



## SECOND REPORT TO CREDITORS

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

29 October 2024

JONATHON KEENAN  
PETER KREJCI  
Joint and Several Administrators

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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
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
SPV	Special Purpose Vehicle
VA	Voluntary Administration
Westfield	Westfield shopping centres as part of the Scentre Group

## QUICK SHEET

<b>What's the nature of the business?</b>	The Company holds certain leases with Westfield as part of a broader retail operation known as "INSPORT". The Company has been primarily funded by a "lease fee" from Afar Holdings for the lease costs.
<b>Why were Administrators appointed?</b>	We understand that the retail trade at the Company's leased stores has deteriorated. Afar Holdings effectively withdrew its financial support, causing the Company to be unable to pay the ongoing rent, creating a cashflow problem.
<b>Is the Company still trading?</b>	We entered into a new commercial arrangement with Afar Holdings to continue funding the lease costs (plus a margin) in the short-term during the Administration. However, trading is anticipated to cease in the coming weeks, and control of the stores returned to Westfield.
<b>Is the Company solvent or insolvent?</b>	Our preliminary investigations indicate that the Company became insolvent on or around our appointment, when Afar Holdings withdrew financial support.
<b>Will there be a DOCA proposal?</b>	The Directors have advised that they intend to propose a DOCA for creditors' consideration, however they require additional time to formulate the proposal.
<b>What are the Company's assets?</b>	The Company's assets consist of a term deposit and bank guarantees for the leases reported at \$508K. However, some bank guarantees are not held by Westfield, and we have issued a demand. The discrepancy may relate to expired and unsigned leases.
<b>What are the Company's liabilities?</b>	The Company's creditors may be around \$2.05M - largely represented by a contingent claim from Westfield for the leases estimated at \$1.55M, plus a loan owed to Afar Holdings for \$480K and administrative debts totalling \$25K.
<b>Are there claims to pursue in Liquidation?</b>	Yes, we have identified a potential breach of duties / contract claim in respect of the commercial arrangement with Afar Holdings. A Liquidator would need to conduct further investigations and require funding to pursue any claims.
<b>Will the creditors get paid?</b>	Any return in a Liquidation scenario is contingent on obtaining sufficient funding and successfully pursuing the potential breach of duties / contract claim, which may provide a partial return to unsecured creditors after litigation costs.
<b>What is the Administrators' recommendation for the future of the Company?</b>	<p>The Company is insolvent and there is no DOCA proposal at this stage. Therefore, we <b>recommend that creditors resolve to place the Company into Liquidation</b> at the upcoming Second Meeting of Creditors.</p> <p>However, the Second Meeting of Creditors may be adjourned, to allow time for the orderly exit from the stores and to formulate a viable DOCA proposal.</p>

**When is the Second Meeting of Creditors?** The Second Meeting of Creditors will be held on **Wednesday, 6 November 2024 at 3:00PM AEDT**. Held in person, with virtual facilities also available.

## 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.

This report should be read in conjunction with the First Report. 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

<b>Name</b>	Afar Retail EF Pty Ltd (Administrators Appointed)
<b>Incorporated</b>	4 August 2003
<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

### ADMINISTRATORS

<b>Name</b>	Jonathon Keenan and Peter Krejci
<b>Date Appointed</b>	1 October 2024

### 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

## EXECUTIVE SUMMARY

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

Pursuant to Section 439A of the Act, we have convened the Second Meeting of Creditors to be held on **Wednesday, 6 November 2024 at 3:00PM AEDT**. Please find attached as **Annexure “1”** the Notice of Second Meeting of Creditors for your information. The meeting will be held in our offices with virtual meeting technology also made available should creditors wish to attend the meeting virtually. Further details on the meeting are disclosed in Section 17 of this report.

We summarise below our observations of the Company’s affairs, our preliminary investigations and potential outcomes for creditors from this Administration process.

The Company was incorporated on 4 August 2003, holding leases as part of a broader retail operation known as “INSPO””. The Company has been primarily funded by a “lease fee” from Afar Holdings for the occupation costs for the leases, however, there does not appear to be any written documentation formalising this arrangement.

We are advised that the INSPO retail business has not been performing well in recent times and has incurred trading losses. The Directors attempted to renegotiate the leases with Westfield, however they were unable to reach agreement on the required commercial terms. We understand that Afar Holdings determined that it would end the lease fee arrangement with the Company, effectively withdrawing its financial support on 30 September 2024. The Company was unable to pay the rent and as such, the Directors sought to appoint us as Joint and Several Administrators.

Following our appointment, we entered into a new commercial arrangement with Afar Holdings to continue funding 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’s creditors.

We explored options to seek to renegotiate lease terms such that the Company could be restructured. However, after various discussions, Afar Holdings advised that they did not intend to continue trading from the Westfield leased premises, and would need to formally cease to occupy those stores within a number of weeks. We liaised closely with Westfield to ensure the objective of having an orderly exit of the stores and return control to Westfield, mitigating the loss suffered, where possible.

We are advised that the Directors intend to propose a DOCA for creditors’ consideration. We have not received a formal DOCA proposal as yet however we anticipate this will be provided shortly. As such, we consider it to be in creditors interests to adjourn the upcoming Second Meeting of Creditors, to provide further time for the Directors to provide a viable DOCA proposal.

According to the management accounts, the Company’s assets consist of a term deposit of approximately \$112K (held by Westfield as partial security) and lease bonds totalling \$396K. However, there appears to be a discrepancy in respect of the bank guarantees, as Westfield has advised that it only holds \$240K in bank guarantees. We have issued a demand to the Directors to deliver up the remaining bank guarantees, however we are advised that they have been unable to locate same thus far. The discrepancy in the bank guarantees may relate (in part) to two (2) expired and unsigned leases, which Westfield allege are in force under implied lease terms, and which the Directors dispute.

In terms of liabilities, the Company's creditors are reported as a loan owed to Afar Holdings for \$480K, plus minor administrative and Director debts totalling \$25K. However, having regard to the leases, Westfield may also have a contingent claim against the Company. Westfield have lodged a proof of debt for \$8.1M, predominantly represented by the balance of the rent on the leases, including the two (2) alleged implied leases. However, all landlords are obliged to mitigate their loss by re-leasing the premises. For the purposes of our report and the estimates contained herein, we have assumed that six (6) months lost rent as representing the potential claim from Westfield, plus make good allowance, less bank guarantees. This reduces Westfield estimated contingent claim to around \$1.55M, which may reduce further to \$757K if the implied leases are instead expired.

We have conducted preliminary investigations into the Company's affairs and the conduct of its officers, which indicate the Company became insolvent on or around our appointment, when Afar Holdings withdrew financial support to the Company. In this regard, we note that there were no debts outside ordinary terms, and rent was paid up until 30 September 2024. Accordingly, there does not appear to be an insolvent trading claim or any voidable transaction claims to pursue.

However, our investigations indicate that there may be a potential breach of director duties claim to consider in a Liquidation scenario, in respect of the commercial arrangement with Afar Holdings which was not entered into at arms-length terms. We note that the arrangement was without margin and was undocumented, entered into for the benefit of the Afar Holdings (also controlled by the Directors). We have sought preliminary legal advice, and formed a view that a Liquidator may potentially have a claim against the Directors for breach of duty, in respect of the loss suffered by the Company which would be represented by Westfield's final net creditor claim. Similarly, there may be a claim against Afar Holdings for breach of contract.

We anticipate that the Directors and/or Afar Holdings would seek to defend any claim brought against them. In this regard, we note that using SPV entities to hold leases is common practice, and Westfield is a sophisticated landlord capable of conducting relevant due diligence on their tenants. It appears that Westfield did not obtain corporate or personal guarantees and relied only on the Company and bank guarantees it provided.

Any breach of duty/contract claim is speculative and carries inherent litigation risks. A Liquidator (if appointed) would need to conduct further investigations and consider the commerciality of pursuing such claims and the parties involved. Further, a Liquidator will require funding to pursue any claims. We have included in this report estimates in a Liquidation scenario for a public examination and potential litigation to be run, also assuming external litigation funding is available at a premium.

Given that the Company is insolvent and there is no DOCA proposal for creditors to consider, we must recommend that creditors resolve to place the Company into Liquidation at the forthcoming meeting. At this stage, we have prepared estimates of the potential returns to creditors under a Liquidation scenario, which are subject to the outcome from the breach of duties/breach of contract claims, and are summarised as follows:



Summary of Return to Creditors	Liquidation High Cents/\$	Liquidation Low Cents/\$
Secured Creditors	N/A	N/A
Priority Creditors	N/A	N/A
Unsecured Creditors	12	Nil

In summary, the Company is insolvent and absent a viable DOCA proposal, we have no choice but to recommend Liquidation at this time. However, we consider it may be in creditors interests for the Second Meeting of Creditors to be adjourned, to provide time for the orderly exit from the stores and to explore if a viable DOCA proposal can be presented for creditors' consideration. This will be discussed further at the Second Meeting of Creditors.

## 1. BASIS OF REPORT

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

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 with the Director and advisors;
- ▲ The ROCAP and questionnaire forms completed by the Directors;
- ▲ Extracts from public information databases;
- ▲ Correspondence with creditors;
- ▲ Correspondence with lawyers; and
- ▲ Documents obtained from the ATO in relation to the Company.

## 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. DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES

A DIRRI pursuant to Section 436DA of the Act was enclosed in the First Report. The DIRRI records that we undertook a proper assessment of the risks to our independence prior to accepting the appointment. There is no update required to the DIRRI.

### 4. CORPORATE INFORMATION

The following information has been extracted from ASIC records as at the date of our appointment:

#### 4.1 COMPANY DETAILS

<b>Company Name</b>	Afar Retail EF Pty Ltd
<b>ABN</b>	23 105 772 978
<b>ACN</b>	105 772 978
<b>Incorporation Date</b>	04 August 2003
<b>Registered Address</b>	Kelly Partners (South West Sydney) Suites 1-8 Kellicar Lane, MacArthur Square, 200 Gilchrist Drive Campbelltown NSW 2560
<b>Principal Place of Business</b>	Suite 4, 132 Burwood Road, Burwood NSW 2134

#### 4.2 OFFICEHOLDERS

Name	Position(s)	Start Date	Cease Date
Joseph Shalala	Director & Secretary	04/08/2003	Current
Peter Shalala	Director & Secretary	04/08/2003	Current

#### 4.3 SHARE STRUCTURE AND SHAREHOLDERS

Shareholders	Class	No. of Shares	Amount paid	Fully Paid
Joseph Shalala	Ordinary	1	\$1.00	Yes
Peter Shalala	Ordinary	1	\$1.00	Yes

#### 4.4 CURRENT REGISTERED SECURITY INTERESTS

A search of the PPSR indicates there is no security interest registered against the Company.

#### 4.5 LEGAL PROCEEDINGS AGAINST THE COMPANY

Pursuant to Section 440D of the Act, upon our appointment as Administrators, all proceedings against the Company are automatically stayed.

Creditors cannot commence or continue proceedings against the Company without our written consent or without leave of the Court. We are not aware that there are any proceedings against the Company on foot.

## 4.6 RELATED ENTITIES

Directorship searches have been undertaken for the Company's Directors. Our searches indicate that these Directors hold the following current and former Officer roles.

### Joseph Shalala

Company Name	Roles	Status
Afar Holdings Pty Ltd	Director & Secretary	Current
Afar Investments Pty Limited	Director & Secretary	Current
Afar Retail BC Pty Ltd	Director & Secretary	Current
Afar Retail BT Pty Limited	Director & Secretary	Current
Afar Retail D Pty Limited	Director & Secretary	Current
Afar Retail EF Pty Ltd	Director & Secretary	Current
Afar Retail M Pty Ltd	Director & Secretary	Current
Afar Retail ML Pty Ltd	Director & Secretary	Current
Afar Retail Pty Limited	Director & Secretary	Current
Afar Retail RD Pty Ltd	Director	Current
Afar T R Pty Ltd	Director & Secretary	Current
GH Retail Pty Ltd	Director	Current
In Sport Pty Ltd	Director & Secretary	Current
Insport Online Pty Ltd	Director & Secretary	Current
JP Project Management Pty Ltd	Director & Secretary	Current
JPDM Burwood Pty Ltd	Director	Current
N R Retail Pty Ltd	Director	Current
R H Retail Pty Ltd	Director & Secretary	Current
SH Retail Pty Ltd	Director & Secretary	Current
Staff ST Properties Pty Ltd	Director & Secretary	Current
Tipvine Pty Ltd	Director & Secretary	Current
WP Retail Pty Ltd	Director & Secretary	Current
Covercab Pty Ltd	Director & Secretary	Ceased

### Peter Shalala






Company Name	Roles	Status
Afar Holdings Pty Ltd	Director	Current
Afar Investments Pty Limited	Director	Current
Afar Retail BC Pty Ltd	Director & Secretary	Current
Afar Retail BT Pty Limited	Director	Current
Afar Retail D Pty Limited	Director	Current
Afar Retail EF Pty Ltd	Director & Secretary	Current
Afar Retail M Pty Ltd	Director	Current

Company Name	Roles	Status
Afar Retail ML Pty Ltd	Director	Current
Afar Retail Pty Limited	Director	Current
Afar Retail RD Pty Ltd	Secretary	Current
Afar T R Pty Ltd	Director	Current
GH Retail Pty Ltd	Secretary	Current
In Sport Pty Ltd	Director	Current
Insport Online Pty Ltd	Director	Current
JP Project Management Pty Ltd	Director	Current
JPDM Burwood Pty Ltd	Director	Current
N R Retail Pty Ltd	Secretary	Current
R H Retail Pty Ltd	Director	Current
SH Retail Pty Ltd	Director	Current
Staff ST Properties Pty Ltd	Director	Current
Tipvine Pty Ltd	Director	Current
WP Retail Pty Ltd	Director & Secretary	Current
Covercab Pty Ltd	Director	Ceased

Importantly, we note that Joesph Shalala and Peter Shalala are common Directors and Shareholders of both the Company and Afar Holdings, plus a range of other related entities.

## 5. COMPANY HISTORY AND EVENTS LEADING UP TO ADMINISTRATION

The following information was obtained from the Company's books and records, enquiries with the Directors, advisors and our own enquiries:

-  The Company was incorporated on 4 August 2003, holding leases as part of a broader retail operation known as "INSPOORT". The Company has been primarily funded by a "lease fee" from Afar Holdings for the occupation costs for the leases, however, there does not appear to be any written contract formalising this arrangement.
-  The Company does not appear to have traded any business (other than holding leases) nor employed any staff.
-  The Company is currently the lessee for six (6) leases with Westfield shopping centres in the Sydney metropolitan area, being Burwood, Hurstville, Liverpool, Mt Druitt, Penrith and Tuggerah. However, some leases have expired and the current lease documentation for Hurstville and Mt Druitt is unsigned.
-  We are advised that the INSPOORT retail business has not been performing well in recent times and has incurred trading losses.
-  The Directors had attempted to renegotiate lease terms (and other commercial aspects) with Westfield, however that does not appear to have been successful.

- As a result, in or around late September 2024, Afar Holdings determined that it would end the arrangement with the Company, ceasing payment of the lease fee.
- The Company does not have any realisable assets, apart from bank guarantees held in respect of the leases.
- Accordingly, the Directors determined that the Company was or likely to become insolvent and we were appointed as Joint and Several Administrators of the Company on 1 October 2024.

## 6. REASONS FOR FAILURE

The Directors have advised, in their view, the reasons for failure were due to poor economic conditions, competition, trading losses and funding withdrawn by the related entity, Afar Holdings.

Whilst we agree with the above in part, we also note the following additional causes of failure based on our preliminary investigations to date:

- The Directors allowed the leases to be provided to Afar Holdings at cost (without a profit margin), which was arguably not a commercial arrangement that benefited the Company.

## 7. CONDUCT OF THE ADMINISTRATION

In summary, during our appointment we have attended to the following major tasks:

- Negotiated a licence arrangement with Afar Holdings, including a margin, to allow for the leases to be maintained;
- Liaised with the landlord, Westfield, regarding the potential negotiation of the lease terms and feasibility of the leases during VA upon appointment;
- Investigated and made enquiries with the Directors regarding the Company's only assets, being the bank guarantees for the lease obligations;
- Investigated the Company's insurance arrangements and arranged cover as necessary;
- Obtained copies of the Company's financial statements and other books and records;
- Reported to creditors and held the first meeting;
- Conducted investigations into the affairs of the Company and conduct of its officers, in particular the Company's bank guarantees and lease status, potential breach of duty/contract claims that may be available to a Liquidator, including obtaining legal advice;
- Liaised with the Directors regarding various queries on the lease documentation, and requested further information as needed for our investigations;
- Explored possible options for a DOCA proposal with the Directors;
- Prepared this report and convened the second meeting of creditors; and
- Attended to various administrative matters.

## 8. TRADING DURING VOLUNTARY ADMINISTRATION

Upon our appointment, we immediately took steps to assess the Company's financial and operational position. To continue trading, and minimise the loss suffered by creditors, 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.

To date, we have received licence fees from Afar Holdings totalling \$608K in respect of October and November 2024 occupation. We have paid Westfield for the October rent commencing after the decision period.

As mentioned earlier, it appears that a restructure of the business is not possible, and therefore we are working to return control of the stores in an orderly manner, as follows:-

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

The objective is to have an orderly exit of the stores, mitigating the loss suffered by Westfield, to the extent possible. There will be a "soft deficit" approach which includes removal of stock, racks, signage and rubbish, leaving a clean shop and shop front. We are advised that this has been done with other stores historically and we anticipate that Afar Holdings will meet its obligations for the licence fees such that rent can be paid up to the intended cease dates.

We are also advised that the Directors intend to propound a DOCA for creditors' consideration, as a commercial proposal, rather than a Liquidation outcome for the Company. Whilst we have not yet received a formal DOCA proposal from the Directors, we anticipate this will be provided shortly. As such, at the forthcoming creditors meeting it may be adjourned to allow time to explore those options.

## 9. HISTORICAL FINANCIAL INFORMATION

We have reviewed the Company's available financial statements for the period from 2021 to part-period ended 30 September 2024 and we have prepared our financial analysis on the available information, which is discussed below.

### 9.1 BALANCE SHEETS

Attached as **Annexure "4"** is a comparative analysis of the Balance Sheets for the abovementioned periods.

We make the following comments with respect to the Company's comparative Balance Sheets:

- ▶ The Company's assets are represented by the term deposit and bonds, relating to the Company's lease obligations with Westfields. We understand that Afar Holdings appears to have put up the funding for the bank guarantees which are reported in the accounts at \$509K.
- ▶ The Company was funded by Afar Holdings to hold the leases for the INSPORT retail business. The loan from Afar Holdings is recorded at \$479K at our appointment, which appears to relate to the corresponding bank guarantees (assets) put up by Afar Holdings. We note that if the bank guarantees are not located or delivered up, then a corresponding adjustment may occur to the Afar Holdings loan account.
- ▶ The Company has reported minimal other trade creditors since FY2022, with \$25K at our appointment relating to legal, accounting and Directors fees.

## 9.2 PROFIT AND LOSS STATEMENTS

Attached as **Annexure "5"** is a comparative analysis of the Profit and Loss Statements for the abovementioned periods.

We make the following comments with respect to the attached comparative Profit and Loss Statements:

- ▶ As mentioned above, the Company was primarily funded by lease fees from Afar Holdings which were used to discharge the Company's rent obligations. In each financial year, the lease fee received equated to the rent expense, confirming the undocumented arrangement was at cost, with no profit margin.
- ▶ The Company also recorded sundry management fees income, in order to meet the other minor administrative expenses of the Company. This has driven the Company to report a breakeven position historically.
- ▶ The Company has incurred some expenses relating to accounting, legal and Directors fees, which has resulted in the Company incurring a minor trading loss at our appointment.

## 10. CURRENT FINANCIAL POSITION

Contained in this section is our analysis of the current financial position of the Company, with regard to the Directors' ROCAP, available financial records and our enquiries to date.

We have included below the assets and liabilities of the Company as reported in the financial statements as at 30 September 2024 and the Directors' ROCAP.



Afar Retail EF Pty Ltd (Administrators Appointed) A.C.N. 105 772 978					
	Report Reference	Book Value as at 1/10/2024 (\$)	Directors' ERV (per ROCAP) (\$)	Administrators' ERV (\$)	Deficiency (\$)
<b>Assets</b>					
Cash and Cash Equivalents	10.1.1	2	-	-	
Bank Guarantee - Term Deposits	10.1.2	112,478	112,478	112,478	
Bank Guarantee - Lease bonds	10.1.3	396,374	396,374	396,374	
<b>Total Assets</b>		<b>508,854</b>	<b>508,852</b>	<b>508,852</b>	
<b>Liabilities</b>					
Priority Creditors	10.2.1	-	-	-	
Secured Creditors	10.2.2	-	-		
Unsecured Creditors:	10.2.3				
Australian Taxation Office		1,064	-	1,064	
Westfield		-	Unknown	1,556,525	
Loans - Afar Holdings		479,521	479,521	479,521	
Other Trade Creditors		12,597	12,597	12,597	
Director Fees		12,000	12,000	12,000	
<b>Total Liabilities</b>		<b>505,182</b>	<b>Unknown</b>	<b>2,061,707</b>	
<b>Estimated Net Asset / (Deficiency)</b>		<b>3,672</b>	<b>Unknown</b>	<b>(1,552,855)</b>	<b>1,552,855</b>

## 10.1 ASSETS

### 10.1.1 Cash and Cash Equivalents

We have issued correspondence to all major financial institutions and to date, we have not identified any transactional bank accounts held in the name of the Company. It appears the lease fee from Afar Holdings was paid directly to Westfield in discharge of the rent obligations.

### 10.1.2 Bank Guarantee - Term Deposits

The Company holds a term deposit with Westpac of approximately \$112K, which is held as security for the bank guarantees issued by Westpac in favour of Westfield.

### 10.1.3 Bank Guarantee - Lease Bond

The Directors have advised that the Company holds various bank guarantees in relation to the leased premises in the amount of \$396K. Westfields have confirmed they hold bank guarantees totalling \$240K, and therefore combined with the term deposit funds, there is a discrepancy of circa \$268K.

We have issued a demand on the Directors to deliver up the missing bank guarantees. However, lawyers representing the Directors have advised that the missing bank guarantees cannot be found at this time. We suspect that part of the discrepancy relates to the expired leases. This will be investigated further during this Administration, or subsequent Liquidation.

## 10.2 LIABILITIES

### 10.2.1 Priority Creditors

The Directors advised there are no employees employed by the Company and our preliminary investigations confirm the same.

Should any employees believe that they are owed outstanding entitlements, please contact our office immediately.

### 10.2.2 Secured Creditors

Our investigations have not identified any registered secured creditors. However, we note that Westfield does hold certain bank guarantees, as discussed above.

### 10.2.3 Unsecured Creditors

We estimate that unsecured creditors may be owed approximately \$2M, subject to further enquiries and adjudication of claims. Below is a breakdown:

Unsecured Creditors	Administrators' ERV \$
Australian Taxation Office	1,064
Westfield	1,556,525
Loan – Afar Holdings	479,521
Other Trade Creditors	12,597
Director Fees	12,000
<b>Total</b>	<b>2,061,707</b>

We note the following in respect of the unsecured creditor claims:

- The Company's financial statements reported a tax debt of \$1K. The Directors' ROCAP did not disclose any tax debts owed to the ATO, and we have not received a POD from the ATO. We are not aware of any debt owed to the ATO; however, this is subject to change once all tax lodgements are brought up to date.
- Westfield is a contingent creditor, and with potentially the largest claim against the Company. Westfield have lodged a proof of debt totalling \$8.1M in respect of damages (make good costs and future rent) from the potential early termination of the leases. We note that Westfield are obliged to mitigate their losses by re-leasing the premises. For the purposes of our report and the estimates contained herein, we have assumed that six (6) months lost rent as representing the potential claim from Westfield, plus make good allowance, less bank guarantees. This reduces Westfield estimated contingent claim to around \$1.55M, as follows:-

Centre Name	Total Claim
Hurstville	317,471
Mt Druitt	296,003
Liverpool	(42,916)
Burwood	367,398
Penrith	416,251
Tuggerah	202,317
<b>Totals</b>	<b>1,556,525</b>

- We also note that that leases for Hurstville and Mt Druitt expired, and the current lease documents provided to us are unsigned. Westfield assert that the leases are operating on implied lease terms, which is disputed by the Directors. We do not have a view on the validity of the implied lease argument at this time, noting that it may become somewhat moot depending on the outcome of the Administration. If the Hurstville and Mt Druitt leases are determined to be expired, then Westfield claim may reduce to circa \$1.025M using the same rationale for six (6) months of lost rent. Further, if the missing bank guarantees of \$268K can be located and made available, this may reduce Westfield’s claim accordingly. We note that Westfield contingent claim may represent the potential breach of duties/contract claim, which is further discussed in section 12.8 of this report.
- The Company reported a loan owed to \$479K to Afar Holdings, largely in respect of funding it provided for the bank guarantees for Westfield. If the bank guarantees cannot be located, then corresponding adjustments will be needed against the loan account.
- Other trade creditors consist of various sundry debts incurred, including accounting fees and legal fees.
- The Directors have submitted claims for unpaid director fees owed by the Company.

## 11. EXPLANATION OF DEFICIENCY

Attached as **Annexure “6”** is the deficiency statement based on pessimistic scenario estimates. We note that the deficiency for the Company’s creditors is circa \$1.55M, before the costs of the Administration. Summarised below are the key aspects of the deficiency:

Summary of deficiency	Amount \$
Accumulated Losses	(3,670)
Loss on Realisation of Assets	2
Understated Liabilities	1,556,525
	<b>1,552,857</b>

We note that the deficiency is predominantly represented by the contingent claim from Westfield. We have necessarily made estimates in this report, however the true value of which may not be known for some time.

## 12. ADMINISTRATORS’ INVESTIGATIONS

### 12.1 OVERVIEW

During the course of the Administration, we have conducted investigations into the affairs of the Company to ascertain whether there are any transactions that appear to be voidable, or other causes of action available whereby money, property or other benefits may be recoverable by a liquidator pursuant to Part 5.7B of the Act, in the event that creditors resolve to wind up the Company. Creditors should be aware that an Administrator does not have the power to recover voidable transactions or take action for insolvent trading.

## 12.2 INVESTIGATION CONSTRAINTS

The Act sets out a strict timeline for the reporting of an Administrator's investigations of an insolvent company's affairs prior to the second meeting of creditors.

As such, our investigations into the Company's affairs are preliminary at this stage. The interim findings discussed below are based on the available records reviewed and under time constraints. A Liquidator would conduct more detailed investigations, provided that necessary funding is available.

## 12.3 BOOKS AND RECORDS

Section 286 of the Act provides that:

"A company, registered scheme or disclosing entity must keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited."

The failure to maintain books and records in accordance with Section 286 of the Act may allow a Liquidator to presume the company was insolvent throughout the period the books were not maintained (Section 588E of the Act).

The books and records received to date comprise of the following:

- Externally prepared financial statements;
- Lease documents;
- Invoices;
- Business activity statements and tax returns; and
- Various other financial records and correspondence.

The records appear to be reasonably complete and reliable. Accordingly, our preliminary view is that the Company has kept sufficient books and records to meet the requirements of Section 286 of the Act.

## 12.4 RISK OF LITIGATION ACTION GENERALLY

Part 5.7B of the Act gives liquidators (but not administrators) the right to commence certain legal proceedings to recover money, property or other benefits for the benefit of the Unsecured Creditors of a company.

Creditors should note that recovery actions:

- have the potential to increase the pool of funds available to Creditors;
- are usually expensive, lengthy and have unpredictable outcomes;
- should not be commenced unless defendants have the financial resources to satisfy any judgement; and

- must be funded out of the Company's existing assets or, where such assets do not exist, by Creditors or by external litigation funders (who are likely to require a significant share of the proceeds of any judgement as a condition of funding the litigation).

## 12.5 INSOLVENCY & INSOLVENT TRADING (SECTION 588G)

The Act prohibits Insolvent Trading and provides that Directors can be required to compensate Creditors for losses they suffer because of Insolvent Trading by making a payment to a Liquidator of the Company. We have considered the prospects of such a claim, as it is one that is only available if creditors decide that the Company should be placed into Liquidation, and so may be relevant to the decisions Creditors take at the forthcoming Second Meeting of Creditors.

### 12.5.1 What Is Insolvent Trading?

Insolvent Trading is the incurring of a debt or liability at a time when the Company is insolvent and when the Director(s) have reasonable grounds to suspect, or a person in their position would have suspected, that the Company was insolvent.

If such a debt or liability is incurred, a Court may require the Director(s) to pay an amount of compensation to a Liquidator of the Company equal to the loss suffered by creditors. In determining that loss, it is necessary to have regard to any amount that may be recovered from the Company's assets or from the recovery of other claims such as Unfair Preferences.

Recovery for Insolvent Trading is only available in a Liquidation. A claim may be brought by a Liquidator, or, if, but only if, the Liquidator declines to pursue a claim, by one or more Creditors.

A Liquidator pursuing a claim must:

- demonstrate Insolvency
- show that the Director(s) suspected, or should have suspected, insolvency
- show that a debt or liability was incurred
- show the debt or liability has not been paid, so that the creditor has suffered loss.

A Director accused of Insolvent Trading can answer a claim by showing that:

- the Director had reasonable grounds to believe the debt would be paid; and/or
- the Director relied on information from another reliable person to believe the debt would be paid; and/or
- the Director did everything he or she could to avoid the incurring of the debt; and/or
- the Director was not participating in the management of the Company for some good reason, such as illness; and/or
- the Director was acting honestly and reasonably and, notwithstanding that a debt or liability was incurred that will be unpaid, he or she should be excused from liability; and/or

- ▶ the Director may assert a defence that they have relief from insolvent trading by way of using the Safe Harbour regime contained in the Corporations Act; and/or
- ▶ the government provided legislative relief from insolvent trading from March to December 2020 in response to the COVID-19 pandemic.

Litigation in respect of Insolvent Trading is carried out in the ordinary civil courts. This means that the costs of pursuit of a claim are borne by the Liquidator, who uses the Company's assets and may enter into a form of borrowing called "litigation funding" to do so, or may ask creditors to make a voluntary contribution to the pursuit of a claim.

If a claim is successful, some of the costs, but not all of them, may also be ordered to be paid by the Director(s). If the Liquidator fails in some or all of the claim, he or she may be ordered to pay some, or all of the costs incurred by the Director(s) in defending the claim. Because of this, in practice Liquidators can only pursue claims where they have funds available to meet both their own and the Defendants' costs, or they have the benefit of "insurance" against costs provided either by creditors or a commercial litigation funder.

If the Company has no assets and neither a litigation funder nor creditors are willing to fund the litigation, no claim can be pursued. Litigation in respect of Insolvent Trading can be expensive, slow and risky. The Liquidator, funder and creditors are exposed to the risk that if the Director(s) are found liable, they may be unable to meet the judgment against them.

Where a Company is a subsidiary of another Company, a claim can also be brought against the holding Company.

### 12.5.2 Insolvency

One important element of liability for Insolvent Trading is if, and when, the Company became insolvent.

Section 95A of the *Corporations Act* defines solvency as follows:

*"95A(1) [when person is solvent] A person is solvent if, and only if, the person is able to pay all the person's debts, as and when they become due and payable.*

*95A(2) [insolvent person not solvent] A person who is not solvent is insolvent".*

Under Australian law, the test of insolvency is a "cashflow" test: it is focused on whether, in commercial reality, a company is able to meet its liabilities as and when they fall due for payment. The forensic assessment of insolvency, and preparation of a case on insolvency, involves a thorough, and costly, examination of the Company's business, its market, its relationships with its customers, lenders, suppliers, owners and with regulators. Where a Company has had expectations of support from related parties, that support is a factor that has to be considered in the context of insolvency.

In elaborating on the cashflow test of insolvency, the Courts have provided extensive commentary on the subject to determining insolvency. One of the leading authorities is the judgment of the Victorian Supreme Court in *ASIC -v- Plymin*, in which Justice Mandie, relying on Expert Evidence, identified the following 14 indicators of insolvency:

- Continuing Losses;
- Liquidity ratios below 1;
- Overdue Commonwealth and State taxes;
- Poor relationship with present Bank, including inability to borrow further funds;
- No access to alternative finance;
- Inability to raise further equity capital;
- Suppliers placing company on COD, or otherwise demanding special payments before resuming supply;
- Creditors unpaid outside trading terms;
- Issuing of post-dated cheques;
- Dishonoured cheques;
- Special arrangements with selected creditors;
- Solicitors' letters, summons(es), judgements or warrants issued against the company;
- Payments to creditors of rounded sums which are not reconcilable to specific invoices;
- Inability to produce timely and accurate financial information to display the company's trading performance and financial position and make reliable forecasts.

Comprehensive forensic insolvency assessment requires the review of each of these indicators, as well as the Company's business, to answer the question "was it able to pay its debts as and when they fell due".

As part of reporting to you about Insolvent Trading we are required to form a preliminary view about when the Company became insolvent. Our opinion is necessarily formed summarily: a forensic analysis of insolvency would be more thorough, more expensive and slower than the Voluntary Administration process ordinarily permits. We have set out our views below.

### 12.5.3 Director's Knowledge

As well as insolvency, a Liquidator must also show when the Director suspected, or ought to have suspected, that the Company was insolvent. If a claim is brought, this will normally involve the comprehensive review of company records to show when the Director(s) first learnt of circumstances that could indicate insolvency. That review is typically thorough and expensive. Again, for the purpose of reporting to you we are required to make a summary assessment of when suspicions were or should have been formed. We have set out our views in this respect below as well.

### 12.5.4 Loss

Only losses *incurred* at or after the time of insolvency can form the basis of a claim, although all unpaid unsecured creditors are entitled to share in any recovery after costs. A debt or liability is "incurred"

when the last event that could have avoided the liability arising occurs. For example, taking delivery will normally be the time at which a debt for the supply of goods is incurred.

Liabilities that have fallen due, but which were not freshly incurred during the period of insolvency cannot form the basis for a claim. Such liabilities commonly include ongoing contracts of employment, long term leases and hire-purchase arrangements, guarantees, loans and long-term supply and construction contracts.

### 12.5.5 Litigation and Funding

As noted above, if a Company does not have significant assets, a Liquidator contemplating bringing a claim for Insolvent Trading will only be able to pursue a claim if either Creditors or a commercial Litigation Funder is willing to fund the Liquidator's Legal and Accounting Costs and meet any costs the Liquidator may be liable to pay if the claim is unsuccessful.

Funding of this sort can be arranged as follows:

- ▶ A creditor or creditors may contribute funds for additional investigations and litigation. Such creditors need to indemnify the Liquidator against any adverse cost orders should the litigation prove unsuccessful. However, should the litigation be ultimately successful, creditors who have funded the litigation may apply to the court to have their claim met in priority to other creditors not participating in the funding arrangement; and/or
- ▶ The Liquidator may request funding from an independent, specialist litigation funding firm. Generally, the litigation funder is compensated for its risk by receiving a share of up to 30 - 40% from any recoveries arising out of the litigation, where there is usually a minimal return (being a multiple of the risk) also required by the funder. Litigation funding is expensive in this regard, and therefore only feasible where the possible recoveries are significant.

### 12.5.6 Legal controversy

There are two (2) controversial areas of insolvency law that bear on the Company. These are:

- ▶ Set-off. Traditionally courts have not allowed set-off of claims such as those for Insolvent Trading. However, in modern cases the Courts have been more generous to parties owing money to an insolvent Company. They have said they would allow the setting off of claims by parties liable to make payments to Liquidators of amounts owed to them by the insolvent Company. This matter remains an unresolved issue at law.
- ▶ Financial Support. Until 1993, the test of insolvency in Australia required that a Company be able to meet its liabilities *from its own monies*. This requirement was removed in 1993. Subsequently, the Courts have held that the provision of "financial support" by a related party can be a basis on which a Company is solvent when, without that support, it would clearly be insolvent. Where solvency is disputed, the Court's inquiry needs to extend to the nature and extent of that support. This remains a controversial issue in insolvency law.



## 12.6 ASSESSMENT OF INSOLVENCY

Our assessment has been based on the information available to us from the Company's records, from information provided by the Directors and their advisors, and Creditors and on the basis of separate investigations of the Company's affairs. As noted above, this assessment has been undertaken on a preliminary basis. If the Company is placed into Liquidation and litigation were contemplated, we would need to undertake a more thorough and rigorous assessment. We would also need to obtain legal advice and gather substantial further evidence, including potentially holding public examinations of the relevant parties.

Based on our investigations conducted to date, it is our preliminary view that the Company was able to satisfy its debts in the ordinary course, and became insolvent on or around our appointment.

Our assessment of the Company's solvency is detailed below.

### 12.6.1 Working Capital Analysis

A working capital analysis is generally based on a review of the Company's financial records and management accounts to determine whether there were sufficient current assets to meet current liabilities, including any adjustments to the reported current assets and current liabilities.

The current ratio compares current assets to current liabilities. A current ratio over 1 indicates that there are sufficient current assets to meet current liabilities.

The below working capital analysis has been prepared based on the Company's available financial statements and management accounts. The position is summarised below, which indicates the Company had sufficient working capital at each reporting period from June 2022.

Working Capital Analysis	Year Ended 30-Jun-22 (\$)	Year Ended 30-Jun-23 (\$)	Year Ended 30-Jun-24 (\$)	Year Ended 30-Sep-24 (\$)
Current Assets	413,470	108,299	508,854	508,854
Current Liabilities	403,022	97,025	494,030	505,182
<b>Working Capital</b>	10,448	11,274	14,824	3,672
<b>Current Ratio</b>	1.03	1.12	1.03	1.01

The Company appears to have had sufficient funds available over the above periods to satisfy debts incurred in the ordinary course. We note the rent for October 2024 was due and payable to Westfield on the day of our appointment.

### 12.6.2 Indicators of Insolvency

In addition, we have observed the following facts relevant to the solvency of the Company:

- We understand that in or around late September 2024, Afar Holdings determined that it would end the commercial arrangement with the Company, ceasing payment of the lease fee. The rent was paid up to 30 September 2024. Accordingly, the Company was unable to discharge the rent for October 2024 and the Directors appointed us as Joint and Several Administrators of the Company on 1 October 2024.

In light of the above, it is our preliminary view that the Company became insolvent on or around our appointment, when Afar Holding determined to withdraw financial support to the Company.

### 12.6.3 Potential Amount of Claim

Determining the value of an insolvent trading or breach of duty claim will generally involve a forensic review of the debts incurred after the date on which it can be maintained that the Company was insolvent.

Our preliminary view is that the Company was solvent on a cashflow basis until our appointment. The Directors took prompt action to place the Company into Administration and accordingly, there does not appear to be an insolvent trading claim to pursue. However, there may be breach of director duties claim which is discussed further in Section 12.8.1 of this report.

If the Company is placed into Liquidation, a Liquidator may conduct further enquiries on the solvency and claims.

### 12.6.4 Defences Available

As discussed above, there is no potential insolvent trading claims according to our preliminary investigations on the Company's solvency position. However, should further investigations be conducted and indicate an insolvent trading claim might be available to pursue, we note that a defence is available under the Act where a director can establish:

- There were reasonable grounds to expect that the company was solvent, and they actually did so expect;
- They did not take part in management for illness or some other good reason;
- They took all reasonable steps to prevent the company incurring the debt; or
- If the Director availed himself of the protections under the Safe Harbour regime.

As discussed above, the Directors took prompt action to place the Company into Administration.

A Liquidator would need to conduct further investigations and consider such claims, including assessing recoverability, before pursuing any recovery action.

## 12.7 VOIDABLE TRANSACTIONS

Voidable transactions include transactions such as unfair preferences, uncommercial transactions, unfair loans, unreasonable director related transactions and circulating security interests created within six months before the relation-back day, which is the date of the appointment of the Administrators.

These transactions usually relate to the period six (6) months prior to the date of our appointment; however, in certain circumstances, this period can be extended to four (4) years in relation to transactions with related entities and up to ten (10) years if the transactions were entered into with related parties with the intention of fraud.

ARITA has issued a creditor information sheet "Offences, Recoverable Transactions and Insolvent Trading" providing further information about voidable transactions. This information sheet is attached as **Annexure "12"**.

The transactions identified, if determined to be voidable, may be recoverable under the following provisions:

### 12.7.1 Unreasonable Director Related Transactions (S588FDA)

A transaction is an unreasonable Director-related transaction of the Company if:

- The transaction is a payment, a conveyance, transfer or disposition of property, the issue of securities, or incurring of an obligation to make a payment, disposition or issue by the Company.
- The transaction is to a Director or close associate of the Director or for their benefit.
- A reasonable person in the Company's circumstances would not have entered into the transaction having regard to the benefit or detriment to the Company or other parties involved in the transaction.
- The transaction was entered into during the four (4) years leading to our appointment.

Our preliminary investigations have not identified any unreasonable director related transactions.

### 12.7.2 Unfair Preferences

An unfair preference results when the Company and a Creditor are parties to a transaction(s) and the Creditor receives more than it would receive if the transaction(s) are set aside, and the Creditor proved for the debt in the winding up. If it is ultimately determined that certain payments are potentially recoverable as unfair preferences, it would be necessary to establish:

- that the Company was insolvent at the time the payments were made; and
- that the recipient had reasonable grounds to suspect that the Company was insolvent at that time or would become insolvent as a result of the payment.

The clawback provisions available to the Liquidator relate only to payments to unrelated parties made within six (6) months from the date of our appointment, if the Company is insolvent at that time, known as the RBP.

Our preliminary view is that the Company became insolvent on or around our appointment. Therefore, at this time, we have not identified any unfair preference claims to pursue. If the view on solvency changes, then it is possible that unfair preference payments may be identified.

If the Company is placed into Liquidation, and subject to funding, a Liquidator may conduct further enquiries on the solvency position of the Company and potential recoveries.

### 12.7.3 Unfair Loans (S588FD)

A loan is unfair if it is made to a Company at extortionate interest rates or the charges in relation to the loan are extortionate. In considering whether interest and charges are extortionate, regard must be had to the following:

- Risk the lender is exposed to;
- Value of the security;

- Term;
- Repayment schedule; and
- Amount of loan.

Our preliminary investigations have not identified any unfair loans.

#### 12.7.4 Uncommercial Transactions

A transaction is considered uncommercial if it is made at a time when the Company is insolvent, and it may be expected that a reasonable person in the Company's circumstances would not have entered into the transaction having regard to:

- The benefits or detriment to the Company of entering into the transaction; and
- The prospective benefits to other parties to the transaction.

The clawback provisions available to a Liquidator relate only to payments to unrelated parties made within two (2) years from the date of the appointment. The RBP can be extended to four (4) years for transactions with related parties.

Our preliminary view is the Company became insolvent on or around our appointment. Therefore, at this time, we have not identified any uncommercial transaction claims to pursue. If the view on solvency changes, then it is possible that uncommercial transactions may be identified.

If the Company is placed into Liquidation, a Liquidator may conduct further enquiries on the solvency position of the Company and potential recoveries.

#### 12.7.5 Discharge of Related Party Debts (S588FH)

A transaction is considered to have discharged a related party's debt if funds from the Company are used to pay that Creditor which has had the effect of discharging, to the extent of a particular amount, a liability (whether under a guarantee or otherwise) of a related entity the Company.

We have not identified any claims for discharge of related party debts.

#### 12.7.6 Circulating Security Interests Created Within Six Months before the Relation-Back Day (S588FJ)

A circulating security interest in property of the Company created within six (6) months before the relation-back day may be void against a Liquidator. However, circulating security interests that are created within this period for consideration paid at or after the date of creation remains valid.

We have not identified any securities registered within six (6) months before the relation-back day.

### 12.8 OTHER POTENTIAL CLAIMS

#### 12.8.1 Potential Breach of Duty Claims

We have considered whether there are any potential breach of duty claims to be pursued against the Directors or other parties.

Historically, it appears that the Company entered into an undocumented commercial arrangement with Afar Holdings (an entity also controlled by the Directors), allowing Afar Holdings to occupy the leased premises to trade the INSPORT retail business. In exchange, Afar Holdings paid the Company a licence fee equal to the rental costs without a profit margin. Afar Holdings also appears to have put up bank guarantees for some of the lease obligations.

We understand the INSPORT retail business operating at these leased premises has been performing poorly of recent time. As a result, Afar Holdings determined that it would cease the commercial arrangement with the Company, bringing an end to the payment of licence fee, and therefore causing the Company to be unable to pay rent.

It appears that this commercial arrangement at cost without a sub-lease or licence is not an arms-length transaction and may amount to a breach of duties claim against the Directors. The loss for which the Company is now likely to incur, as the Company is left with lease exposures owed to Westfield and no (or limited) assets to discharge same.

We have sought legal advice and formed the preliminary view that the Directors may have breached their duties, by causing it to enter into leases with Westfield:

- (a) at potential detriment or risk to the Company;
- (b) for no benefit to the Company; and
- (c) for the overall benefit and advantage of Afar Holdings (and its shareholders).

Accordingly, the Company may have prima facie claims against the Directors for the losses and damages suffered where they have arguably used their position to gain an advantage for Afar Holdings and cause detriment to the Company. The quantum of this claim may be, at the very least, the loss suffered by Westfield, which as discussed previously, we have estimated to be approximately \$1.3M (net of the held and missing bank guarantees).

We anticipate that the Directors would seek to defend any claim brought against them. We note that the Directors may seek to argue defences if a claim is brought, such as exercising the “business judgement rule” by entering into the leases in good faith and for a proper purpose. At this early stage it is very difficult to accurately assess the merits of any such defences. This would require further investigations by a Liquidator, to better understand the broader circumstances and assess the claims more fully.

We note that using SPV entities to hold leases is common practice. Further, we note that Westfield is a sophisticated landlord capable of conducting relevant due diligence on their tenants. Westfield would have, or ought to have, been aware of the Company’s financial position, and the dealings between the related entities (Afar Holdings). Having regard to those risks, it appears that Westfield did not obtain corporate or personal guarantees and relied only on the Company and bank guarantees.

A Liquidator would have to consider the prospects of recovery is dependent on the capacity of the Directors to pay. Property searches conducted in NSW indicate that the Directors are the registered proprietors of respective properties in Strathfield and Canada Bay, and it seems two properties are

registered with covenants. Prima facie, the Directors may have financial capacity however this requires further investigations by a Liquidator.

In summary, any breach of duty claim is speculative and carries inherent litigation risks. A Liquidator (if appointed) would need to conduct further investigations and consider the commerciality of pursuing such claims and the parties involved. We have included in the estimate outcome projections, estimates in a Liquidation scenario for a public examination and potential litigation to be run, also assuming external litigation funding is available at a premium.

### 12.8.2 Potential Breach of Contract

There is a similar potential claim against Afar Holdings for alleged breach of contract, mirroring the potential breach of duties claim against the Directors.

Whilst undocumented, the Company and Afar Holdings had a commercial arrangement in which Afar Holdings agreed to cover the Company's liabilities/obligations to Westfield in connection with the leases. Afar Holdings may have repudiated that contract or breached its obligations to the Company under that contract by failing to comply with its terms, leaving the Company exposed to Westfield (amongst others). Consequently, the Company may have a claim against Afar Holdings for breach of contract.

Similarly, the quantum of this claim may be the loss suffered by Westfield, which as discussed previously, we have estimated to be approximately \$1.3M (net of the held and missing bank guarantees). However, as the arrangement is not recorded in writing, there may be various (as yet unknown) counterfactuals propounded by Afar Holdings in defending such a claim. Again, at this early stage it is very difficult to accurately assess the merits of any such defences, which require further investigations by a Liquidator.

We note that there are elements of duplication with the abovementioned breach of duties claim against the Directors, such that only one claim can be pursued.

Further, a Liquidator would have to consider the prospects of recovery is dependent on the capacity of Afar Holdings to pay. Property searches conducted in NSW indicate that the Afar Holdings is the registered proprietors of properties in Burwood and one property seems to be financed with ANZ. As such, Afar Holdings may have financial capacity however this requires further investigations by a Liquidator.

As above, any breach of contract claim is speculative and carries inherent litigation risks. The claim would require further investigation by a Liquidator, likely via public examination prior to any litigation being commenced. This claim mirrors the breach of duties claim (discussed above), which is modelled in the estimated outcome projections.

## 12.9 SUMMARY OF POTENTIAL OFFENCES

In summary, we consider there is a potential contravention of the Act to consider in a Liquidation scenario:

Section	Potential Offence Identified	Summary of Offence
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182	Use of positions to gain advantage for the related entities and cause detriment to the Company	Allowing Afar Holdings to occupy the leased premises without a profit margin or documentation protecting the Company's interests
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## 12.10 REPORT TO ASIC

We intend to lodge a confidential report to ASIC pursuant to Section 438D of the Act, in respect of our preliminary investigations and any potential offences identified. This report will be lodged shortly.

Should the Company be wound up, a Liquidator is required to complete an investigation into the Company's affairs and, if offences are identified, or if the Company is unable to pay its Creditors more than 50 cents in the dollar, lodge a report with ASIC pursuant to Section 533 of the Act.

## 13. 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 directors' breach of duty recovered and the costs of these recoveries;
- 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 "7"** is an analysis of the estimated returns that may be available to creditors under a Liquidation scenario noting that we have not received a DOCA proposal. In summary, the estimated returns are as follows:

Summary of Return to Creditors	Liquidation High Cents/\$	Liquidation Low Cents/\$
Secured Creditors	N/A	N/A
Priority Creditors	N/A	N/A
Unsecured Creditors	12	Nil

We note that the above returns are estimates only and are subject to various assumptions on the contingent claims and potential recovery actions, which may ultimately prove to be inaccurate. As such, the returns to creditors may vary from those above.

We note that any return to unsecured creditors in liquidation is contingent on identifying sufficient funding and successfully pursuing the potential breach of duties/contract claim identified. Those claims are speculative and carry inherent litigation risks. The merits and outcomes are unknown at this time; however, it is possible that no recovery could be achieved.

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.

## 14. 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;
- 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:

### 14.1 DEED OF COMPANY ARRANGEMENT

We have had discussions with the Directors to explore a proposal for a DOCA. The Directors have advised that they require additional time to formulate a DOCA proposal, which also includes the orderly exit of the stores.

However, at this time, there is no formal DOCA proposal available for creditors to consider. As such, we may adjourn the Second Meeting of Creditors to provide further time close the stores in an orderly manner and explore a DOCA proposal.

**We do not recommend creditors resolve that the Company execute a DOCA on the basis that there is no DOCA proposal for creditors to consider.**

### 14.2 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 insolvent and if the administration was to end, the Company would be placed in a similar position to that existing prior to our appointment as Administrators.

**We do not recommend that creditors resolve the Administration end on the basis that the Company is insolvent.**

### 14.3 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 Liquidator 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 Liquidator is also required to report their findings to ASIC in the event that offences are uncovered.

**On the basis that the Company is insolvent and that no DOCA has been proposed for creditors' consideration, we recommend that Creditors resolve to wind up the Company.**



Notwithstanding that the resolution to wind up the Company is an agenda item for the forthcoming meeting, as previously discussed, in order to provide further time to close the stores in an orderly manner and to explore a DOCA proposal, pursuant to Rule 75-140(1)(b) of the IPR, we intend to adjourn the Second Meeting of Creditors for up to forty-five (45) business days.

## 15. RECEIPTS AND PAYMENTS

The receipts and payments up to date of this report are attached as “**Annexure 8**”.

## 16. REMUNERATION OF ADMINISTRATORS / LIQUIDATORS

In compliance with the ARITA Code of Professional Practice and the requirements of the Act, we are required to provide detailed information in respect of our remuneration. We attach our Remuneration Approval Report as **Annexure “9”** which details the major tasks that have been and will be conducted in this administration. Our remuneration is calculated on the time spent by staff at hourly rates used by BRI Ferrier, as detailed in our Remuneration Matrix. This document is contained within the Remuneration Report. In addition, a schedule of hourly rates is attached as **Annexure “10”**.

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 “11”**) 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>

### 16.1 VOLUNTARY ADMINISTRATION PERIOD

Creditors will be asked to approve the Administrators’ remuneration at the Second Meeting of Creditors for the costs incurred.

Please refer to the Remuneration Approval Report, attached as **Annexure “9”** for further details.

### 16.2 LIQUIDATION PERIOD

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

On the basis that we are to be appointed Liquidator, 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 does not factor in the costs of litigation, which may be significant. 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 “9”** for further details.

## 17. SECOND MEETING OF CREDITORS

The Second Meeting of Creditors will be held on Wednesday, 6 November 2024 at 3:00PM AEDT. The formal Notice of Meeting is attached as **Annexure “1”** for your reference. Virtual meeting facilities will be available.

The purpose of the Second Meeting of Creditors is to enable Creditors to consider the Administrators’ Report pursuant to Rule 75-225 of the IPR and to determine the Company’s future.

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 accepted for voting at the First Meeting are not required to be re-lodged for the Second Meeting of Creditors.**
- Creditors may attend and vote in person, by proxy or by attorney. The appointment of a proxy, copies of which is attached as **Annexure “3”**, must be in accordance with Form 532. Persons attending on behalf of a corporate entity are required to have a proxy signed on behalf of that entity. **Proxies from the First Meeting cannot be used at the Second Meeting, and it is necessary for Creditors attending to submit new proxies for the Second Meeting of Creditors.**
- A specific proxy can be lodged showing approval or rejection of each proposal. 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 my office by 4:00 PM one (1) business day prior to the meeting.

## 18. QUERIES

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

- BRI Contact: Nicole Feng
- Phone: (02) 8263 2333
- Email: [nfeng@brifnsw.com.au](mailto:nfeng@brifnsw.com.au) (preferred)
- Mailing: GPO Box 7079, Sydney NSW 2001

Yours faithfully,  
**AFAR RETAIL EF PTY LTD**  
**(ADMINISTRATORS APPOINTED)**



**JONATHON KEENAN**  
Joint and Several Administrator

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

**BRI Ferrier**

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

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**Annexure "1"  
Notice 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 SECOND MEETING OF CREDITORS**

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

**(ADMINISTRATORS APPOINTED)  
("THE COMPANY")**

NOTICE is given that a Second Meeting of the Creditors of the Company will be held at the office of BRI Ferrier, Level 26, 25 Bligh Street, Sydney NSW 2000 on Wednesday, 6 November 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/tZModuysrDwjGtzdfNYkGS-tu3aZj90U1RRl>

A G E N D A

1. To receive the Report of the Administrators and receive questions from creditors.
2. To approve the remuneration of the Administrators.
3. To consider adjournment of the meeting.
4. To consider the internal disbursements of the Administrators.
5. 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.
6. 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.
7. To consider the appointment of a Committee of Inspection.
8. 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 29<sup>th</sup> day of October 2024



JONATHON KEENAN  
JOINT AND SEVERAL ADMINISTRATOR

BRI FERRIER  
Level 26  
25 Bligh Street  
Sydney NSW 2000



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

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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 01 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 (please attach documents to support your claim e.g. purchase orders, invoices, interest schedules):

Date	Consideration <sup>(3)</sup> state how the debt arose	Amount \$ (Incl. GST)	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.

<input type="checkbox"/>	<p>I authorise the External Administrators' (whether as Voluntary Administrators/Deed Administrators/Liquidators) on behalf of the Company and his or her employees and agents to send and give electronic notification of documents in accordance with Section 600G of the Corporations Act 2001 to the following email address:</p> <p>Contact Name: .....</p> <p>Email Address: .....</p>
--------------------------	--

DATED this ..... day of ..... 20...

NAME IN BLOCK LETTERS .....

Occupation.....

Address.....

Signature of Signatory .....

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	\$
Reason for Admitting / Rejection			
PREP BY/AUTHORISED		TOTAL PROOF	\$
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 company name in white serif font 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  
ACN 105 772 978  
(Administrators Appointed)**

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**Annexure "3"  
Appointment of Proxy Forms**

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APPOINTMENT OF PROXY

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

\*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 Second Meeting of Creditors of the Company to be held on Wednesday, 6 November 2024 at 3:00 PM AEDT, or at any adjournment of that meeting.

Please mark any boxes with an ☒

Proxy Type: ☐ General ☐ Special

	For	Against	Abstain
<b>Resolution 1:</b> <i>"That the remuneration of the Joint and Several Administrators, their partners and staff for the period 1 October 2024 to 25 October 2024, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 29 October 2024, be fixed and approved at \$62,544.00 (plus GST), and that the Joint and Several Administrators be authorised to draw that amount."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 2:</b> <i>"That the remuneration of the Joint and Several Administrators, their partners and staff for the period 26 October 2024 to Conclusion be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 29 October 2024 and approved to an interim cap of \$80,000.00 (plus GST), and that the Joint and Several Administrators be authorised to draw that amount as and when incurred."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 3:</b> <i>"That the Administrators be allowed internal disbursements for the period 1 October 2024 to the conclusion of the Administration at the rates of charge annexed to the Voluntary Administrators' Remuneration Approval Report dated 29 October 2024, up to an amount of \$1,000.00 (excl. GST) and that the Joint and Several Voluntary Administrators be authorised to draw that amount as accrued."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	For	Against	Abstain
<b>Resolution 4<sup>(3)</sup>:</b> <i>"That the Company execute a Deed of Company Arrangement."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 5<sup>(3)</sup>:</b> <i>"That the Voluntary Administration should end."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 6<sup>(3)</sup>:</b> <i>"That the Company be wound up."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 7 – If creditors resolve to wind up the Company:</b> <i>"That the remuneration of the Joint and Several Liquidators, their partners and staff for the period 6 November 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' Second Report to Creditors dated 29 October 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>Resolution 8 – If creditors resolve to wind up the Company:</b> <i>"That the Liquidators be allowed internal disbursements for the period 6 November 2024 to the conclusion of the Liquidation at the rates of charge in the Voluntary Administrators' Remuneration Approval Report dated 29 October 2024, up to an amount of \$2,000.00 (excl. GST) and that the Liquidators be authorised to draw that amount as accrued."</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 9 – If creditors resolve to wind up the Company:</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"/>

#### 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 to [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**  
**ACN 105 772 978**  
**(Administrators Appointed)**

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**Annexure "4"**  
**Comparative Balance Sheets**

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## Afar Retail EF Pty Ltd

A.C.N. 105 772 978

## Comparative Balance Sheet

For the Financial Years Ended 30 June 2022, 30 June 2023, 30 June 2024 and Part-Ended September 2024

	Year Ended 30-Jun-22 (\$)	Year Ended 30-Jun-23 (\$)	Year Ended 30-Jun-24 (\$)	Year Ended 30-Sep-24 (\$)
<b>ASSETS</b>				
<b>Current Assets</b>				
Cash on Hand	2	2	2	2
Term Deposit	108,027	108,297	112,478	112,478
Trade Debtors	305,441	-	-	-
Lease Bonds	-	-	396,374	396,374
<b>Total Current Assets</b>	<b>413,470</b>	<b>108,299</b>	<b>508,854</b>	<b>508,854</b>
<b>TOTAL ASSETS</b>	<b>413,470</b>	<b>108,299</b>	<b>508,854</b>	<b>508,854</b>
<b>LIABILITIES</b>				
<b>Current Liabilities</b>				
Trade Creditors	305,441	-	-	12,597
Net GST Payable	30	30	990	85
Provision for Income Tax	(28)	(253)	1,059	979
Loans - Afar Holdings Pty Ltd	97,579	97,248	482,381	479,521
Directors Loans	-	-	9,600	12,000
<b>Total Current Liabilities</b>	<b>403,022</b>	<b>97,025</b>	<b>494,030</b>	<b>505,182</b>
<b>TOTAL LIABILITIES</b>	<b>403,022</b>	<b>97,025</b>	<b>494,030</b>	<b>505,182</b>
<b>NET ASSETS</b>	<b>10,448</b>	<b>11,274</b>	<b>14,824</b>	<b>3,672</b>
<b>Equity</b>				
Share Capital	2	2	2	2
Retained Earnings	10,446	11,272	14,822	3,670
<b>TOTAL EQUITY</b>	<b>10,448</b>	<b>11,274</b>	<b>14,824</b>	<b>3,672</b>

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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**  
**ACN 105 772 978**  
**(Administrators Appointed)**

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**Annexure "5"**  
**Comparative Profit and Loss**  
**Statements**

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**Afar Retail EF Pty Ltd**  
**A.C.N. 105 772 978**  
**Comparative Profit and Loss Statements**  
**For the Financial Years Ended 30 June 2022, 30 June 2023, 30 June 2024 and Part-Ended September 2024**

	Year Ended 30-Jun-22 (\$)	Year Ended 30-Jun-23 (\$)	Year Ended 30-Jun-24 (\$)	Year Ended 30-Sep-24 (\$)
<b>Income</b>				
Lease Fees Received	2,296,744	3,702,362	3,566,971	695,268
Management Fees	1,200	1,200	10,800	2,700
<b>Total Income</b>	<b>2,297,944</b>	<b>3,703,562</b>	<b>3,577,771</b>	<b>697,968</b>
<b>Expenses</b>				
Accounting Fees	-	-	-	4,500
Directors Fees	-	-	9,600	2,400
Filing Fees	276	290	310	-
Legal Fees	-	-	-	6,951
Rent	2,296,744	3,702,362	3,566,971	695,268
<b>Total Expenses</b>	<b>2,297,020</b>	<b>3,702,652</b>	<b>3,576,881</b>	<b>709,119</b>
<b>Profit from Operations</b>	<b>924</b>	<b>910</b>	<b>890</b>	<b>(11,151)</b>
<b>Other Income</b>				
Interest Received - Term Deposit	269	270	4,181	-
<b>Profit before Tax</b>	<b>1,193</b>	<b>1,180</b>	<b>5,071</b>	<b>(11,151)</b>
<b>Income Tax</b>				
Income Tax Expense	358	354	1,521	-
<b>Total Income Tax</b>	<b>358</b>	<b>354</b>	<b>1,521</b>	<b>-</b>
<b>Profit / (Loss)</b>	<b>835</b>	<b>826</b>	<b>3,550</b>	<b>(11,151)</b>

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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 rectangle.

**BRI Ferrier**

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

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**Annexure "6"**  
**Deficiency Statement**

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Afar Retail EF Pty Ltd (Administrators Appointed)					
A.C.N. 105 772 978					
	Report	Book Value	Directors' ERV	Administrators'	Deficiency
	Reference	as at	(per ROCAP)	ERV	(\$)
		1/10/2024			
		(\$)	(\$)	(\$)	
<b>Assets</b>					
Cash and Cash Equivalents	10.1.1	2	-	-	
Bank Guarantee - Term Deposits	10.1.2	112,478	112,478	112,478	
Bank Guarantee - Lease bonds	10.1.3	396,374	396,374	396,374	
<b>Total Assets</b>		<b>508,854</b>	<b>508,852</b>	<b>508,852</b>	
<b>Liabilities</b>					
Priority Creditors	10.2.1	-	-	-	
Secured Creditors	10.2.2	-	-		
Unsecured Creditors:	10.2.3				
Australian Taxation Office		1,064	-	1,064	
Westfield		-	Unknown	1,556,525	
Loans - Afar Holdings		479,521	479,521	479,521	
Other Trade Creditors		12,597	12,597	12,597	
Director Fees		12,000	12,000	12,000	
<b>Total Liabilities</b>		<b>505,182</b>	<b>Unknown</b>	<b>2,061,707</b>	
<b>Estimated Net Asset / (Deficiency)</b>		<b>3,672</b>	<b>Unknown</b>	<b>(1,552,855)</b>	<b>1,552,855</b>

Afar Retail EF Pty Ltd (Administrators Appointed)					
A.C.N. 105 772 978					
Deficiency Statement					
			Amount (\$)	Amount (\$)	
<b>Deficiency of Assets to Liabilities</b>				1,552,855	
<b>Add:</b>	Loss of Share Capital		2		
<b>Estimated Total Deficiency of Assets to meet Liabilities &amp; Share Capital</b>				<b>1,552,857</b>	
These losses are represented by:					
<b>a) Retained Earnings</b>					
	Retained Earning as at 30 June 2024		(14,822)		
	Current Year Loss as at 30 September 2024		11,151		
	Truncation amount		1		
					(3,670)
<b>b) Estimated Loss on Realisation of Assets</b>					
		Book Value	Administrators'	Loss on	
		as at	ERV	Realisation	
		1/10/2024			
		(\$)	(\$)	(\$)	
<b>Asset</b>					
Cash and Cash Equivalents		2	-	2	
Term Deposits		112,478	112,478	0	
Bank Guarantee - Lease bonds		396,374	396,374	(0)	
<b>Total</b>		<b>508,854</b>	<b>508,852</b>	<b>2</b>	<b>2</b>
<b>c) Increase in Creditor Claims not disclosed in Balance Sheet</b>					
		Book Value	Administrators'	Unreported	
		as at	ERV	Liabilities	
		1/10/2024			
		(\$)	(\$)	(\$)	
<b>Liabilities</b>					
Priority Creditors		-	-	-	
Secured Creditors		-	-	-	
Unsecured Creditors:		-	-	-	
Australian Taxation Office		1,064	1,064	-	
Other Trade Creditors		12,597	12,597	-	
Loans - Afar Holdings		479,521	479,521	-	
Director Fees		12,000	12,000	-	
Westfield		-	1,556,525	1,556,525	
<b>Total</b>		<b>505,182</b>	<b>2,061,707</b>	<b>1,556,525</b>	<b>1,556,525</b>
<b>Deficiency as Above</b>					<b>1,552,857</b>



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

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**Annexure "7"**  
**Estimated Outcome Statement**

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Afar Retail EF Pty Ltd (Administrators Appointed) Estimated Outcome Statement			
	Book Value as at 1/10/2024 (\$)	Administrators' ERV Liquidation (High)	Administrators' ERV Liquidation (Low)
<b>ASSETS</b>			
Cash on Hand	2		
Bank Guarantees - Lease Bonds held by Westfield		240,223	240,223
Bank Guarantees - Lease Bonds held by Other	508,852	268,629	-
Less: Secured claim by Westfields		(508,852)	(240,223)
Bank Guarantee excess funds	-	-	-
Indemnity Funds		140,000	140,000
<b>Total Assets</b>	<b>508,854</b>	<b>140,000</b>	<b>140,000</b>
<b>Trading Activities</b>			
License Fees		584,453	584,453
Rent expenses		(460,046)	(460,046)
Other Asset Realisation costs			
<b>Trading Surplus</b>	<b>-</b>	<b>124,407</b>	<b>124,407</b>
<b>Deed Fund</b>			
Deed Fund Contribution	-	N/A	N/A
Bank Guarantees - Lease Bonds held by Other	-		
<b>Deed Fund Total</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Recoveries in Liquidation</b>			
Voidable Transactions		-	-
Insolvent Trading Claims		-	-
Breach of Director Duties Claims		1,287,896	-
<b>Total Recovery</b>	<b>-</b>	<b>1,287,896</b>	<b>-</b>
<b>Administration Costs</b>			
Administration Costs			
Administrators' Remuneration up to 25 October 2024 (Accrued)		62,544	62,544
Administrators' Additional Remuneration (Future)		60,000	80,000
Administrators' Disbursements		1,000	2,000
Administrators' Legal Fees		20,000	40,000
Reimburse Directors Indemnity funds		120,863	79,863
Deed Administration Costs			
Deed Administrators' Remuneration and Costs		N/A	N/A
Deed Administrators' Disbursements		N/A	N/A
Deed Administrators' Legal Fees		N/A	N/A
Accounting Fees		N/A	N/A
Insurance Costs			
Liquidation Costs			
Liquidators' Remuneration		150,000	50,000
Liquidators' Disbursements		5,000	2,000
Liquidators' Legal Fees - general		-	10,000
Liquidators' Legal Fees - Public Examination		50,000	-
Liquidators' Legal Fees - Litigation		350,000	-
Litigation Funder (40% of recovery)		515,158	-
Accounting Fees		7,500	5,000
<b>Total Costs of Administration Costs</b>	<b>-</b>	<b>1,342,066</b>	<b>331,407</b>
<b>Estimated Surplus Available for Secured Creditors</b>		<b>210,238</b>	<b>(67,000)</b>
<b>Secured Creditor Claims (Estimated)</b>			
Secured Creditor Claims		-	-
<b>Total Secured Creditor Claims</b>		<b>-</b>	<b>-</b>
<b>Estimated Surplus Available to Priority Creditors</b>		<b>210,238</b>	<b>(67,000)</b>
<b>Priority Creditors</b>			
Wages and Superannuation	-	-	-
Annual Leave & Long Service Leave	-	-	-
PILN and Redundancy	-	-	-
<b>Total Priority Creditors</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Estimated Surplus Available to Unsecured Creditors</b>		<b>210,238</b>	<b>(67,000)</b>
<b>Unsecured Creditors</b>	<b>-</b>		
Australian Taxation Office	1,064	-	1,064
Westfield	-	1,287,896	1,556,525
Loans - Afar Holdings Pty Limited	479,521	479,521	210,892
Other Trade Creditors	12,597	12,597	12,597
Director Fees	12,000	12,000	12,000
<b>Total Other Unsecured Creditors</b>	<b>505,182</b>	<b>1,792,014</b>	<b>1,793,078</b>
<b>Estimated Surplus/(Shortfall)</b>		<b>(1,581,776)</b>	<b>(1,860,078)</b>

Summary of Return to Creditors		Liquidation High Cents/\$	Liquidation Low Cents/\$
Secured Creditors		N/A	N/A
Priority Creditors		N/A	N/A
Unsecured Creditors		12	Nil

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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**  
**ACN 105 772 978**  
**(Administrators Appointed)**

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**Annexure "8"**  
**Summary of Receipts & Payments**

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Summarised Receipts & Payments

Afar Retail EF Pty Ltd  
(Administrators Appointed)  
Transactions From 01 October 2024 To 28 October 2024

A/C	Account	Net	GST	Gross
7	License Fee	553,566.68	55,356.67	608,923.35
89	Administrator Indemnity	140,000.00	0.00	140,000.00
Total Receipts (inc GST)		\$693,566.68	\$55,356.67	\$748,923.35
150	Rents Commercial	204,915.79	20,491.58	225,407.37
Total Payments (inc GST)		\$204,915.79	\$20,491.58	\$225,407.37
Balance in Hand - By Bank Account				
212	Cheque Account			523,515.98
				\$523,515.98



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

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**Annexure "g"**  
**Remuneration Approval Report**

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# Remuneration Approval Report

**AFAR RETAIL EF PTY LTD  
(ADMINISTRATORS APPOINTED)  
("the Company")  
ACN 105 772 978**

**29 October 2024**

Peter Krejci and Jonathon Keenan  
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)  
Website: [www.briferrier.com.au](http://www.briferrier.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)
Voluntary Administration	142,544.00	1,000.00
If Company is liquidated	150,000.00	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 at the Second Meeting of Creditors on Wednesday, 6 November 2024.

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

As we consider it may be in creditors interests for the Second Meeting of Creditors to be adjourned to explore if a viable DOCA proposal can be presented for creditors' consideration, we expect that there will be further remuneration approval requests for a subsequent appointment at the resumed Second Meeting of Creditors, either as Deed Administrators or Liquidators.

## 2. DECLARATION

We, Peter Krejci and Jonathon Keenan of BRI Ferrier, have undertaken an assessment of this remuneration and disbursement claim in accordance with the law and applicable professional standards. We are satisfied that the remuneration and disbursements claimed are 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
Work we have already done	1 October 2024 to 25 October 2024	62,544.00	Provided in our IRN sent to creditors on 3 October 2024	Immediately, subject to creditor approval
Future work	26 October 2024 to Conclusion	80,000.00	Provided in our IRN sent to creditors on 3 October 2024	It will be drawn when incurred, when funds are available and

For	Period	Amount (\$, excl. GST)	Rates to apply	When it will be drawn
				subject to creditor approval
<b>VA total</b>		<b>142,544.00 (excl. GST)</b>		
If Company liquidated – Future Work	6 November 2024 to finalisation of liquidation	150,000.00	Provided in our IRN sent to creditors on 3 October 2024	It will be drawn when incurred, when funds are available and subject to creditor approval
<b>Liquidation Total</b>		<b>150,000.00 (excl. GST)</b>		

Details of the work done for the period 1 October 2024 to 25 October 2024 and future work expected for the period 26 October 2024 to conclusion are included at **Schedule A**.

A breakdown of time spent by staff members on each major task for work completed from 1 October 2024 to 25 October 2024 is included in **Schedule B**.

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.

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

For	Period	Amount (\$, excl. GST)
Disbursements incurred during the VA period	1 October 2024 to Conclusion	1,000.00
<b>VA total (excl. GST)</b>		<b>1,000.00</b>
If Company liquidated – Future disbursements	6 November 2024 to Conclusion	2,000.00
<b>Liquidation total (excl. GST)</b>		<b>2,000.00</b>

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

## 5. 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 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.

An estimated outcome statement is attached as "**Annexure 7**" of the Second Report to Creditors dated 29 October 2024. Any dividend payable to creditors will depend on 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.

## 6. SUMMARY OF RECEIPTS AND PAYMENTS

A summary of the receipts and payments is attached as "**Annexure 8**" of the Second Report to Creditors dated 29 October 2024.

## 7. 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.

## 8. ATTACHMENTS

Schedule A – Details of work

Schedule B – A breakdown of time spent by staff members on each major task for work completed from 1 October 2024 to 25 October 2024

Schedule C – Resolutions

Schedule D – Disbursements

Schedule E – Schedule of Hourly Rates

## SCHEDULE A – DETAILS OF WORK

Company	Afar Retail EF Pty Ltd (Administrators Appointed)	Period From	1 October 2024	To	Conclusion
Practitioner	Jonathon Keenan & Peter Krejci	Firm	BRI Ferrier		
Administration Type	Administrators Appointed				
		Tasks			
		Work completed (excl. GST)	Future work (excl. GST)	If wound up	
				Liquidation Work	
Period		1 October 2024 to 25 October 2024	26 October 2024 to Conclusion	6 November 2024 to Conclusion	
Amount (excl. GST)		\$62,544.00	\$80,000.00	\$150,000.00	
Task Area	General Description				
Assets		0.70 Hours \$375.00	\$4,000.00	\$8,000.00	
	Leasing	Meeting with Westfield in relation to lease agreements	N/A	N/A	
	Sale of Business as a Going Concern	Correspondence with interested party regarding potential sale of business	N/A	N/A	
	Other Asset	Liaising with Directors in relation to bank guarantees	Liaising with Directors in relation to bank guarantees	Liaising with Directors in relation to bank guarantees Correspondence with Westfield regarding bank guarantees Recovery of bank guarantees	

				Obtaining accounting for bank guarantees from Westfield
<b>Creditors</b>		<b>53.1 Hours \$28,210.00</b>	<b>\$55,000.00</b>	<b>\$30,000.00</b>
	Creditor Enquiries	Receive and respond to creditor enquiries Receive and follow up creditor enquiries by telephone Review and prepare correspondence to creditors and their representatives by email and post	Receive and respond to creditor enquiries Receive and follow up creditor enquiries by telephone Review and prepare correspondence to creditors and their representatives by email and post Responding to information requested by creditors	Receive and respond to creditor enquiries Receive and follow up creditor enquiries by telephone Review and prepare initial correspondence to creditors and their representatives Considering reasonableness of creditor request Obtaining legal advice on requests Compiling information requested by creditors
	Creditor Reports	Preparing and issuing First Report to Creditors Preparation of necessary annexures for First Report to Creditors Preparing Second Report to Creditors Preparation of necessary annexures for Second Report to Creditors	Preparing and issuing Second Report to Creditors Preparation of necessary annexures for Second Report to Creditors Preparing and issuing Supplementary Second Report to Creditors to resume Second Meeting of Creditors Preparation of necessary annexures for Supplementary Second Report to Creditors	Prepare Circular to Creditors regarding Liquidation Prepare Statutory Report to Creditors Preparation of necessary Annexures for Statutory Report to Creditors Preparing further reports to creditors, if necessary
	Dealing with proofs of debt	Receipting and filing PODs Maintaining register of Proofs of Debts received	Receipting, processing, and filing Proofs of Debts when not related to a dividend	Receipting, processing, and filing Proofs of Debts when not related to a dividend Maintaining register of Proofs of Debts received

		Reviewing supporting documentation from creditors	Maintaining register of Proofs of Debts received Reviewing supporting documentation from creditors	Reviewing supporting documentation from creditors
	Meeting of Creditors	Preparation of meeting notices, proxies and advertisements for First Meeting of Creditors Sending Notice of Meeting to all known creditors Preparation of meeting file, including agenda, attendance register, list of creditors, report to creditors, advertisement of meeting and draft minutes of meeting for First Meeting of Creditors Preparation and lodgement of minutes with ASIC for First Meeting of Creditors	Preparation of meeting notices, proxies and advertisements for Second Meeting of Creditors Sending Notice of Meeting to all known creditors Preparation of meeting file, including agenda, attendance register, list of creditors, report to creditors, advertisement of meeting and draft minutes of meeting for Second Meeting of Creditors Hold Second Meeting of Creditors Preparation of minutes and lodgement with ASIC for Second Meeting of Creditors Preparation of meeting notices, proxies and advertisements for Resumed Second Meeting of Creditors Preparation of meeting file, including agenda, attendance register, list of creditors, report to creditors, advertisement of meeting and draft minutes of meeting for Resumed Second Meeting of Creditors	Preparation of minutes and lodgement with ASIC for resumed Second Meeting of Creditors Convening creditors meeting as necessary



			Hold Resumed Second Meeting of Creditors	
	DOCA Planning	Liaising with Directors and lawyers regarding potential DOCA Consider potential outcome for DOCA	Liaising with Directors and lawyers regarding DOCA terms Negotiating DOCA terms Consider potential outcome for DOCA Discussions regarding funding requirements for DOCA Review of draft DOCA and liaise with Directors regarding same Finalising DOCA deed with lawyers Negotiating DOCA deed Execution of DOCA	N/A
<b>Investigation</b>		<b>26.3 Hours \$13,992.00</b>	<b>\$3,000.00</b>	<b>\$85,000.00</b>
	Conducting Investigation	Conducting and summarising statutory searches Reviewing Company's books and records Reviewing ROCAP completed by Director Liaising with Directors regarding ROCAP Preparation of comparative financial statements Preparation of deficiency statement Preparation of working capital analysis	N/A	Conducting further investigations into potential breach of director duties/breach of contract claim Preparation of updated investigation file Liaise with lawyers regarding breach of directors duties/breach of contract claim Consider and assess merits of pursuing claim via litigation

		<ul style="list-style-type: none"> <li>Preparation of indicators of insolvency</li> <li>Liaising with lawyers regarding breach of directors duties/breach of contract claim</li> <li>Investigation into Related Parties</li> <li>Prepare Solvency Analysis</li> <li>Assessing recovery actions in Liquidation Scenario</li> <li>Investigating potential breach of duty claim and breach of contracts</li> <li>Preparation of investigation file</li> </ul>		
	Examinations	N/A	N/A	<ul style="list-style-type: none"> <li>Liaising with lawyers regarding public examinations</li> <li>Consider conducting public examinations</li> <li>Seeking funding to conduct public examinations and commence litigation</li> <li>Preparing brief to solicitors</li> <li>Reviewing and settling draft submissions, affidavits, orders for production and other Court documents for public examinations</li> <li>Strategy meetings with lawyers and Counsel</li> <li>Review of examination bundle</li> <li>Prepare for and attend public examinations</li> <li>Review transcripts of public examinations</li> <li>Consider outcome from public examinations</li> </ul>

				Briefing with lawyers and Counsel regarding outcome of public examinations
	Litigation/Recoveries	N/A	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	<p>Preparing statutory investigation reports</p> <p>Liaising with ASIC</p>	<p>Preparing statutory investigation reports</p> <p>Liaising with ASIC</p>
Trade On		<p>12.7 Hours</p> <p>\$9,456.00</p>	<p>\$11,000.00</p>	<p>\$15,000.00</p>

	Trade On Management	<p>Liaising with Directors and lawyers in relation to finalising license agreement</p> <p>Negotiations with Westfield in relation to leasing arrangements</p> <p>Liaising with Director and lawyers regarding DOCA proposal</p> <p>Liaising with Directors regarding closure of stores</p> <p>Correspondence with Westfield to provide updates</p> <p>Correspondence with insurance broker regarding appointment and insurance policies</p>	<p>Negotiating further licence agreement</p> <p>Liaising with Directors and lawyers in relation to exit of premises</p> <p>Attend stores with Westfield on proposed closure dates to conduct inspection, if necessary</p>	<p>Liaising with Directors and lawyers in relation to exit of premises</p> <p>Attend stores with Westfield on proposed closure dates to conduct inspection, if necessary</p>
<b>Administration</b>		<b>27.2 Hours</b> <b>\$10,511.00</b>	<b>\$7,000.00</b>	<b>\$12,000.00</b>
	ASIC Forms and lodgements	<p>Preparing and lodging ASIC forms including 505, 531, 507 etc</p> <p>Preparing and lodging ASIC PNW Advert</p>	N/A	<p>Preparing and lodging ASIC forms including 505, 5601, 5602, etc</p> <p>Correspondence with ASIC regarding statutory forms</p>
	Bank account administration	<p>Preparing correspondence opening bank account</p> <p>Bank account reconciliations</p> <p>Preparing receipt and payment vouchers</p>	<p>Preparing receipt and payment vouchers</p> <p>Bank account reconciliations</p>	<p>Preparing receipt and payment vouchers</p> <p>Bank account reconciliations</p>
	Correspondence	Correspondence with various parties	Correspondence with various parties	Correspondence with various parties
	Books and Records/Storage	N/A	N/A	<p>Dealing with records in storage</p> <p>Sending job files to archive storage</p>

	Document maintenance/file review/checklist	Preparing and updating job checklists Filing of documents	Updating job checklists Filing of documents	Filing of documents File reviews Updating checklists
	ATO and other statutory reporting	Notification of appointment	N/A	Notification of appointment Preparing BAS
	Planning / Review	Internal discussions regarding status of administration	Internal discussions regarding status of administration	Discussions regarding status of administration
	Insurance	Correspondence with Insurance broker regarding appointment and insurance policies	Ongoing correspondence with Insurance broker regarding insurance policies	N/A
	Finalisation	N/A	N/A	Notifying ATO of finalisation Cancelling ABN/GST/PAYG registration Completing checklists Finalising WIP

## SCHEDULE B – TIME SPENT BY STAFF ON MAJOR TASKS – 1 OCTOBER 2024 TO 25 OCTOBER 2024

Afar Retail EF Pty Ltd (Administrators Appointed)  
ACN 105 772 978  
For the period 1 October 2024 to 25 October 2024

Staff Classification	Name	Hourly Rate	Administration		Assets		Creditors		Investigation		Trade On		Total	Total
			Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Principal	John Keenan	750	1.80	1,350.00	0.20	150.00	14.20	10,650.00	7.40	5,550.00	12.30	9,225.00	35.90	26,925.00
Senior Manager	Katherine La	620	2.10	1,302.00			8.00	4,960.00	6.60	4,092.00	0.30	186.00	17.00	10,540.00
Senior Manager	Pauline Yeow	620	0.10	62.00									0.10	62.00
Manager	Savio Monis	580	0.40	232.00									0.40	232.00
Senior 1	Nicole Feng	450	5.10	2,295.00	0.50	225.00	22.20	9,990.00	6.80	3,060.00	0.10	45.00	34.70	15,615.00
Intermediate 2	Vijay Rajmohan	300	11.60	3,480.00			8.70	2,610.00	1.20	360.00			21.50	6,450.00
Senior Administration	Andrea Moulikova	300	0.70	210.00					0.70	210.00			1.40	420.00
Senior Administration	Sarita Gurung	300	4.30	1,290.00									4.30	1,290.00
Senior Administration	Sonia Stelmach	300	0.70	210.00									0.70	210.00
Junior Administration	Kevin Pumares	200	0.40	80.00					3.60	720.00			4.00	800.00
<b>Grand Total</b>			<b>27.20</b>	<b>10,511.00</b>	<b>0.70</b>	<b>375.00</b>	<b>53.10</b>	<b>28,210.00</b>	<b>26.30</b>	<b>13,992.00</b>	<b>12.70</b>	<b>9,456.00</b>	<b>120.00</b>	<b>62,544.00</b>
													<b>GST</b>	<b>6,254.40</b>
													<b>Total Fee Approval Sought</b>	<b>68,798.40</b>
<i>Average rate per hour</i>				<u>386.43</u>		<u>535.71</u>		<u>531.26</u>		<u>532.02</u>		<u>744.57</u>		<u>521.20</u>

## SCHEDULE C – RESOLUTIONS

We will be seeking approval of the following resolutions to approve our remuneration and disbursements. Details to support these resolutions are included in **section 3** and **4** and in the attached Schedules.

**Resolution: Administrators’ Remuneration for the period 1 October 2024 to 25 October 2024**

*“That the remuneration of the Joint and Several Administrators, their partners and staff for the period 1 October 2024 to 25 October 2024, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators’ Second Report to Creditors dated 29 October 2024, be fixed and approved at \$62,544.00 (plus GST), and that the Joint and Several Administrators be authorised to draw that amount.”*

**Resolution: Administrators’ Remuneration for the period 26 October 2024 to Conclusion**

*“That the remuneration of the Joint and Several Administrators, their partners and staff for the period 26 October 2024 to Conclusion be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators’ Second Report to Creditors dated 29 October 2024, and approved to an interim cap of \$80,000.00 (plus GST) and that the Joint and Several Administrators be authorised to draw that amount as and when incurred.”*

If the Company is wound up:

**Resolution: Liquidators’ Remuneration for the period 6 November 2024 to Conclusion**

*“That the remuneration of the Joint and Several Liquidators, their partners and staff for the period 6 November 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 29 October 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 D – 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: Administrators' Internal Disbursements for the period 1 October 2024 to Conclusion**

"That the Administrators be allowed internal disbursements for the period 1 October 2024 to the conclusion of the Administration at the rates of charge annexed to the Voluntary Administrators' Remuneration Approval Report dated 29 October 2024, up to an amount of \$1,000.00 (excl. GST) and that the Administrators be authorised to draw that amount as accrued."

**Resolution: Liquidators' Internal Disbursements for the period 6 November 2024 to Conclusion**

"That the Liquidators be allowed internal disbursements for the period 6 November 2024 to the conclusion of the Liquidation at the rates of charge annexed to the Voluntary Administrators' Remuneration Approval Report dated 29 October 2024, up to an amount of \$2,000.00 (excl. GST) and that the 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 E – SCHEDULE OF 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 (ex 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 (ex 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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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**  
**ACN 105 772 978**  
**(Administrators Appointed)**

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**Annexure "10"**  
**Advice to Creditors About**  
**Remuneration**

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## ADVICE TO CREDITORS ABOUT REMUNERATION

Insolvency Practice Schedule (Corporations) 70-50  
Insolvency Practice Rules (Corporations) 70-35

**AFAR RETAIL EF PTY LTD  
(ADMINISTRATORS APPOINTED)  
ACN 105 772 978  
("the Company")**

### A REMUNERATION METHOD

There are four methods for calculation of remuneration that can be used to calculate the remuneration of an Insolvency Practitioner. They are:

- Time based / hourly rates or "Time Cost"

This is the most common method. It provides for remuneration to be charged at an hourly rate for each person working on the matter. The hourly rate charged will reflect the level of experience each person has.

- Fixed Fee

The total remuneration for the administration is quoted at commencement of the appointment and is the total charge for the administration. Sometimes a practitioner will finalise an administration for a fixed fee.

- Percentage

The remuneration for the appointment is based on a percentage of a particular variable, such as the gross proceeds of asset realisations.

- Contingency

The total remuneration for the matter is structured to be contingent on a particular outcome being achieved.

### B METHOD CHOSEN

Given the nature of this administration, We propose that our remuneration be calculated on the time based / hourly rates method. In our opinion, this is the fairest method for the following reasons:

- We will only be paid for work done, subject to sufficient realisations of the Company assets.
- It ensures creditors are only charged for work that is performed. Our time are recorded and charged in six-minute increments and staff are allocated to duties according to their relevant experience and qualifications.

- We are required to perform a number of tasks which do not relate to the realisation of assets, including responding to creditor enquiries, reporting to the ASIC, distributing funds in accordance with the provisions of the Corporations Act 2001.

BRI Ferrier reviews its hourly rates every twelve months. The hourly rates quoted below remain current until 30 June 2025. At this time BRI Ferrier may increase the hourly rates charged for work performed past that date. If hourly rates are increased, we will seek approval from creditors.

## C EXPLANATION OF HOURLY RATES

The rates applicable are set out in the table on the following page together with a general guide to the qualifications and experience of staff engaged in administration and the role they undertake in the administration. 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 (ex GST) 1 July 2024
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

Title	Description	Hourly Rate (ex GST) 1 July 2024
Senior Administration	Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.	\$300
Junior Administration	Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.	\$200

## D 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 charged 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 are not required to seek creditor approval for disbursements paid to third parties but must account to creditors. However, we must be satisfied that these disbursements are appropriate, justified and reasonable.

We are required to obtain creditor's consent for the payment of internal disbursements. Creditors will be asked to approve our internal disbursements prior to these disbursements being paid from the administration.

Details of the basis of recovering disbursements in this administration are provided below.

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

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**BRI Ferrier**

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

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**Annexure "11"**  
**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**  
**ACN 105 772 978**  
**(Administrators Appointed)**

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**Annexure "12"**  
**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.