holdings, which will require funding to pursue. The claims are speculative and will likely be defended, such that the outcome is uncertain.</p>
<b>Is a Deed of Company Arrangement proposed?</b>	<p>Yes, the Directors have proposed a DOCA.</p>
<b>How is the DOCA being funded?</b>	<p>Deed fund will consist of funds held in the Administration, including any residual from the \$140K indemnity provided by the Directors. Plus a further \$100K cash contribution from Joseph Shalala paid upfront.</p>
<b>Will the unsecured creditors get paid?</b>	<p>Yes, the DOCA provides a partial return to unsecured creditors, which varies depending on Westfield's claim.</p> <p>In Liquidation, a return is subject to successfully pursuing the breach of duty claim, which will be subject to funding to pursue via litigation and the outcome is uncertain.</p>
<b>What is the Administrators' recommendation that creditors vote for at the Resumed Second Meeting of Creditors?</b>	<p><b>The DOCA provides for a more certain and likely improved return to creditors as compared to a speculative return in a Liquidation, which is contingent on litigation.</b></p> <p><b>As such, we recommend that creditors should vote in favour of the proposed DOCA.</b></p>

## 2. INTRODUCTION

We refer to our First Report to Creditors dated 3 October 2024 in which our appointment as Joint and Several Administrators of the Company was advised along with an explanation of the Voluntary Administration process.

The objective of Part 5.3A of the Act is to provide for the business, property and affairs of an insolvent (or likely to become insolvent) company to be administered in a way that maximises the chances of the company, or as much as possible of its business, continuing in existence, or, if this is not possible, results in a better return for the company's creditors than would result from an immediate winding up of the company.

Section 438A of the Act requires that, as soon as practicable, the Administrators must investigate the business, property, affairs and financial circumstances of the Company and form an opinion about each of the following matters:

- ▲ Whether it would be in the Creditors' interests for the Company to execute a DOCA;
- ▲ Whether it would be in the Creditors' interests for the Administration to end; and
- ▲ Whether it would be in the Creditors' interests for the Company to be wound up.

We issued our Second Report to Creditors on 29 October 2024, convening the Second Meeting of Creditors held on 6 November 2024, which was adjourned. This is a supplementary report to creditors, which should be read in conjunction with the First and Second Reports. If you have any questions relating to the administration in general, or specific questions relating to your position, please do not hesitate to contact this office.

COMPANY DETAILS		ADMINISTRATORS	
<b>Name</b>	Afar Retail EF Pty Ltd (Administrators Appointed)	<b>Name</b>	Jonathon Keenan and Peter Krejci
<b>Incorporated</b>	4 August 2003	<b>Date Appointed</b>	1 October 2024
<b>ACN</b>	105 772 978		
<b>ABN</b>	23 105 772 978		
<b>Registered Office</b>	Kelly Partners (South West Sydney), Suites 1-8 Kellicar Lane, MacArthur Square, 200 Gilchrist Drive Campbelltown NSW 2560	ADMINISTRATION CONTACT	
		<b>Name</b>	Nicole Feng
		<b>Email</b>	<a href="mailto:nfeng@brifnsw.com.au">nfeng@brifnsw.com.au</a>
		<b>Phone</b>	02 8263 2333

### 3. EXECUTIVE SUMMARY

As you are aware, on 1 October 2024, we, Jonathon Keenan and Peter Krejci, were appointed Joint and Several Administrators of the Company pursuant to Section 436A of the Act.

This Report should be read in conjunction with our previous reports, in particular, our Second Report to Creditors dated 29 October 2024. We will not restate matters contained in the previous report, unless there are updates required.

Pursuant to Section 439A of the Act, we convened the Second Meeting of Creditors of the Company on 6 November 2024. This meeting was adjourned for up to forty-five (45) business days to allow further time for a DOCA to be explored.

The resumption of the Second Meeting of Creditors has been convened to be held at 3:00pm (AEDT) on Monday, 16 December 2024. A notice is attached with particulars of the meeting, which will be held in person and virtually for convenience of creditors.

We provide below a summary update on this matter.

Over the past month, we have continued to trade the business by maintaining the leases, via the commercial arrangement with Afar Holdings. As foreshadowed in the past report, the Company's six (6) leased premises with Westfield would need to close. We have worked with both Afar Holdings and Westfield to facilitate the orderly process of closing the stores. Thus far, five (5) stores have closed, and Westfield have re-entered and terminated the respective leases (some of which had already expired or are allegedly operating under implied terms). We anticipate that the final store will close prior to the resumption of the Second Meeting of Creditors.

We have continued our discussions with the Directors, who had expressed interest in proposing a DOCA. After negotiations with the parties, we have received a DOCA proposal from the Directors as Deed Proponents. The DOCA Proposal is included herein, along with our analysis.

The DOCA Proposal provides for the establishment of a Deed Fund, comprising the funds held in the Administration, any residual from the indemnity funds of \$140K paid by the Directors and a further cash contribution from Joseph Shalala of \$100K (to be paid into trust prior to the resumed Second Meeting).

The DOCA Proposal appears to be a viable arrangement presenting creditors with a commercial settlement in the circumstances. The DOCA Proposal provides for a more certain and likely improved return to creditors, as compared to Liquidation. We note that, based on our investigations to date, any return to unsecured creditors in Liquidation is speculative, based on successfully pursuing the potential breach of duties/contract claim via litigation (refer to details in the Second Report).

We note that the Liquidation would require funding to pursue any recovery via litigation, especially so because we understand, that any claims would be defended. The claim value is based on the loss suffered by Westfield, which is currently unknown as it requires Westfield to mitigate its loss by re-leasing the respective premises. Based on our investigations to date and experience from past (unrelated) matters, Westfield's claim may be in the order of approximately \$1.6M, subject to a number of assumptions. With the quantum of the claim at that level, it will be challenging to attract a commercial litigation funder to provide funding for litigation to pursue the claims. In such

circumstances, the primary creditor beneficiaries are the logical funders, however Westfield has not indicated any interest in providing such funding for a Liquidator. This would need to be explored further if the Company is placed into Liquidation.

We have prepared estimates of the potential returns to creditors under the proposed DOCA as compared to a Liquidation scenario, summarised as follows:

Summary of Return to Creditors	DOCA		Liquidation	
	Optimistic Cents/\$	Pessimistic Cents/\$	Optimistic Cents/\$	Pessimistic Cents/\$
<b>Secured Creditors</b>	N/A	N/A	N/A	N/A
<b>Priority Creditors</b>	N/A	N/A	N/A	N/A
<b>Unsecured Creditors</b>	26	6	22	Nil

Based on current estimates, in a Liquidation scenario, our projections indicate that the recovery (if the claims are ultimately successful) would need to exceed \$935K for there to be a return to creditors, after costs. Conversely, the DOCA is based on a contribution amount which will be immediately available. As such, we consider that the proposed DOCA provides creditors a more certain and likely improved return as compared to Liquidation, where any return to creditors is subject to the costs, risks and vagaries of litigation.

**Therefore, we recommend that creditors should vote in favour of the proposed DOCA at the forthcoming resumed Second Meeting of Creditors.**

### 3.1 BASIS OF REPORT

This Supplementary Report has been prepared primarily from information received from the Company's Directors and external advisors to the business/Directors.

In order to complete this report, and in conducting our investigations, we have also utilised information from:

- ▲ ASIC;
- ▲ The books and records of the Company;
- ▲ Discussions and correspondence with the Directors and advisors;
- ▲ The ROCAP and questionnaire forms completed by the Directors;
- ▲ Extracts from public information databases; and
- ▲ Correspondence with creditors.

### 3.2 DISCLAIMER

This Report and the statements made herein are based upon available books and records, information provided by the Company's Directors, Advisors and from our own enquiries. Whilst we have no reason to doubt the accuracy of the information provided or contained herein, we reserve the right to alter our opinions or conclusions should the underlying data prove to be inaccurate or materially change after the date of this Report.

In considering the options available to Creditors and in formulating our recommendations, we have necessarily made forecasts and estimates of asset realisations and the ultimate quantum of Creditors' claims against the Company where appropriate. These forecasts and estimates may change as asset realisations progress and as Creditors' claims are made and adjudicated upon. Whilst the forecasts and estimates are the Administrators' best assessment in the circumstances, Creditors should note that the Company's ultimate deficiency, and therefore the outcome for Creditors could differ from the information provided in this Report.

Neither the Administrators nor any member or employee of BRI Ferrier accepts responsibility in any way whatsoever to any person in respect of any errors in this Report arising from incorrect information provided to us, or necessary forecasts, estimates and assessments made for the purposes of these Reports.

Should any Creditor have material information in relation to the Company's affairs which they consider may impact on our investigation or Reports, please forward the details to our office as soon as possible.

### 3.3 DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES

A DIRRI pursuant to Section 436DA of the Act was enclosed in the First Report. There is no update required to the DIRRI.



### 3.4 PREVIOUS REPORTS AND CREDITORS MEETINGS

This report should be read in conjunction with our previous reports issued in this matter:

- ▲ First Report to Creditors dated 3 October 2024; and
- ▲ Second Report to Creditors dated 29 October 2024.

We note that first creditors meeting was held on 14 October 2024. Minutes of that meeting were lodged with ASIC.

The Second creditors meeting was held on 6 November 2024 and was adjourned for up to forty-five (45) business days. The minutes for the adjourned meeting will be lodged, once the resumption of Second Meeting has occurred and concluded.

### 4. TRADING DURING VOLUNTARY ADMINISTRATION

As discussed in the Second Report, we entered into a commercial arrangement with Afar Holdings to continue the funding of the lease costs in the short-term during the Administration period. That arrangement includes recovery of costs, plus a 10% margin, improving the position for the Company.

As previously reported, Afar Holdings determined that the underlying INSPORT retail business trading from the six (6) Westfield leased stores would need to close. Over the past month we have worked closely with Afar Holdings and Westfield to facilitate the orderly closure of the stores. Thus far, five (5) stores have closed, and Westfield have re-entered and terminated the respective leases (some of which had already expired or are allegedly operating under implied terms). We anticipate that the final store will close prior to the resumption of the Second Meeting of Creditors.

We note that as part of the store closures, a “soft deficit” was undertaken at each of the sites, which included removal of stock, racks, signage and rubbish, leaving a clean shop and shop front. This approach should assist to minimise the loss suffered by Westfield.

Below is a summary update on the store closures:-

Store	Return of Control of Store
Westfields Tuggerah	Closed on 8-Nov-24
Westfields Liverpool	Closed on 15-Nov-24
Westfields Hurstville	Closed on 22-Nov-24
Westfields Mt Druitt	Closed on 29-Nov-24
Westfields Burwood	Closed on 6-Dec-24
Westfields Penrith	Proposed for 13-Dec-24

During the Administration, we have received licence fees from Afar Holdings totalling \$653K for the continued occupation of the stores to the respective closure dates. We have continued to pay Westfield for the rent for those stores (commencing after the decision period). We have also arranged insurance cover and incurred other related occupation costs during the trading.

## 5. CURRENT FINANCIAL POSITION

We refer to the detail contained in the Second Report as to the financial position of the Company.

We note that in the Second Report there was discussion regarding the bank guarantees, some of which were missing. We issued a demand on the Directors to deliver up the missing bank guarantees, of circa \$308K, however none were delivered up. Since the last report, the Directors have advised that they cannot locate the missing guarantee documents, however they have not provided any further details nor offered to have the guarantee documents reissued. Absent any further explanation or documentation, Afar Holdings might be considered a debtor in respect of the missing bank guarantees, and until the Company recovers that debt, there may be a set-off available in respect of the loan reported as owed to Afar Holdings. We note that the debt may be pursued as a claim in a Liquidation, which is incorporated in the breach of duty/contract discussed in the Second Report. We also note that a portion of the missing bank guarantees relate to the unsigned leases (Hurstville and Mt Druitt), and therefore that claim is likely to be subject to dispute with Afar Holdings and/or Directors.

There are no other material updates required to the financial position disclosed in our Second Report.

## 6. PRELIMINARY INVESTIGATIONS & POTENTIAL CLAIMS

We refer to the detail contained in the Second Report as to the preliminary investigations of the Company. We have not received any further information or documentation that would change our analysis.

As such, there have been no material updates required to the preliminary investigations and potential claims outlined in our Second Report.

## 7. DEED OF COMPANY ARRANGEMENT PROPOSAL

As discussed earlier, we have been working with the Directors to explore whether a DOCA could be proposed as a commercial settlement for creditors to consider as the alternative to a Liquidation. We have received a DOCA proposal from the Directors, Joseph Shalala and Peter Shalala dated 5 December 2024, a copy of which is attached as **Annexure "4"** for creditors' information and consideration.

We summarise the key terms of the proposal below:

- ▲ Deed Proponents are Joseph Shalala and Peter Shalala.
- ▲ Deed Administrators will be Jonathon Keenan and Peter Krejci.
- ▲ A Deed Fund will be established consisting of:
  - Funds held by the Company in Administration on execution of the DOCA, including any undrawn amount of the \$140K Indemnity funds paid by the Directors;
  - Any GST and/or other recoveries for the VA and DOCA periods; and
  - Joseph Shalala will contribute a further \$100K to the Deed Fund, to be paid into trust ahead of the resumed Second Meeting of Creditors;

- ▶ Any bank guarantees held by Westfield (understood to be \$200K) are not part of the DOCA, and therefore may be claimed by Westfield (assuming there is an entitlement to do so under the respective leases).
- ▶ The Deed Fund will be distributed as follows:
  - Firstly, the Administrators' unpaid costs, including expenses, remuneration and disbursements;
  - Secondly, the Deed Administrators' unpaid costs, including expenses, costs, remuneration and disbursements;
  - To discharge any priority creditor claims (former employees);
  - To the Participating Unsecured Creditors pari passu; and
  - Any surplus is returned to the Company.
- ▶ Related party creditors will not claim in the DOCA, and will provide a Deed of Forbearance if requested.
- ▶ All Participating Creditor claims will be extinguished as against the Company upon effectuation of the DOCA.
- ▶ Control of the Company will revert to the Directors upon execution of the DOCA.
- ▶ Relevant provisions of Schedule 8A of the Corporations Act to be adopted.
- ▶ The DOCA will terminate upon satisfaction of its terms, or if it is determined unable to achieve its objectives, including resolution of creditors or order of the Court.

Our observations of the DOCA proposal are as follows:

- ▶ The DOCA proposal is a viable offer, which appears capable of being implemented.
- ▶ There are no material credit risks given that the funds are required upfront.
- ▶ We note that the control of the Company will return to the Directors, however there appears to be no trading business remaining after the stores have closed.
- ▶ The relevant provisions of the Corporations Act are included, such that a variation or termination of the DOCA could be pursued if the circumstances dictate.
- ▶ We are not aware of any priority or secured creditors with claims against the Company.
- ▶ There is no minimum dividend rate stipulated in the DOCA. The return to creditors will largely be driven by Westfield's claim, which is contingent and largely unquantified as yet. We note that Westfield have recently indicated their claim may be in the order of \$7.7M, based on the future rent under the leases (including the unsigned and alleged implied leases). However, Westfield is required to mitigate its losses by re-leasing the premises.

Adopting the estimates previously reported of \$1.6M to \$630K for Westfield's claim, the return to participating unsecured creditors may be in the order of 6-26 cents in the dollar. If Westfield's claim is ultimately \$7.7M (which appears unlikely), the return to participating unsecured creditors could be as low as 1 cent in the dollar.

- Conversely, as set out in the Second Report, any return to creditors in a Liquidation will be dependent on litigation recoveries, which will require funding and are speculative at this time. As the primary creditor, Westfield are the logical funder of the litigation, however, Westfield have not indicated any interest in providing such funding for a Liquidator. This would need to be explored further if the Company is placed into Liquidation.

**In conclusion, the proposed DOCA achieves the object of part 5.3A of the Act, in that our projections indicate that the DOCA may provide a more certain and likely improved return for the participating creditors in a timely manner, as compared to Liquidation.**

**As such, it is our recommendation that creditors should vote in favour the proposed DOCA.**

## 8. ESTIMATED RETURN TO CREDITORS

The likelihood of a dividend being paid to creditors will be affected by a number of factors including:

- the size and complexity of the administration.
- the amount of voidable transactions recovered and the costs of these recoveries;
- the statutory priority of certain claims and costs;
- the value of various classes of claims including secured, priority and unsecured creditor claims; and
- the volume of enquiries by creditors and other stakeholders.

Set out in **Annexure "5"** is an analysis of the estimated returns that may be available to creditors under the proposed DOCA as compared to a Liquidation scenario. Please note these figures are estimates only, and the actual results may vary materially.

In summary, the estimated return are as follows:

Summary of Return to Creditors	DOCA Optimistic Cents/\$	DOCA Pessimistic Cents/\$	Liquidation Optimistic Cents/\$	Liquidation Pessimistic Cents/\$
Secured Creditors	N/A	N/A	N/A	N/A
Priority Creditors	N/A	N/A	N/A	N/A
Unsecured Creditors	26	6	22	Nil

We note that, as the likely major creditor of the Company, the actual value of Westfield's creditor claim will impact the return to the unsecured creditors in both DOCA and Liquidation scenarios.

Further, in a Liquidation, any return to creditors is contingent on successfully pursuing a breach of duty/contract claim against the Directors and/or Afar Holdings, the outcome of which is uncertain and dependant on litigation funding. We anticipate that litigation may take two (2) years to run. Based on the cost estimates and assuming the claims are ultimately successful in the face of opposition, a

recovery of greater than \$935K would be needed to provide any return to creditors, which is a meaningful hurdle. Subject to the costs, risks and vagaries of litigation, it is also possible that no recovery could be achieved. Please refer to the Second Report for further detail on the potential liquidation claims.

Conversely, the proposed DOCA is based on immediately available funds, and as such, is projected to provide a more certain and likely improved return for the participating creditors in a timely manner, as compared to Liquidation.

We encourage any creditors who have not already done so, to lodge a Formal Proof of Debt ("POD") together with relevant supporting documentation. A copy of the POD is attached as **Annexure "2"** in this regard.

## 9. RECOMMENDATION OF ADMINISTRATORS

Pursuant to Rule 75-225(3) of the IPR, the Administrators are required to make a statement setting out the Administrators' opinion about each of the following matters and provide their reasons for those opinions:

- Whether it would be in the Creditors' interests for the Company to execute a DOCA;
- Whether it would be in the Creditors' interests for the administration to end; and
- Whether it would be in the Creditors' interests for the Company to be wound up.

**We set out below our opinions as to each of these options:**

### 9.1 DEED OF COMPANY ARRANGEMENT

Creditors may resolve that the Company should execute the proposed DOCA at the forthcoming resumption meeting. Once executed, we would become Deed Administrators.

Under the proposal, the Deed Contributions are immediately available, and therefore there is no credit risk. After costs of the process, we project there may be meaningful funds to distribute to participating unsecured creditors, however the return value is dependent on Westfield's creditor claim which is yet to be determined.

Consistent with the object of Part 5.3A of the Act, the DOCA may provide a more certain and likely improved return for the participating creditors in a timely manner, as compared to Liquidation.

**Based on the above factors, we RECOMMEND that the creditors resolve in favour of the proposed DOCA.**

### 9.2 ADMINISTRATION TO END

Creditors may resolve that the Administration of the Company should end, and that control of the Company should be handed back to its Directors.

The Company is ceasing to trade and is insolvent. If the administration was to end, the Company would be left in an insolvent position, and as such, would need to again be placed into Administration (or Liquidation).

**We do NOT recommend that the Administration end on the basis that the Company is clearly insolvent.**

### 9.3 LIQUIDATION

Should Creditors decide to wind up the Company, the Administration would revert to a Creditors Voluntary Liquidation and the Administrators would become the Liquidators, unless creditors resolved to appoint an alternative Liquidator.

One of the roles of the Liquidators would be to complete investigations into the reasons for the Company's failure and to identify any causes of action or voidable transaction recoveries against any entity or individual. The Liquidators are also required to report their findings to ASIC in the event that offences are uncovered.

As detailed in our Second Report, potential claims have been identified against the Directors and/or Afar Holdings. Our enquiries with the parties indicate that any claims would be vigorously defended. The Liquidation would require funding to commence litigation, which can be sourced from creditors or commercial litigation funders. Noting that the claim value may be relatively limited, it may be challenging to obtain funding from a commercial litigation funder, who typically seek returns which are multiples on their outlays. As such, the logical funder would be the major creditor beneficiary, being Westfield. As yet, Westfield have not expressed any interest in providing funding in a Liquidation, however this could be explored further if the Company is placed into Liquidation.

Litigation in this Liquidation scenario is speculative. Based on current estimates, our projections indicate that the recovery would need to exceed \$935K for there to be any return to be available for creditors, after costs. As such, it is also possible that the litigation is successful but results in no funds being available to distribute to creditors.

In comparison, the DOCA proposal is based on immediately available funds, and as such, may provide a more certain and likely improved return for participating creditors.

**We do NOT recommend that creditors resolve to wind up the Company.**

## 10. ADMINISTRATORS' RECEIPTS AND PAYMENTS

Attached as **Annexure "6"** is the Administrators' Receipts and Payment from 1 October 2024 to the date of this Report.

## 11. DEED ADMINISTRATORS' AND LIQUIDATORS' REMUNERATION

In compliance with the Australian Restructuring, Insolvency and Turnaround Association's ("ARITA") Code of Professional Practice and the requirements of the Act, we are required to provide detailed information in respect of our remuneration. We refer to our Second Report which provided detailed information about the major tasks conducted in the administration.

We attach our Remuneration Approval Report as **Annexure "7"** which details the major tasks that will be conducted in either a DOCA or Liquidation scenario. In addition, a schedule of hourly rates is also contained within the Remuneration Report.

To date, our remuneration has been calculated on this "Time-Cost" basis, and we propose that it continue to be calculated on this basis. The Time-Cost method for calculating remuneration reflects the cost to our firm of the work undertaken, rather than a measure of the assets realised. In our view,

the Time-Cost method is the preferable basis for calculating remuneration in an engagement such as this.

For Creditors' information, ASIC information sheets (**Annexure "8"**) that relate to specific circumstances once an insolvency practitioner is appointed to a Company and approval of remuneration can be found at the following websites:

- <http://www.asic.gov.au/insolvencyinfosheets>
- <http://www.arita.com.au/insolvency-you/insolvency-explained/insolvency-fact-sheet>

### 11.1 VOLUNTARY ADMINISTRATION PERIOD

At the adjourned second meeting, the Creditors approved our Administrators' remuneration. We do not intend to seek any further remuneration approvals for the VA period at the forthcoming resumed Second Meeting of Creditors.

### 11.2 DEED OF COMPANY ARRANGEMENT PERIOD

If creditors approve the DOCA Proposal, the Deed Proponents have 15 business days to execute the DOCA.

If executed, we, Jonathon Keenan and Peter Krejci, will be appointed Deed Administrators. In that circumstance, at the forthcoming resumed meeting we will seek approval for our estimated remuneration to conduct the DOCA. The attached remuneration report details an estimate of the costs likely to be incurred in the DOCA. It is an estimate only and may change depending on matters which occur during the course of the DOCA.

Please refer to the Remuneration Approval Report, attached as **Annexure "7"** for further details.

### 11.3 LIQUIDATION PERIOD

If the Company is placed into liquidation at the forthcoming resumed Second Meeting of Creditors, we will be appointed Liquidators, unless creditors resolve to appoint an alternate Liquidator. We note that we have not received an alternate consent to act as Liquidator.

If creditors resolve to wind up an entity and we are to be appointed, we will also seek approval for our estimated remuneration in conducting the Liquidation. The attached remuneration report details an estimate of the initial costs likely to be incurred in a liquidation scenario. It is an interim estimate only and actual costs may be quite different, depending on the work required and/or if litigation actually is pursued. Therefore, the estimate may change depending on matters which occur during the course of the liquidation.

Please refer to the Remuneration Approval Request Report, attached as **Annexure "7"** for further details.

## 12. RESUMPTION OF SECOND MEETING OF CREDITORS

As discussed previously, the Second Meeting of Creditors for the Company held on 6 November 2024 was adjourned up to forty-five (45) business days, to no later than 13 January 2025. We note that at the Second Meeting, the only resolutions that were dealt with at the meeting related to the

remuneration of the Administrators, and as such, the remaining agenda items will be dealt with at the resumed Second Meeting.

The resumption of the Second Meeting of Creditors for the Company will be held on Monday, 16 December 2024 at 3:00PM AEDT. The formal Notice of Meeting is attached as **Annexure "1"** for your reference.

To participate as a Creditor, you should:

- ▲ Provide us with a Proof of Debt detailing your claim to be a Creditor. Proofs of Debt are enclosed as **Annexure "2"**. If you have previously provided a proof of debt and wish to supplement it, you may do so. **Otherwise, Creditors whose proofs were admitted to vote at the adjourned Second Meeting of Creditors are not required to re-lodge for the resumption of the Second Meeting of Creditors.**
- ▲ Creditors may attend and vote in person, by proxy or by attorney. The appointment of a proxy, which is attached as **Annexure "3"**, must be in accordance with Form 532. **Creditors who submitted general proxies which were admitted to vote at the adjourned Second Meeting of Creditors are not required to be re-lodged for the resumption of the Second Meeting of Creditors, unless they wish to submit special proxies or nominate another proxy party.** We note that persons attending on behalf of a corporate entity are required to have a proxy signed on behalf of that entity.
- ▲ A specific proxy can be lodged showing approval, rejection or abstention of each resolution. Creditors, in lodging specific proxies, need to be mindful that their intended voting patterns can become academic or "contradictory" where the outcome of an earlier vote (in the order of proceedings) is determined in a way which could influence or change their intended voting. Proxy forms or facsimiles thereof must be lodged at our office by 4:00 PM one (1) business day prior to the meeting.

### 13. QUERIES

The BRI Ferrier staff member responsible for this matter is as follows:

- ▲ BRI Contact: Nicole Feng
- ▲ Phone: (02) 8263 2312
- ▲ Email: [nfeng@brifnsw.com.au](mailto:nfeng@brifnsw.com.au) (preferred)
- ▲ Mailing: Level 26, 25 Bligh Street, Sydney NSW 2000

Yours faithfully,

**AFAR RETAIL EF PTY LTD  
(ADMINISTRATORS APPOINTED)**



**JONATHON KEENAN**

Joint and Several Administrator





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**Afar Retail EF Pty Ltd**  
**(Administrators Appointed)**  
**ACN 105 772 978**  
**ABN 23 105 772 978**

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**Annexure "1"**  
**Notice of Resumption of Second**  
**Meeting of Creditors**

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CORPORATIONS ACT 2001

*Section 439A*

Insolvency Practice Rules (Corporations)

75-10, 75-15 & 75-20

**NOTICE OF RESUMPTION OF SECOND MEETING OF CREDITORS**

**AFAR RETAIL EF PTY LTD  
(ADMINISTRATORS APPOINTED)**

**ACN 105 772 978 / ABN 23 105 772 978  
("THE COMPANY")**

NOTICE is given that the resumption of the Second Meeting of the Creditors of the Company will be held at the offices of BRI Ferrier, Level 26, 25 Bligh Street, Sydney NSW 2000 on **Monday, 16 December 2024 at 3:00 PM AEDT**.

Virtual meeting technology will also be made available should creditors wish to attend the meeting virtually. To attend virtually, creditors will need to register their details at the following link:

<https://us06web.zoom.us/meeting/register/tZwtd-ihqDkrGN1XaSL8an29v-2h4ba2tyHw>

A G E N D A

1. To receive the Report of the Administrators and receive questions from creditors.
2. For Creditors to resolve:
  - a. That the Company execute a Deed of Company Arrangement; or
  - b. That the administration should end; or
  - c. That the Company be wound up.
3. If Creditors resolve to enter into a Deed of Company Arrangement;
  - a. To consider approving the remuneration of the Deed Administrators; and
  - b. To consider approving the internal disbursements of the Deed Administrators.
4. If Creditors resolve to wind up the Company:
  - a. To consider the appointment of an alternate Liquidator(s);
  - b. To consider approving the remuneration of the Liquidators;
  - c. To consider approving the internal disbursements of the Liquidators; and
  - d. To consider the early destruction of the Company books and records.
5. To consider the appointment of a Committee of Inspection.
6. To consider any other business that may be lawfully brought forward.

Proxies to be used at the meeting should be lodged at the office of the Administrators by 4:00 PM AEDT on the business day prior to the meeting. A creditor can only be represented by proxy or by an attorney pursuant to Insolvency Practice Rules (Corporations) (IPR) 75-150 & 75-155 or, if a body corporate, by a representative appointed pursuant to Section 250D of the Corporations Act 2001.

#### Special Instructions for Meeting

Attendees who wish to attend the meeting virtually are required to register to attend the meeting at the above link.

You will also need to provide a Formal Proof of Debt Form (including documentation to support your claim) and proxy form, if you are a corporate creditor or wish to be represented by another person.

In accordance with IPR 75-85, creditors will not be entitled to vote at this meeting unless they have previously lodged particulars of their claim against the Company with the Administrators and their claim has been admitted for voting purposes wholly or in part by the Administrators.

Upon receipt of a valid Formal Proof of Debt Form and Proxy, a link to access the virtual meeting will be emailed to you. This link will be unique for each attendee and unable to be shared with other parties. Telephone dial-in details will also be available for the virtual meeting. Those wishing to attend via telephone will also be required to complete the above registration process.

In accordance with IPR 5-5, a vote taken on a “show of hands” includes a vote taken using any electronic mechanism that indicates the intentions of a person in respect of a vote. This may include an attendee clicking a “raise a hand”, or similar button, on a virtual meeting computer program, as well as verbally indicating their vote if dialling in to the meeting.

This definition is necessary to ensure that a show of hands may be used at a virtual meeting as an alternative to a poll.

DATED this 9<sup>th</sup> day of December 2024



JONATHON KEENAN  
JOINT AND SEVERAL ADMINISTRATOR

BRI FERRIER  
Level 26  
25 Bligh Street  
Sydney NSW 2000

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The logo for BRI Ferrier, featuring the text "BRI Ferrier" in white on a dark grey background, with a green triangle on the right side.

**BRI Ferrier**

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**Afar Retail EF Pty Ltd  
(Administrators Appointed)  
ACN 105 772 978  
ABN 23 105 772 978**

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**Annexure "2"  
Formal Proof of Debt Form**

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FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Joint and Several Administrators of Afar Retail EF Pty Ltd (Administrators Appointed) ACN 105 772 978

1. This is to state that the company was, on 1 October 2024 <sup>(1)</sup> and still is, justly and truly indebted to<sup>(2)</sup> (full name):

.....  
(‘Creditor’)

.....  
of (full address)

for \$.....dollars and.....cents.

Particulars of the debt are:

Date	Consideration <sup>(3)</sup> state how the debt arose	Amount \$	GST included \$	Remarks <sup>(4)</sup> include details of voucher substantiating payment

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: .....

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 \$ c	Due Date

☐ I am **not** a related creditor of the Company <sup>(5)</sup>

☐ I am a related creditor of the Company <sup>(5)</sup>  
relationship: .....

3A.<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.

3B.<sup>(6)\*</sup> I am the creditor's agent authorised 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.

The External Administrators' (whether as Voluntary Administrators/Deed Administrators/Liquidators) will send and give electronic notification of documents. Please provide your email address below:

Contact Name: .....

Email Address: .....

DATED this.....day of.....202.....

Signature of Signatory .....

NAME IN BLOCK LETTERS .....

Occupation.....

Address.....

OFFICE USE ONLY

POD No:		ADMIT (Voting / Dividend) - Ordinary	\$
Date Received:	/ /	ADMIT (Voting / Dividend) – Preferential	\$
Entered into CORE IPS:		Reject (Voting / Dividend)	\$
Amount per CRA/RATA	\$	Object or H/Over for Consideration	\$
<b>Reason for Admitting / Rejection</b>			
PREP BY/AUTHORISED		<b>TOTAL PROOF</b>	\$
DATE AUTHORISED / /			

### Proof of Debt Form 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) Related Party / Entity: Director, relative of Director, related company, beneficiary of a related trust.
  - (6) If the Creditor is a natural person and this proof is made by the Creditor personally. In other cases, if, for example, you are the director of a corporate Creditor or the solicitor or accountant of the Creditor, you sign this form as the Creditor's authorised agent (delete item 3A). If you are an authorised employee of the Creditor (credit manager etc), delete item 3B.

### 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:
    - i) "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.

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The logo for BRI Ferrier, featuring the text "BRI Ferrier" in white on a dark grey rectangular background. A green triangle is positioned at the bottom right corner of the grey rectangle.

**BRI Ferrier**

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**Afar Retail EF Pty Ltd  
(Administrators Appointed)**

**ACN 105 772 978**

**ABN 23 105 772 978**

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**Annexure "3"  
Appointment of Proxy Form**

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APPOINTMENT OF PROXY

AFAR RETAIL EF PTY LTD  
(ADMINISTRATORS APPOINTED)

ACN 105 772 978 / ABN 23 105 772 978  
("THE COMPANY")

\*I/\*We<sup>(1)</sup> .....of.....  
a creditor of **Afar Retail EF Pty Ltd (Administrators Appointed)**, appoint<sup>(2)</sup> .....  
or in his or her absence ..... as \*my/our general/special proxy to vote at  
the Resumed Second Meeting of Creditors of the Company to be held on Monday, 16 December 2024 at 3:00 PM  
AEDT, or at any adjournment of that meeting.

Please mark any boxes with an ☒

Proxy Type: ☐ General ☐ Special

<b><u>Future of the Company:</u></b>			
<b><u>Resolution 1</u></b> <sup>(3)</sup> : <i>"That the Company execute a Deed of Company Arrangement."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Resolution 2</u></b> <sup>(3)</sup> : <i>"That the Voluntary Administration should end."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Resolution 3</u></b> <sup>(3)</sup> : <i>"That the Company be wound up."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>If creditors resolve that the Company execute a Deed of Company Arrangement:</u></b>			
<b><u>Resolution 4:</u></b> <i>"That the remuneration of the Joint and Several Deed Administrators, their partners and staff from the execution of the DOCA to the finalisation of DOCA, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Supplementary Second Report to Creditors dated 9 December 2024, and approved to an interim cap of \$50,000.00 (plus GST), and that the Joint and Several Deed Administrators be authorised to draw that amount as and when incurred."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



<b><u>Resolution 5:</u></b>  <i>"That the Joint and Several Deed Administrators be allowed internal disbursements from the date of the execution of the Deed of Company Arrangement to the conclusion of the Deed of Company Arrangement at the rates of charge annexed to the Voluntary Administrators' Remuneration Approval Report dated 16 December 2024, up to an amount of \$1,000.00 (plus GST) and that the Joint and Several Deed Administrators be authorised to draw that amount as accrued."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>If creditors resolve that the Company be wound up:</u></b>			
<b><u>Resolution 6:</u></b>  <i>"That the remuneration of the Joint and Several Liquidators, their partners and staff for the period 16 December 2024 to the conclusion of the Liquidation, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Supplementary Second Report to Creditors dated 9 December 2024, and approved to an interim cap of \$150,000.00 (plus GST), and that the Joint and Several Liquidators be authorised to draw that amount as and when incurred."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Resolution 7:</u></b>  <i>"That the Joint and Several Liquidators be allowed internal disbursements for the period 16 December 2024 to the conclusion of the Liquidation at the rates of charge annexed to the Voluntary Administrators' Remuneration Approval Report dated 9 December 2024, up to an amount of \$2,000.00 (plus GST) and that the Joint and Several Liquidators be authorised to draw that amount as accrued."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Resolution 8:</u></b>  <i>"That subject to the consent of the Australian Securities &amp; Investments Commission, the Liquidators be approved to destroy the books and records of the Company at any time after the dissolution of the Company."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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**INSTRUCTIONS FOR COMPLETING:**

- \* Strike out if inapplicable.
- (1) Insert name and address. If a firm, strike out "I" and set out the full name of the firm.
  - (2) Insert the name, address and description of the person appointed.
  - (3) You may only vote in "favour" for one of these 2 resolutions relating to the future of the Company. You must vote "against" the other 1 resolution.
- 

DATED this .....day of ..... 2024

\_\_\_\_\_  
Signature

**Proxies should be returned to the offices of BRI Ferrier by 4.00 PM AEDT one (1) business day prior to the meeting by email: [nfeng@brifnsw.com.au](mailto:nfeng@brifnsw.com.au)**

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**CERTIFICATE OF WITNESS – (This certificate is to be completed only if the person giving the proxy is blind or incapable of writing)**

I, .....of.....certify that the above instrument appointing a proxy was completed by me in the presence of and at the request of the person appointing the proxy and read to him before he attached his signature or mark to the instrument.

DATED this .....day of ..... 2024

Signature of Witness: .....

Description: .....

Place of Residence: .....



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**Afar Retail EF Pty Ltd**  
**(Administrators Appointed)**  
**ACN 105 772 978**  
**ABN 23 105 772 978**

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**Annexure "4"**  
**DOCA Proposal**

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**Afar Retail EF Pty Ltd  
(Administrators Appointed)  
(ACN 105 772 978)  
("the Company")**

**Outline of Proposed Deed of Company Arrangement**

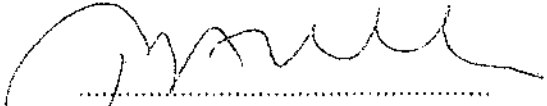
1. The proponents of the Deed of Company Arrangement (the **Deed**) are Joseph Shalala and Peter Shalala (the Directors).
2. The Administrators of the Deed will be Jonathon Keenan and Peter Krejci.
3. During the term of the Deed, the Deed Administrators will take no part in the management or operation of the Company's business.
4. Upon execution of the Deed, control of the Company will revert to the Directors, Joseph Shalala and Peter Shalala.
5. There will be a Deed Fund comprising:
  - (a) the balance of funds held by the Administrator after payment of the Administrators' remuneration, costs and expenses, including cash at bank held by the Administrators on execution of the DOCA and any undrawn amount from the \$140K indemnity funds;
  - (b) any GST and/or ~~sundry~~ <sup>other receivables</sup> ~~refunds~~ for the VA & DOCA periods; as part of the Deed Fund; and <sup>^</sup>
  - (c) the sum of \$100,000 to be paid into the Deed Fund by Joseph Shalala, which will be paid into trust in advance of the second meeting.
6. The Deed Fund will be controlled and administered by the Deed Administrators who will also be responsible for assessing and adjudicating upon all proofs of debt and claims against the Deed Fund.
7. Joseph Shalala, Peter Shalala, Afar Holdings Pty Ltd and any related entity (**Related Creditors**) will not prove in the Deed Fund and any debts owed to them will be deferred until after the Deed is effectuated.
8. If requested, Related Creditors will execute a Deed of Forbearance.
9. The Deed Fund will be distributed in the following manner:
  - (a) First, in payment of any unpaid amount of the Administrators' remuneration, disbursements, expenses and trading liabilities incurred during the course of the administration as at the commencement of the Deed;
  - (b) Secondly, in payment of the Deed Administrators' remuneration, disbursements and expenses;
  - (c) Thirdly, in payment of any priority creditors in accordance with section 556 of the Corporations Act;
  - (d) Fourthly, *pari passu* in payment to unsecured creditors; and

- (e) Fifthly, any surplus is returned to the Company.
10. As to any claim by Westfield:
    - (a) Westfield may only claim once, in respect of all former leases of each of the six (6) stores;
    - (b) The term deposit of approximately \$112K held by the Company with Westpac, which is held as security for the bank guarantees issued by Westpac in favour of Westfield, are not included in the Deed Fund and is recoverable by Westfield in reduction of its claims; and
    - (c) The bank guarantees in the possession of Westfield are not included in the Deed Fund and are recoverable by Westfield in reduction of its claims.
  11. The Administrators may make interim payments to those Deed Creditors whose claims have been proved and admitted in partial satisfaction of their debts at such times as they in their absolute discretion might deem fit.
  12. The Deed will include a definition of Claims, specifically including all claims from the leases (actual or implied) between the Company and the various Westfield entities in respect of the six (6) stores, regardless of whether the leases were terminated after the Commencement Date.
  13. During the term of the Deed all unsecured Claims against the Company will be subject to a moratorium which will prevent unsecured creditors from taking any action in relation to their claims.
  14. Upon payment to the unsecured creditors of their distribution from the Deed Fund their claims will be satisfied in full and extinguished.
  15. The Deed will terminate after the Deed Administrators have certified that the Deed Fund has been distributed to the unsecured creditors and that the terms of the Deed have been satisfied.
  16. The Deed will operate in compliance with section 444(DA)(1) of the Corporations Act.
  17. The Deed will terminate if any secured creditor enforces its security by the appointment of a receiver or if an administrator, provisional liquidator or liquidator is appointed to the Company.
  18. The Deed will contain other standard provisions including in relation to set-off, insured claims and the Administrators' indemnity and lien.
  19. The Deed Fund contribution is made for the specific purpose of this Deed proposal.
  20. The Directors will assist the Deed Administrators with accounting, taxation reporting, or otherwise as requested.
  21. The Deed will incorporate the provisions of the Corporations Regulations 2001 - Schedule 8A.
  22. If the Deed Administrators determine that it is no longer practicable or desirable to continue with or implement the Deed, the Deed Administrators may convene a

meeting of creditors pursuant to section 445F of the Corporations Act for the purposes of considering a resolution:

- (a) that the Deed terminate and the company be wound up;
- (b) that the Deed be varied; or
- (c) such other resolution as is permitted by the Act.

Dated: 5 December 2024



.....  
Joseph Shalala



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**Afar Retail EF Pty Ltd**  
**(Administrators Appointed)**  
**ACN 105 772 978**  
**ABN 23 105 772 978**

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**Annexure "5"**  
**Estimated Outcome Statement**

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Afar Retail EF Pty Ltd (Administrators Appointed) Estimated Outcome Statement					
Updated 9 December 2024					
	Book Value as at 1/10/2024 (\$)	Administrators' ERV DOCA (Optimistic)	Administrators' ERV DOCA (Pessimistic)	Administrators' ERV Liquidation (Optimistic)	Administrators' ERV Liquidation (Pessimistic)
<b>ASSETS</b>					
Cash on Hand	2	-			
Bank Guarantees - Lease Bonds held by Westfield	508,852	200,223	200,223	200,223	200,223
Bank Guarantees - Lease Bonds held by Other		-	-	-	-
Less: Secured claim by Westfields		(200,223)	(200,223)	(200,223)	(200,223)
Bank Guarantee excess funds	-	-	-	-	-
Indemnity Funds		140,000	140,000	140,000	140,000
<b>Total Assets</b>	<b>508,854</b>	<b>140,000</b>	<b>140,000</b>	<b>140,000</b>	<b>140,000</b>
<b>Trading Activities</b>					
License Fees		593,268	593,268	593,268	593,268
Rent expenses		(458,843)	(458,843)	(458,843)	(458,843)
Licence fees - outgoing & utilities (future)		6,797	6,797	6,797	6,797
Outgoings & utilities (incurred)		(6,797)	(6,797)	(6,797)	(6,797)
Other Asset Realisation costs					
<b>Trading Surplus</b>	<b>-</b>	<b>134,425</b>	<b>134,425</b>	<b>134,425</b>	<b>134,425</b>
<b>Deed Fund</b>					
Deed Fund Contribution	-	100,000	100,000	N/A	N/A
<b>Deed Fund Total</b>	<b>-</b>	<b>100,000</b>	<b>100,000</b>	<b>-</b>	<b>-</b>
<b>Recoveries in Liquidation</b>					
Voidable Transactions		N/A	N/A	-	-
Insolvent Trading Claims		N/A	N/A	-	-
Breach of Director Duties Claims/ Contract Claims		N/A	N/A	1,596,525	-
<b>Total Recovery</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1,596,525</b>	<b>-</b>
<b>External Administration Costs</b>					
Administration Costs					
Administrators' Remuneration up to 27 October 2024 (Accrued)		62,544	62,544	62,544	62,544
Administrators' Additional Remuneration (Future)		60,000	80,000	60,000	80,000
Administrators' Disbursements		1,000	2,000	1,000	2,000
Administrators' Legal Fees		20,000	40,000	20,000	40,000
Reimburse Directors Indemnity funds		Excluded	Excluded	130,881	89,881
Deed Administration Costs					
Deed Administrators' Remuneration and Costs		40,000	50,000	N/A	N/A
Deed Administrators' Disbursements		2,000	1,000	N/A	N/A
Deed Administrators' Legal Fees		15,000	30,000	N/A	N/A
Liquidation Costs					
Liquidators' Remuneration		N/A	N/A	150,000	50,000
Liquidators' Disbursements		N/A	N/A	5,000	2,000
Liquidators' Legal Fees - general		N/A	N/A	-	10,000
Liquidators' Legal Fees - Public Examination		N/A	N/A	50,000	-
Liquidators' Legal Fees - Litigation		N/A	N/A	350,000	-
Litigation Funder (40% of recovery)		N/A	N/A	638,610	-
Other Sundry Costs		1,000	2,000	1,000	2,000
Accounting & Taxation Fees		5,000	10,000	5,000	10,000
<b>Total Costs of External Administration Costs</b>	<b>-</b>	<b>206,544</b>	<b>277,544</b>	<b>1,474,035</b>	<b>348,425</b>
<b>Estimated Surplus Available for Secured Creditors</b>		<b>167,881</b>	<b>96,881</b>	<b>396,915</b>	<b>(74,000)</b>
<b>Total Secured Creditor Claims</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Estimated Surplus Available to Priority Creditors</b>		<b>167,881</b>	<b>96,881</b>	<b>396,915</b>	<b>(74,000)</b>
<b>Total Priority Creditors</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Estimated Surplus Available to Unsecured Creditors</b>		<b>167,881</b>	<b>96,881</b>	<b>396,915</b>	<b>(74,000)</b>
<b>Unsecured Creditors</b>	<b>-</b>				
Australian Taxation Office	1,064	1,064	1,064	1,064	1,064
Westfield (estimate of contingent claim)	-	628,757	1,596,525	1,596,525	1,596,525
Loans - Afar Holdings Pty Limited	479,521	Excluded	Excluded	170,892	170,892
Other Trade Creditors	12,597	12,597	12,597	12,597	12,597
Director Fees		Excluded	Excluded	12,000	12,000
Scentre Grid		10,000	20,000	10,000	20,000
<b>Total Other Unsecured Creditors</b>	<b>493,182</b>	<b>652,418</b>	<b>1,630,186</b>	<b>1,803,078</b>	<b>1,813,078</b>
<b>Estimated Surplus/(Shortfall)</b>		<b>(484,537)</b>	<b>(1,533,305)</b>	<b>(1,406,163)</b>	<b>(1,887,078)</b>

Summary of Return to Creditors		DOCA Optimistic Cents/\$	DOCA Pessimistic Cents/\$	Liquidation Optimistic Cents/\$	Liquidation Pessimistic Cents/\$
<b>Secured Creditors</b>		N/A	N/A	N/A	N/A
<b>Priority Creditors</b>		N/A	N/A	N/A	N/A
<b>Unsecured Creditors</b>		26	6	22	Nil





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**Afar Retail EF Pty Ltd**  
**(Administrators Appointed)**  
**ACN 105 772 978**  
**ABN 23 105 772 978**

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**Annexure "6"**  
**Summary of Receipts & Payments**

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Summarised Receipts & Payments

Afar Retail EF Pty Ltd  
(Administrators Appointed)  
Transactions From 01 October 2024 To 06 December 2024

A/C	Account	Net	GST	Gross
7	License Fee	593,267.78	59,326.78	652,594.56
89	Administrator Indemnity	140,000.00	0.00	140,000.00
Total Receipts (inc GST)		\$733,267.78	\$59,326.78	\$792,594.56
36	Insurance	1,753.00	175.30	1,928.30
57	Insurance No GST	43.86	0.00	43.86
150	Rents Commercial	458,843.14	45,884.32	504,727.46
Total Payments (inc GST)		\$460,640.00	\$46,059.62	\$506,699.62
Balance in Hand - By Bank Account				
212	Cheque Account			285,894.94
				\$285,894.94



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**Afar Retail EF Pty Ltd**  
**(Administrators Appointed)**  
**ACN 105 772 978**  
**ABN 23 105 772 978**

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**Annexure "7"**  
**Remuneration Approval Report**

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# Remuneration Approval Report

**AFAR RETAIL EF PTY LTD**  
**ACN 105 772 978**

**9 December 2024**

Jonathon Keenan and Peter Krejci  
Joint and Several Administrators

Novabrif Pty Ltd ABN 61 643 013 610  
Level 26, 25 Bligh Street, Sydney NSW 2000  
Phone (02) 8263 2333  
Email: [info@brifnsw.com.au](mailto:info@brifnsw.com.au)  
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## 1. EXECUTIVE SUMMARY

We are asking creditors to approve the following remuneration and disbursements:

	Remuneration (\$, excl GST)	Disbursements (\$, excl GST)
If a DOCA is accepted	50,000	1,000.00
If Company is liquidated	150,000	2,000.00

Details of remuneration and disbursements can be found in sections 3 and 4 of this report.

Creditors will be asked to pass resolutions in relation to remuneration and disbursements at the resumption of the Second Meeting of Creditors on Monday, 16 December 2024.

Creditors have previously approved our remuneration \$142,544.00 and disbursements of \$1,000.00.

We estimate the total cost of this Voluntary Administration will be approximately \$142K which is consistent with the previous estimate that we provided to you in our Initial Remuneration Notice dated 3 October 2024.

## 2. DECLARATION

We, Jonathon Keenan and Peter Krejci of BRI Ferrier, have undertaken an assessment of this remuneration claim in accordance with the law and applicable professional standards. We are satisfied that the remuneration and disbursements claimed is necessary and proper.

We have reviewed the work in progress report for the Administration to ensure that remuneration is only being claimed for necessary and proper work performed and no adjustment was necessary.

## 3. REMUNERATION APPROVAL SOUGHT

The remuneration we are asking creditors to approve is as follows:

For	Period	Amount (\$, excl. GST)	Rates to apply	When it will be drawn
Future Work – DOCA	Execution of DOCA to finalisation of DOCA	50,000.00	Provided in our IRN sent to creditors on 3 October 2024	It will be drawn when funds are available and incurred
<b>DOCA total</b>		<b>50,000.00</b>		
Future Work – Liquidation	16 December 2024 to finalisation of liquidation	150,000.00	Provided in our IRN sent to creditors on 3 October 2024	It will be drawn when funds are available and incurred
<b>Liquidation total</b>		<b>150,000.00</b>		

Details of future work that we intend to do (either in a DOCA or Liquidation) are included at **Schedule A**.

Actual resolutions to be put to the meeting are included at **Schedule B** for your information. These resolutions also appear in the proxy form for the meeting provided to you.

We will only seek approval of the resolution for the liquidation if creditors vote to place the Company into liquidation.

#### 4. DISBURSEMENTS SOUGHT

We are not required to seek creditor approval for costs paid to third parties or where we are recovering a cost incurred on behalf of the administration, but we must provide details to creditors. To date, we have not paid any such costs in the administration.

We are required to obtain creditor's consent for the payment of a disbursement where we, or a related entity of ourselves, may directly or indirectly obtain a profit.

For more information about disbursements, please refer to the Initial Remuneration Notice sent to you on 3 October 2024.

The disbursements we would like creditors to approve is as follows:

For	Period	Amount (\$, excl. GST)
If a DOCA is executed	Execution of the DOCA to conclusion	1,000.00
If Company is liquidated – Future disbursements	16 December 2024 to conclusion	2,000.00

Details of disbursements incurred and future disbursements are included at **Schedule C**. Actual resolutions to be put to the meeting are included at **Schedule C** for your information. These resolutions also appear in the proxy form for the meeting provided to you.

#### 5. PREVIOUS REMUNERATION APPROVALS

The following remuneration approvals have previously been approved by creditors.

Period	For	Amount Approved (excl. GST) (\$)	Amount Paid (excl. GST) (\$)
1 October 2024 to 25 October 2024	Work completed	\$62,544.00	\$0.00
26 October 2024 to conclusion	Work to be completed	\$80,000.00	\$0.00
<b>TOTAL approved and unpaid fees</b>		<b>\$142,544.00</b>	<b>\$0.00</b>

We are not seeking any further remuneration approval in relation to the Administration period.

If creditors vote in favour of the DOCA, then we will seek approval of the DOCA resolution. Alternatively, if creditors vote to place the Company into Liquidation, then we will seek approval of the Liquidation resolution.

## 6. LIKELY IMPACT ON DIVIDENDS

The Corporations Act sets the order for payment of claims against the Company and it provides for the remuneration of the Administrators to be paid in priority to other claims. This ensures that when there are sufficient funds, the Administrators receives payment for the work done to recover assets, investigate the Company's affairs, report to creditors and ASIC and distribute any available funds. Even if creditors approve our remuneration, this does not guarantee that we will be paid, as we are only paid if sufficient assets are recovered.

Based on:

- Realisations to date,
- Estimated future realisations,
- Our estimated remuneration to complete the DOCA and
- The estimated total of creditor claims based on the Company's records and claims lodged now,

We estimate that a dividend of between 6 and 26 cents in the dollar may be paid in the DOCA. However, this is subject to a range of variables, particularly the decision creditors make on the future of the Company, future realisations, our estimated remuneration as we have set out in this report and creditor claims.

## 7. SUMMARY OF RECEIPTS AND PAYMENTS

A summary of the receipts and payments as at 9 December 2024 is attached.

## 8. QUERIES & INFORMATION SHEET

If you have any queries in relation to the information in this report, please contact our office. You can also access information which may assist you on the following websites:

ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors)

ASIC at <http://www.asic.gov.au> (search for INFO 85)

Further supporting documentation for our remuneration claim can be provided to creditors on request.



## 9. ATTACHMENTS

Schedule A – Details of work for the DOCA period or the Liquidation period

Schedule B – Resolutions

Schedule C – Disbursements

Schedule D – Hourly rates

SCHEDULE A – DETAILS OF WORK FOR THE DOCA PERIOD OR LIQUIDATION PERIOD

Company		Afar Retail EF Pty Ltd (Administrators Appointed)		Period From	16 December 2024	To	Conclusion
		Jonathon Keenan & Peter Krejci		Firm	BRI Ferrier		
		Administrators Appointed					
				Tasks			
		If DOCA approved			If wound up		
		DOCA work			Liquidation Work		
Period		From execution of DOCA to finalisation of DOCA			16 December 2024 to conclusion		
Amount (excl. GST)		\$50,000.00			\$150,000.00		
Task Area	General Description						
Assets			N/A			\$10,000.00	

	Other Asset	N/A	<p>Liaising with Directors in relation to bank guarantees</p> <p>Correspondence with Westfield regarding bank guarantees</p> <p>Recovery of bank guarantees</p> <p>Obtaining accounting for bank guarantees from Westfield</p>
<b>Creditors</b>		<b>\$10,000.00</b>	<b>\$30,000.00</b>
	Creditor Enquiries	<p>Receive and respond to creditor enquiries</p> <p>Receive and follow up creditor enquiries by telephone</p> <p>Review and prepare correspondence to creditors and their representatives by email</p>	<p>Receive and respond to creditor enquiries</p> <p>Receive and follow up creditor enquiries by telephone</p> <p>Review and prepare initial correspondence to creditors and their representatives</p> <p>Considering reasonableness of creditor request</p> <p>Obtaining legal advice on requests</p> <p>Compiling information requested by creditors</p>
	Creditor Reports	<p>Preparing Circular to Creditors regarding notification of execution of DOCA</p> <p>Preparing further report to creditors if required</p>	<p>Prepare Circular to Creditors regarding Liquidation</p> <p>Prepare Statutory Report to Creditors</p> <p>Preparation of necessary Annexures for Statutory Report to Creditors</p> <p>Preparing further reports to creditors, if necessary</p>
	Dealing with proofs of debt	<p>Receipting, processing, and filing Proofs of Debts</p> <p>Maintaining register of Proofs of Debts received</p>	<p>Receipting, processing, and filing Proofs of Debts when not related to a dividend</p> <p>Maintaining register of Proofs of Debts received</p> <p>Reviewing supporting documentation from creditors</p>

	Meeting of Creditors	N/A	<p>Convening creditors meeting as necessary</p> <p>Preparation of meeting notices, proxies and advertisements</p> <p>Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, report to creditors, advertisement of meeting and draft minutes of meeting</p> <p>Preparation of minutes and lodgement with ASIC</p>
	Proposals to Creditors	N/A	<p>Preparing proposal notices and voting forms</p> <p>Forward notice of proposal to all known creditors</p> <p>Reviewing votes and determining outcome of proposal</p> <p>Preparation and lodgement of proposal outcome with ASIC</p>
Investigation		N/A	\$95,000.00
	Conducting Investigation	N/A	<p>Conducting further investigations into potential breach of director duties/breach of contract claim</p> <p>Preparation of updated investigation file</p> <p>Liaise with lawyers regarding breach of directors duties/breach of contract claim</p> <p>Consider and assess merits of pursuing claim via litigation</p>
	Examinations	N/A	<p>Liaising with lawyers regarding public examinations</p> <p>Consider conducting public examinations</p> <p>Seeking funding to conduct public examinations and commence litigation</p> <p>Preparing brief to solicitors</p>

			<p>Reviewing and settling draft submissions, affidavits, orders for production and other Court documents for public examinations</p> <p>Strategy meetings with lawyers and Counsel</p> <p>Review of examination bundle</p> <p>Prepare for and attend public examinations</p> <p>Review transcripts of public examinations</p> <p>Consider outcome from public examinations</p> <p>Briefing with lawyers and Counsel regarding outcome of public examinations</p>
	Litigation/ Recoveries	N/A	<p>Conducting investigations into potential claims against Director and related parties</p> <p>Liaising with solicitors regarding recovery actions</p> <p>Seeking funding to commence litigation for recovery actions</p> <p>Preparing brief to solicitors</p> <p>Commencing recovery action against Directors and/or related parties</p> <p>Reviewing and settling draft pleadings, affidavits and other Court documents for litigation</p> <p>Strategy meetings with lawyers and Counsel</p> <p>Discussions and providing updates to litigation funder</p> <p>Dealing with Court application for discovery/subpoena process</p> <p>Attendance at directions hearings, if necessary</p> <p>Negotiating commercial settlement with lawyers</p> <p>Prepare for and attendance at mediation</p> <p>Attendance at trial hearings</p>
	ASIC Reporting	N/A	Preparing statutory investigation reports

			Liaising with ASIC
Dividend		\$30,000.00	N/A
	Processing proofs of debt (POD)	Correspondence to potential creditors inviting lodgement of POD Receipt of POD Maintain POD register	N/A
	Dividend Procedures	Briefing external accountant regarding outstanding tax lodgements Liaising with Directors regarding outstanding tax lodgements Completing outstanding tax lodgements and seeking tax clearance Advertisement of intention to declare dividend Correspondence to creditors advising of intention to declare dividend Calculation of dividend Adjudicate PODs and supporting documentation Request further evidence from creditors as necessary Obtaining legal advice on creditor claims as necessary Issue notices of rejection as necessary Reporting to Creditors regarding dividend quantum and timing Preparing dividend file Preparation of distribution Preparation of payment vouchers to pay dividend Correspondence to creditors regarding payment of dividend	N/A

Administration			
		\$10,000.00	\$15,000.00
	ASIC Forms and lodgements	Preparing and lodging ASIC forms Correspondence with ASIC regarding statutory forms	Preparing and lodging ASIC forms Correspondence with ASIC regarding statutory forms
	Bank account administration	Preparing correspondence opening DOCA contribution bank account Preparing receipts and payment vouchers Bank account reconciliations	Preparing receipt and payment vouchers Bank account reconciliations
	Correspondence	Correspondence with various parties	Correspondence with various parties
	Document maintenance/file review/checklist	Filing of documents File reviews Updating checklists	Filing of documents File reviews Updating checklists
	ATO and other statutory reporting	Notification of appointment Preparing BAS	Notification of appointment Preparing BAS
	Planning / Review	Discussions regarding status of administration	Discussions regarding status of administration
	Insurance	Ongoing correspondence with Insurance broker regarding insurance policies	N/A
	Finalisation	Notifying ATO of finalisation Completing checklists Finalising WIP	Notifying ATO of finalisation Cancelling ABN/GST/PAYG registration Completing checklists Finalising WIP

## SCHEDULE B – RESOLUTIONS

We will be seeking approval of the following resolutions to approve our remuneration. Details to support these resolutions are included in **section 3** and in the attached Schedules.

**If a Deed of Company Arrangement is accepted:**

**Resolution: Deed Administrators' Remuneration from the execution of DOCA to finalisation of DOCA**

*"That the remuneration of the Joint and Several Deed Administrators, their partners and staff from the execution of the DOCA to the finalisation of DOCA, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Supplementary Second Report to Creditors dated 9 December 2024, and approved to an interim cap of \$50,000.00 (plus GST), and that the Joint and Several Deed Administrators be authorised to draw that amount as and when incurred."*

**If the Company is wound up:**

**Resolution: Liquidators' Remuneration for the period 16 December 2024 to Conclusion**

*"That the remuneration of the Joint and Several Liquidators, their partners and staff for the period 16 December 2024 to the conclusion of the Liquidation, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Supplementary Second Report to Creditors dated 9 December 2024, and approved to an interim cap of \$150,000.00 (plus GST), and that the Joint and Several Liquidators be authorised to draw that amount as and when incurred."*



## SCHEDULE C – DISBURSEMENTS

Disbursements are divided into three types:

- Externally provided professional services - these are recovered at cost. An example of an externally provided service disbursement is legal fees.
- Externally provided non-professional costs such as travel, accommodation, and search fees. These are recovered at cost.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally charge at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

We advise that to date we have not paid any disbursements incurred during this Administration by our Firm.

We are not obliged to seek creditor approval for disbursements paid to third parties, but must account to creditors, this includes providing details of the basis of charging for these types of disbursements to creditors as part of the Remuneration Approval Report. We are required to seek creditor approval for internal disbursements where there could be a profit or advantage. Accordingly, we will be seeking approval from creditors for the following resolution:

**Resolution: Deed Administrators' Internal Disbursements from Execution to Conclusion**

*"That the Joint and Several Deed Administrators be allowed internal disbursements from the date of the execution of the Deed of Company Arrangement to the conclusion of the Deed of Company Arrangement at the rates of charge annexed to the Voluntary Administrators' Remuneration Approval Report dated 9 December 2024, up to an amount of \$1,000.00 (plus GST) and that the Joint and Several Deed Administrators be authorised to draw that amount as accrued."*

**Resolution: Liquidators' Internal Disbursements for the period 16 December 2024 to Conclusion**

*"That the Joint and Several Liquidators be allowed internal disbursements for the period 16 December 2024 to the conclusion of the Liquidation at the rates of charge annexed to the Voluntary Administrators' Remuneration Approval Report dated 9 December 2024, up to an amount of \$2,000.00 (plus GST) and that the Joint and Several Liquidators be authorised to draw that amount as accrued."*

Future disbursements provided by our Firm will be charged to the administration on the following basis:

Disbursement Type	Rate (excl. GST)
Externally provided professional services	At cost
Externally provided non-professional costs	At cost
Internal disbursements	
ASIC Charges for appointments and notifiable events	At cost
Faxes and Photocopying	\$0.25 per page
Postage	At cost
Staff vehicle use	In accordance with ATO mileage allowance

## SCHEDULE D – HOURLY RATES

The rates applicable are set out in the table below with a general guide to the qualifications and experience of staff engaged in administration and the role they undertake in the administration. This table is included in the Initial Remuneration Notice dated 3 October 2024. The hourly rates charged encompass the total cost of providing professional services and are not comparable to an hourly wage rate.

Title	Description	Hourly Rate (excl GST)
Principal	Senior member of the firm. May be a Registered Liquidator and/or Registered Trustee. A senior accountant with over 10 years' experience who brings specialist skills and experience to the appointment. Leads staff carrying out appointments.	\$750
Director	An accountant with more than 10 years' experience. May be a Liquidator. Fully qualified and able to control all aspects of an appointment. May have specialist industry knowledge or skills. Assists with all facets of appointment.	\$670
Senior Manager	An accountant with more than 7 years' experience. Qualified and answerable to the Team Leader. Self-sufficient in completing and planning all aspects of large appointments.	\$620
Manager	An accountant with at least 6 years' experience. Typically qualified with well-developed technical and commercial skills. Controls and plans all aspects of medium to larger appointments, reporting to the Team Leader.	\$580
Supervisor	An accountant with more than 4 years' experience. Typically qualified with sound knowledge of insolvency principles and developing commercial skill. Assists to plan and control specific tasks on medium to larger appointments. Often undertaking post qualification study specialising in Insolvency and Reconstruction.	\$510
Senior 1	An accountant with more than 2 years' experience. Typically a graduate undertaking study leading to professional qualification as a Chartered Accountant or CPA. Able to complete work on appointments with limited supervision.	\$450
Senior 2	An accountant with less than 2 years' experience. Typically a graduate who has commenced study leading to professional qualifications. Able to complete many tasks on medium to large appointments under supervision.	\$400
Intermediate 1	An accountant with less than 2 years' experience. Typically a graduate and commencing study for qualifications. Able to complete multiple tasks on smaller to medium appointments under supervision.	\$350
Intermediate 2	An accountant with less than 1 year's experience. A trainee undertaking degree with an accountancy major. Assists in the appointment under supervision.	\$300
Senior Administration	Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.	\$300

Title	Description	Hourly Rate (excl GST)
Junior Administration	Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.	\$200



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**Afar Retail EF Pty Ltd**  
**(Administrators Appointed)**  
**ACN 105 772 978**  
**ABN 23 105 772 978**

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**Annexure "8"**  
**ASIC Information Sheet**

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**ASIC**

Australian Securities & Investments Commission

## Insolvency information for directors, employees, creditors and shareholders

This information sheet (INFO 39) lists ASIC's information sheets for directors, employees, creditors and shareholders affected by a company's insolvency.

We have produced these with endorsement from the Australian Restructuring Insolvency & Turnaround Association (ARITA).

The information sheets give a basic understanding of the three most common company insolvency procedures – liquidation, voluntary administration and receivership – as well as the independence requirements for external administrators and approving external administrator remuneration. There is also a glossary of commonly used insolvency terms.

### List of information sheets

- [INFO 41](#) Insolvency: A glossary of terms
- [INFO 42](#) Insolvency: A guide for directors
- [INFO 43](#) Insolvency: A guide for shareholders
- [INFO 45](#) Liquidation: A guide for creditors
- [INFO 46](#) Liquidation: A guide for employees
- [INFO 54](#) Receivership: A guide for creditors
- [INFO 55](#) Receivership: A guide for employees
- [INFO 74](#) Voluntary administration: A guide for creditors
- [INFO 75](#) Voluntary administration: A guide for employees
- [INFO 84](#) Independence of external administrators: A guide for creditors
- [INFO 85](#) Approving fees: A guide for creditors

### Where can I get more information?

Further information is available from the [ARITA website](#). The ARITA website also contains the [ARITA Code of Professional Practice for Insolvency Practitioners](#).

This is **Information Sheet 39 (INFO 39)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Last updated: 01/09/2017 10:57



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**Afar Retail EF Pty Ltd  
(Administrators Appointed)**

**ACN 105 772 978**

**ABN 23 105 772 978**

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**Annexure "g"  
ARITA Information Sheet**

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# Creditor Information Sheet

## Offences, Recoverable Transactions and Insolvent Trading



### Offences

A summary of offences under the Corporations Act that may be identified by the administrator:

180	Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.
181	Failure to act in good faith.
182	Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of the officer's position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.
198G	Performing or exercising a function or power as an officer while a company is under administration.
206A	Contravening a court order against taking part in the management of a corporation.
206A, B	Taking part in the management of corporation while being an insolvent, for example, while bankrupt.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of an auditor.
314-7	Failure to comply with requirements for the preparation of financial statements.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to the administrator.
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.

### Recoverable Transactions

#### Preferences

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under the Corporations Act.

#### Uncommercial Transaction

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to:

- the benefit or detriment to the company;
- the respective benefits to other parties; and,
- any other relevant matter.



To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years.

The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

### **Unfair Loan**

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only must be entered into before the winding up began.

### **Arrangements to avoid employee entitlements**

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person. It will only be necessary to satisfy the court that there was a breach on the balance of probabilities. There is no time limit on when the transaction occurred.

### **Unreasonable payments to directors**

Liquidators have the power to reclaim '*unreasonable payments*' made to directors by companies prior to liquidation. The provision relates to payments made to or on behalf of a director or close associate of a director. The transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

### **Voidable charges**

Certain charges over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six months of its creation.

## **Insolvent trading**

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they did so expect;
- they did not take part in management for illness or some other good reason; or
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

**Important note:** This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.