



The PAS Group Limited (Subject to Deed of Company Arrangement) ACN 169 477 463

Explanatory Statement
4 December 2020

1 Overview

This Explanatory Statement provides information to shareholders of The PAS Group Limited (Subject to Deed of Company Arrangement) ACN 169 477 463 (**PAS Group**) about:

- (a) the Deed Administrators' application to the Federal Court of Australia for leave to transfer all of the shares in PAS Group to PAS Group International Pty Ltd ACN 645 134 247 (**Purchaser**) (**Section 444GA Application**);
- (b) the right of any shareholder of PAS Group to object to the Section 444GA Application; and
- (c) the requirement for the Purchaser to apply for and obtain from the Australian Securities and Investments Commission (**ASIC**) such exemptions or modifications from the takeover requirements of Chapter 6 of the *Corporations Act 2001* (Cth) (**Corporations Act**) as are necessary to enable the transfer of all of the shares in PAS Group to the Purchaser in the Section 444GA Application (**ASIC Relief**).

1.2 Enclosed with this Explanatory Statement are copies of:

- (a) an Independent Expert's Report prepared by Leadenhall Corporate Advisory Pty Ltd (**Leadenhall**) providing a valuation of the shares in PAS Group; and
- (b) the Originating Process and Supporting Affidavit of Stephen Graham Longley filed by the Deed Administrators in support of the Section 444GA Application (**Court Documents**).

1.3 A copy of this Explanatory Statement has been given to ASIC for the purposes of the application for ASIC Relief. Neither ASIC, nor any of its officers, take any responsibility for the contents of this Explanatory Statement.

1.4 The Section 444GA Application has been tentatively listed for a final hearing at 9.00am on Friday 18 December 2020 at the Victorian Registry of the Federal Court of Australia, located at the Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne.

1.5 If you intend to oppose the Section 444GA Application at the final hearing, you must file with the Court, and serve on the Deed Administrators and ASIC, by 4.00pm on Friday 11 December 2020 a notice of appearance and supporting affidavit in the prescribed Court



form indicating your grounds of opposition.

- 1.6 **It is important for shareholders, their advisers and any other interested parties to carefully read this Explanatory Statement, the Independent Expert's Report and the Court Documents carefully and in their entirety before determining whether to take action in respect of the Section 444GA Application. Please consult your legal or other professional advisers if you have any questions regarding this Explanatory Statement.**

2 Administration of the PAS Group Companies

- 2.1 Martin Ford, Stephen Longley and David McEvoy of PricewaterhouseCoopers Australia (**PwC**) are the deed administrators (**Deed Administrators**), and former voluntary administrators (**Administrators**), of PAS Group and 18 of its wholly-owned Australian subsidiaries (**PAS Group Companies**). A list of the PAS Group Companies can be found in Appendix A to this Explanatory Statement.
- 2.2 On 29 May 2020, the PAS Group Companies entered voluntary administration as a result of financial difficulties associated with the impact of the COVID-19 pandemic and an already challenging retail environment attributable to soft consumer sentiment.
- 2.3 Prior to resolving to place the PAS Group Companies in voluntary administration, the Board of PAS Group explored various restructuring options:
- (a) In February 2020, the Board announced it was commencing a strategic review of the PAS Group business.
 - (b) In late March 2020, conduct of the strategic review was accelerated as a result of operational disruptions associated with COVID-19. PwC was engaged to assist with a review and assessment of restructuring options prepared by PAS Group management.
 - (c) Throughout May 2020, PAS Group management worked with PwC on possible restructuring options for the PAS Group Companies, involving either a solvent restructure contingent on a successful capital raising, or a potential voluntary administration if such funding could not be obtained.
 - (d) On 28 May 2020, the Board of PAS Group determined that a source of funding to enable the solvent restructure of the PAS Group Companies was not available. Accordingly, the Board resolved to place the PAS Group Companies in voluntary administration.
- 2.4 Shortly after their appointment, the Administrators commenced a process to explore options for a sale and/or recapitalisation of the PAS Group Companies, with the assistance of PricewaterhouseCoopers Securities Ltd's Mergers & Acquisitions Division (**Sale Campaign**).

- 2.5 During the Sale Campaign, the Administrators received offers from parties interested in PAS Group and/or certain of its businesses.
- 2.6 The Administrators' main priorities when conducting the Sale Campaign were:
- (a) to secure a "whole of Group" offer for the PAS Group Companies, although consideration was given to separate acquisitions of PAS Group's Designworks business and the retail businesses, Review and Black Pepper;
 - (b) to at least secure an acquisition of the Designworks business (which retained significant value) to enable the distribution of returns to creditors; and
 - (c) to secure an acquisition of the PAS Group Companies' retail businesses to avoid a managed wind down of those businesses (which would reduce potential returns to creditors), due to the Administrators forming the view that approximately \$8 million of winter 2021 stock orders would need to be placed from late September 2020 to ensure the retail businesses would remain as going concerns.
- 2.7 Ultimately the Deed Administrators determined that a "whole of Group" offer received from Queens Lane Capital Pty Ltd ACN 617 339 563 (**QLC**) was the best alternative of the offers received during the Sale Campaign. The Deed Administrators formed the view that QLC's offer:
- (a) would enable the preservation of a higher number of employees' jobs and retail leases;
 - (b) was likely to generate higher returns to creditors of the PAS Group Companies and maximise the chances of the PAS Group Companies remaining in existence;
 - (c) was the most advanced offer available for acceptance by the Deed Administrators at the time; and
 - (d) was a transaction that could be concluded promptly, given the extensive due diligence conducted by QLC during the Sale Campaign.
- 2.8 Further information concerning the transactions entered into by the PAS Group Companies and QLC can be found in Section 4 below.
- 2.9 As noted in Section 2.6 of the Administrators' Second Report to Creditors dated 7 August 2020 (**Report to Creditors**), the Administrators also received an offer to purchase the brand name, inventory and intellectual property of PAS Group's JETS Swimwear business. On 7 August 2020, the Administrators entered into an agreement with Seafolly Holdings Pty Ltd ACN 602 624 466 (**Seafolly**) for the sale of the assets of the JETS Swimwear business. At the time of entry into that agreement, Seafolly was under voluntary administration.

3 The PAS DOCAs

- 3.1 In the Report to Creditors, the Administrators proposed that the PAS Group Companies enter a “Transaction Support and Distribution” Deed of Company Arrangement structure, which would give the Deed Administrators broad powers to arrange the PAS Group Companies’ assets and liabilities in a way that would optimise a sale transaction.
- 3.2 At the concurrent second meetings of creditors of the PAS Group Companies on 7 August 2020, creditors resolved that the PAS Group Companies enter the proposed “Transaction Support and Distribution” Deeds of Company Arrangement (**PAS DOCAs**), whereby:
- (a) PAS Group and 17 of its subsidiaries would each become parties to a Transaction Support DOCA (**Transaction Support DOCAs**), which would empower the Deed Administrators to transfer assets and novate (or extinguish) liabilities between those companies to facilitate one or more sale transactions; and
 - (b) PAS Group’s subsidiary Bondi Bather Pty Limited ACN 620 985 864 (since renamed The PAS Group Distribution Company Pty Ltd (Subject to Deed of Company Arrangement)), was designated to be the party to the Distribution DOCA (**Distribution DOCA**), under which proceeds of all realisations would be aggregated and distributed to creditors of the PAS Group Companies via a “Distribution Fund”.
- 3.3 The PAS DOCAs commenced operation on 4 September 2020.
- 3.4 The purposes and objects of the PAS DOCAs include:
- (a) to maximise the chances of the PAS Group Companies, or as many of them as possible, continuing in existence;
 - (b) to maximise the chances of a sale and recapitalisation of the PAS Group Companies, or as many of them as possible;
 - (c) to provide a better return to creditors of the PAS Group Companies as a whole than would result from an immediate winding up of the PAS Group Companies; and
 - (d) to provide flexibility to potential purchasers of the assets and/or shares in the PAS Group Companies.
- 3.5 Pursuant to the PAS DOCAs:
- (a) upon or prior to effectuation, claims of creditors for the PAS Group Companies will be extinguished or novated, and creditors will be entitled to submit a proof of debt for an equivalent claim in the “Distribution Fund” established under the Distribution DOCA;

- (b) payments to creditors in respect of their claims admitted to proof by the Deed Administrators (referred to as “Admitted Claims”) out of the Distribution Fund will be made in accordance with the order of priority set out in the “Waterfall” contained in the Distribution DOCA;
 - (c) upon or prior to effectuation of the Transaction Support DOCA to which PAS Group is a party:
 - (i) any claims you have against PAS Group in your capacity as a shareholder (whether by way of dividends, profits or otherwise) will be extinguished; and
 - (ii) your entitlement to receive a dividend from the Distribution Fund in respect of those claims will be subordinated to the entitlement of creditors to receive a distribution in respect of their Admitted Claims. Because creditors are not expected to be paid in full in relation to their Admitted Claims, it is highly unlikely that you will receive a dividend from the Distribution Fund in respect of any claims you may have against PAS Group in your capacity as shareholder.
- 3.6 Copies of the PAS DOCAs are available on the website established by PwC regarding the administration of the PAS Group Companies:
<https://insolvency.pwc.com.au/groupEntityCases/the-pas-group-ltd-and-associated-entities-all-administrators-appointed/casePage> (**PAS Administration Website**).
- 4 Sale transactions**
- 4.1 QLC established PAS Group International Pty Ltd ACN 645 134 247 (**Purchaser**) to enter into binding sale documentation with PAS Group. The Purchaser does not form part of the PAS Group.
- 4.2 On 23 October 2020, PAS Group entered into binding documentation with entities and persons associated with the Purchaser for:
 - (a) the sale of its Designworks and Yarra Trail businesses (**Asset Sale Agreements**); and
 - (b) the potential sale of the remainder of PAS Group as a whole, including, amongst other matters, the possible transfer of all of the shares in PAS Group to the Purchaser (**Share Transfer**) (**Implementation Deed**),
- 4.3 PAS Group’s entry into the Implementation Deed and Asset Sale Agreements was announced on the Australian Securities Exchange (**ASX**) on 27 October 2020 (**ASX Announcement**). On 28 October 2020, the Deed Administrators uploaded a letter to creditors to the PAS Administration Website advising creditors of the ASX Announcement and the Deed Administrators’ intention to make the Section 444GA Application.
- 4.4 The following information was also disclosed in the ASX Announcement:

- (a) the Asset Sale Agreements will ensure the continued employment for a majority of current employees of the Designworks and Yarra Trail businesses, who will be offered ongoing roles on the same or no lesser terms by the acquirers;
 - (b) the net proceeds of the Asset Sale Agreements and Implementation Deed will be applied in accordance with the terms of the PAS DOCAs;
 - (c) the sale price payable on completion of the Asset Sale Agreements and Implementation Deed is expected to produce returns to creditors in excess of the estimated “high case” liquidation return to creditors provided in Section 2.8 of the Report to Creditors (but will not satisfy creditor claims in full); and
 - (d) it was not expected that there would be a return to shareholders arising from the Asset Sale Agreements and Implementation Deed.
- 4.5 Completion of the Asset Sale Agreements occurred on 1 December 2020 and was announced to the ASX on 2 December 2020.
- 4.6 The Share Transfer in the Implementation Deed is subject to a number of conditions, including:
 - (a) the Deed Administrators obtaining Court approval of the Section 444GA Application; and
 - (b) the Purchaser obtaining the relief sought from ASIC from certain takeover provisions in Chapter 6 of the Corporations Act as necessary to permit the transfer of all shares in PAS Group to the Purchaser.
- 4.7 These conditions must be satisfied by 31 January 2021 (**Sunset Date**) or such later date agreed to by the parties to the Implementation Deed in writing.
- 4.8 In consideration for the Share Transfer under the Implementation Deed, the Purchaser will pay a nominal total “Share Purchase Price” for all shares in PAS Group of \$1.00 to The PAS Group Distribution Company Pty Ltd (Subject to Deed of Company Arrangement), the party to the Distribution DOCA.
- 4.9 The terms of the Implementation Deed provide that the Purchaser takes the economic benefit and burden of the PAS Group Companies’ remaining businesses on and from the “Effective Date” (being 1 October 2020). For example, the Implementation Deed provides that on and from 1 October 2020, the Purchaser is:
 - (a) entitled to all “Operating Revenue” of the remaining businesses; and
 - (b) liable for all “Operating Costs” of the remaining businesses, which include:
 - (i) liabilities arising under any purchase order or customer order, including orders for new stock; and



- (ii) certain employee wages and leave entitlements which accrue during the period between 1 October 2020 and completion of the share sale.
- 4.10 Upon completion of the Share Transfer:
 - (a) PAS Group and its remaining businesses will cease to be subject to the Transaction Support DOCAs; and
 - (b) the Purchaser will be the owner of PAS Group.
- 4.11 Should the conditions to the Share Transfer, including Court approval of the Section 444GA Application, not be satisfied or waived by the Sunset Date, the Implementation Deed provides that the Purchaser may:
 - (a) instruct the Deed Administrators to commence a managed wind down of the PAS Group Companies' remaining businesses (**Managed Wind Down**); or
 - (b) complete an asset sale agreement for all or part of the assets of the PAS Group Companies pursuant to which the Purchaser:
 - (i) may elect what assets and liabilities it acquires which relate to or are used in connection with the PAS Group Companies' remaining businesses; and
 - (ii) will bear the costs of the managed wind down of those parts of the PAS Group Companies' businesses it opts not to acquire.
- 4.12 The affidavit filed by Stephen Longley in support of the Section 444GA Application, a copy of which is **enclosed** with this Explanatory Statement, contains information about the Deed Administrators' estimated returns to unsecured creditors of the PAS Group Companies (at paragraphs 123 to 126 of the affidavit). Relevantly, the affidavit refers to the Deed Administrators' opinion that:
 - (a) completion of the Asset Sale Agreements and the Share Transfer in the Implementation Deed are estimated to yield a return to unsecured creditors of approximately 60 to 80 cents in the dollar;
 - (b) should a Managed Wind Down be conducted in accordance with the terms of the Implementation Deed (which means the Asset Sale Agreements have completed, but the Share Transfer under the Implementation Deed has not completed), unsecured creditors are estimated to receive returns of approximately 25 to 35 cents in the dollar;
 - (c) in a situation where none of those transactions complete (referred to in the affidavit as a "liquidation" scenario), the Deed Administrators estimate most unsecured creditors would receive a significantly lower return of approximately 0 to 21 cents in the dollar; and

- (d) there will be no distribution of funds to shareholders of PAS Group under any of the above scenarios.

5 The Section 444GA Application

- 5.1 To enable the Share Transfer under the Implementation Deed to proceed, the Deed Administrators are required to make the Section 444GA Application.
- 5.2 The Court will only approve the Section 444GA Application if it is satisfied that the Share Transfer will not unfairly prejudice the interests of shareholders of PAS Group.
- 5.3 The following parties are entitled to oppose the Section 444GA Application:
 - (a) a shareholder of PAS Group;
 - (b) a creditor of PAS Group;
 - (c) any other interested person; or
 - (d) ASIC.

6 No consideration payable for the Share Transfer

- 6.1 You will not receive any consideration (purchase price) for the transfer of your shares in PAS Group.

7 Independent Expert's Report

- 7.1 The Deed Administrators engaged an independent expert, Leadenhall, to prepare an Independent Expert's Report valuing the shares in PAS Group. As set out in the Independent Expert's Report, Leadenhall has concluded that the value of PAS Group's shares is nil on a liquidation basis.
- 7.2 The Independent Expert's Report will be provided to the Court to assist with the determination of whether the Share Transfer will unfairly prejudice Shareholders. The Independent Expert's Report will also be provided to ASIC for the purpose of the Purchaser's application to ASIC for relief from the takeover provisions in Chapter 6 of the Corporations Act, referred to in Section 8 below.
- 7.3 A copy of the Independent Expert's Report is **enclosed** with this Explanatory Statement.

8 ASIC Relief

- 8.1 Section 606 of the Corporations Act relevantly prohibits a person from acquiring a relevant interest in a listed company if, as a result of that acquisition, that person's, or someone else's, voting power in the entity increases from 20% or below to more than 20%, or from a starting point that is above 20% and below 90%, unless the acquisition falls within one of the exceptions set out in section 611.

- 8.2 The Implementation Deed provides that, if the Section 444GA Application is approved, amongst other conditions, the Purchaser will acquire 100% of the shares in PAS Group pursuant to the Share Transfer. Accordingly, the transfer of shares pursuant to the Section 444GA Application would increase the Purchaser's voting power in PAS Group from less than 20% to more than 20%. For completeness, it is noted that the Purchaser is an associate of Cannes Management Pty. Ltd. ACN 104 506 532, which as at the date of this Explanatory Statement holds 10.10% of the ordinary shares in PAS Group.
- 8.3 In the absence of any relief from ASIC, the transfer would be prohibited under section 606 of the Corporations Act. As such, it is necessary for the Purchaser to apply to obtain from ASIC such exemptions or modifications from the requirements of Chapter 6 of the Corporations Act as are necessary to enable the Share Transfer to proceed.
- 8.4 The application for ASIC Relief is being made by the Purchaser separately to the Deed Administrators' Section 444GA Application.

9 Timetable for the Section 444GA Application

- 9.1 The Section 444GA Application was filed in the Federal Court of Australia on 27 November 2020.
- 9.2 On 1 December 2020, the Court made timetabling orders for the Section 444GA Application.
- 9.3 The tentative final hearing date of the Section 444GA Application is 9.00am on Friday 18 December 2020.
- 9.4 Below is an indicative timeline for the progress of the Section 444GA Application.
- 9.5 The dates provided are indicative only and subject to change, as the timetabling of the Section 444GA Application is ultimately at the discretion of the Court. Any changes to the timetable will be communicated to the market via the ASX website under issuer code "PGR", and copies of any orders made by the Court will be posted on the PAS Administration Website and the website of PAS Group.

Key dates for shareholders

Event	Date
Any party wishing to oppose the Section 444GA Application to file a notice of appearance and supporting affidavit in the prescribed Court form and serve that material on the Deed Administrators and ASIC	By 4.00pm AEDT on Friday 11 December 2020
The Deed Administrators to file any further evidence with the Court in support of the Section 444GA Application	By 4.00pm AEDT on Monday 14 December 2020
Tentative final hearing date for the Section 444GA Application	9.00am AEDT on Friday 18 December 2020

10 What will happen if the Section 444GA Application is successful?

10.1 If Court approval of the Section 444GA Application is obtained and related conditions under the Implementation Deed are satisfied or waived:

- (a) your shares in PAS Group will be transferred to the Purchaser;
- (b) you will no longer be a shareholder of PAS Group;
- (c) any claims you have against PAS Group in your capacity as a shareholder (whether by way of dividends, profits or otherwise) will be extinguished; and
- (d) it is not expected that you will receive a dividend from the Distribution Fund in respect of any claims you may have against PAS Group in your capacity as a shareholder.

11 What will happen if the Section 444GA Application is not successful?

11.1 If Court approval of the Section 444GA Application is not obtained, the Purchaser may:

- (a) instruct the Deed Administrators to commence the Managed Wind Down of the PAS Group Companies' remaining businesses; or
- (b) complete an asset sale agreement for all or part of the assets of the PAS Group Companies pursuant to which the Purchaser:
 - (i) may elect what assets and liabilities it acquires which relate to or are used in connection with the PAS Group Companies' remaining businesses; and

- (ii) will bear the costs of the managed wind down of those parts of the PAS Group Companies' businesses it opts not to acquire.

11.2 In either scenario above, it is not anticipated that pre-administration creditors of the PAS Group Companies will be repaid in full, and accordingly no funds will be available for distribution to the shareholders of PAS Group on its winding up.

12 Your right to object to the Section 444GA Application

12.1 As a shareholder of PAS Group, you are entitled to oppose the Section 444GA Application.

12.2 You may appear in Court to make submissions and/or oppose the Section 444GA Application by filing with the Court, and serving on the Deed Administrators and ASIC, a notice of appearance and supporting affidavit in the prescribed Court form setting out your grounds of opposition by 4.00pm on Friday 11 December 2020.

12.3 The solicitors for the Deed Administrators are Ben Mahoney and Alexandra Harrison-Ichlov of Arnold Bloch Leibler (**ABL**). ABL will accept service of a notice of appearance and supporting affidavit:

- (a) by post: C/- Arnold Bloch Leibler, Level 21, 333 Collins Street, Melbourne VIC 3000 (Attention: Ben Mahoney and Alexandra Harrison-Ichlov); or
- (b) by email: bmahoney@abl.com.au and aharrisonichlov@abl.com.au.

12.4 You should seek independent legal, financial, taxation or other professional advice before deciding whether to take any action in relation to the Section 444GA Application.

13 Further information to assist you

13.1 To assist you with determining whether to take action in relation to the Section 444GA Application:

- (a) copies of the Independent Expert's Report and Court Documents are enclosed with this Explanatory Statement; and
- (b) the Independent Expert's Report, Court Documents, the PAS DOCAs and the Report to Creditors are available on:
 - (i) the PAS Administration Website (<https://insolvency.pwc.com.au/groupEntityCases/the-pas-group-ltd-and-associated-entities-all-administrators-appointed/casePage>); and
 - (ii) the PAS Group website (<https://thepasgroup.com.au>).

13.2 The Deed Administrators will also make available on the above websites any orders made by the Court in relation to the Section 444GA Application.



- 13.3 Alternatively, you may request copies of these documents from us and we can email them to you free of charge. To request copies of any documents, please contact Nina Leong of PwC by email: nina.leong@pwc.com.

14 Signature of PAS Group

This Explanatory Statement has been signed by PAS Group.

A handwritten signature in black ink, appearing to read "S Longley".

Stephen Longley

In his capacity as joint and several deed administrator of The PAS Group Limited (Subject to Deed of Company Arrangement)



Appendix A

The PAS Group Limited and Associated Entities (All Subject to Deed of Company Arrangement)

Company name	ACN
The PAS Group Limited	169 477 463
PASCO Group Pty Ltd	117 244 943
PAS Finance Pty Ltd	169 478 291
JETS Swimwear Pty Limited	068 819 581
AFG Retail Pty Limited	133 613 251
Chestnut Apparel Pty Limited	112 091 522
PASCO Operations Pty Ltd	112 078 547
Black Pepper Brands Pty Limited	112 065 559
Designworks Holdings Pty Limited	113 900 057
Designworks Clothing Company Pty Limited	117 343 807
World Brands Pty Ltd	075 219 135
Yarra Trail Holdings Pty Limited	110 901 561
Yarra Trail Pty Limited	110 902 102
Review Australia Pty Limited	122 295 836
The Capelle Group Pty Limited	121 867 641
Fiorelli Licensing Pty Limited	122 295 827
Metpas Pty Ltd	127 957 653
The Hopkins Group Aust Pty Limited	119 023 273
The PAS Group Distribution Company Pty Ltd (formerly known as Bondi Bather Pty Limited)	620 985 864



Appendix B
Independent Expert's Report

THE PAS GROUP LIMITED

(Subject to deed of company arrangement)

VALUE OF SHARES ON A LIQUIDATION BASIS

INDEPENDENT EXPERT'S REPORT AND FINANCIAL SERVICES GUIDE
1 DECEMBER 2020



1 December 2020

The Solicitors for the Deed Administrators
The PAS Group Limited (subject to Deed of Company Arrangement)
c/- Ben Mahoney – Partner
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne VIC 3000

Dear Sirs,

Independent Expert's Report for The PAS Group Limited

1. Introduction

The PAS Group Limited (Subject to Deed of Company Arrangement) ("**PAS**") and its 18 Australian subsidiaries (together the "**PAS Group Companies**") went into voluntary administration on 29 May 2020 at which time Martin Ford, Stephen Longley and David McEvoy of PricewaterhouseCoopers ("**PwC**"), were appointed joint and several voluntary administrators of each of the PAS Group Companies. At the second concurrent meetings of creditors of the PAS Group Companies on 17 August 2020, the creditors resolved that 18 of the PAS Group Companies, including PAS, enter identical "Transaction Support" Deeds of Company Arrangement (to facilitate a sale transaction) and that one PAS Group Company execute a "Distribution" Deed of Company Arrangement (to distribute proceeds of realisations to creditors via a distribution fund established under the deed) ("**DOCAs**"). The DOCAs came into effect on 4 September 2020. Martin Ford, Stephen Longley and David McEvoy were appointed the deed administrators of each DOCA ("**Deed Administrators**").

After an extensive, independent and competitive sales process undertaken by the Deed Administrators, the Deed Administrators entered into binding agreements with entities and persons associated with Queens Lane Capital Pty Ltd ("**QLC**"), for the acquisition of PAS' wholesale Designworks business and predominantly wholesale Yarra Trail business and the potential acquisition of the remainder of the PAS Group Companies as a whole, involving the transfer of PAS shares for a purchase price of \$1.

The Deed Administrators intend to apply to the Federal Court of Australia ("**Court**") for leave to transfer all the shares in PAS to PAS Group International Pty Ltd (an entity associated with QLC) under section 444GA of the Corporations Act 2001 (Cth) ("**Act**") ("**Section 444GA Application**"). PAS Group International Pty Ltd will also apply to the Australian Securities and Investments Commission ("**ASIC**") for relief from the takeover provisions in Chapter 6 of the Act. Prior to the hearing of the Section 444GA Application, the Deed Administrators will provide an Explanatory Statement to shareholders of PAS.

Leadenhall Corporate Advisory Pty Ltd ("**Leadenhall**") has been engaged to prepare an Independent Expert's Report ("**IER**") assessing the value of a PAS share on a liquidation basis, in accordance with ASIC Regulatory Guide 111 ("**RG 111**").

The subject of the IER is the value of the PAS shares to be transferred to QLC which includes the retail operations of Review and Black Pepper as well as the other residual assets and liabilities in the corporate structure, including the Fiorelli brand (the "**Remaining Operations**" of PAS). This IER does not consider the JETS Swimwear business, which was sold prior to entry into the DOCAs, or the Designworks and Yarra Trail businesses which are to be acquired by entities associated with QLC under separate asset sale agreements.

Further details of the Proposed Transaction are set out in Section 1 of our detailed report.

2. Purpose of the report

We understand that the IER will be used for the following purposes:

- ◆ to assist the Court in determining whether to grant leave to the Deed Administrators under section 444GA of the Act to transfer the shares in PAS to PAS Group International Pty Ltd. This requires the Court to consider whether the proposed transfer of shares will unfairly prejudice the interest of PAS' shareholders.
- ◆ to assist PAS Group International Pty Ltd with the making of an application to ASIC under section 655(1)(a) of the Act for relief from the operation of section 606 of the Act; and
- ◆ to be provided in an Explanatory Statement to be sent to PAS shareholders in relation to the Section 444GA Application.

Further information regarding our scope and purpose is set out in Section 2 of our detailed report.

3. Assessed value

RG 111 requires an assessment of the value of PAS shares on a liquidation basis, where this is the most likely consequence of the transfer of shares not being approved.

Liquidation value is defined as:

"The amount that would be realised when an asset or group of assets are sold on a piecemeal basis. Liquidation Value should take into account the costs of getting the assets into saleable condition as well as those of the disposal activity. Liquidation Value can be determined under two different premises of value:

- (a) an orderly transaction with a typical marketing period, or*
- (b) a forced transaction with a shortened marketing period."*

In assessing the liquidation value of PAS shares we take account of the financial difficulties faced by the company. As the Remaining Operations of PAS are operating at a loss, have little prospect of becoming profitable in the short term and have already been through an extensive sales campaign, our approach has been to assume a forced sale of the main assets and allow for lease termination costs and redundancy costs. We have assumed the retail stores are closed in an orderly process while attempting to maximise the sale proceeds from the existing inventory.

The following table sets out our assessment of the liquidation value of PAS Shares.

Table 1: Liquidation value of PAS shares

\$'000	Consolidated Group	Liquidation Values	
		Low	High
Current assets			
Cash and cash equivalents	21,743	21,743	21,743
Trade and other receivables	24,201	19,361	19,361
Inventories	12,381	2,476	6,191
Other current assets	613	-	-
Total current assets	58,938	43,580	47,294
Non-current assets			
Trade and other receivables	17	-	-
Property, plant and equipment	4,233	-	423
Right of use asset	9,073	-	-
Deferred tax assets	15,983	-	-
Intangible assets	47,306	-	473
Total non-current assets	76,613	-	896
Total assets	135,551	43,580	48,191
Current liabilities			
Trade and other payables	(28,724)	(28,724)	(28,724)
Borrowings	(5,309)	(5,309)	(5,309)
Provisions	(6,096)	(17,720)	(15,525)
Financial liabilities	(254)	(254)	(254)
Lease liabilities	(5,874)	(5,874)	(5,874)
Tax liabilities	(194)	(194)	(194)
Other liabilities	(856)	(856)	(856)
Total current liabilities	(47,307)	(58,930)	(56,736)
Non-current liabilities			
Provisions	(741)	(741)	(741)
Other non-current liabilities	0	0	0
Lease liability	(5,358)	(5,358)	(3,751)
Deferred tax liability	(10,362)	-	-
Total non-current liabilities	(16,461)	(6,099)	(4,492)
Total liabilities	(63,768)	(65,030)	(61,227)
Net assets	71,784	(21,450)	(13,037)

Source: Leadenhall analysis

This analysis has been cross-checked with reference to the Deed Administrators Estimated Outcome Statement which is broadly consistent with our conclusions.


Further details of our valuation of a PAS share are provided in Section 6 of our detailed report.

4. Opinion

In our opinion, the fair market value of the shares in PAS is nil on a liquidation basis.

This opinion should be read in conjunction with our detailed report which sets out our scope, analysis and findings in more detail.

Yours faithfully



Simon Dalgarno
Director



Dave Pearson
Director

*Note: All amounts stated in this report are in Australian dollars unless otherwise stated.
Tables in this report may not add due to rounding.*

LEADENHALL CORPORATE ADVISORY PTY LTD

ABN 11 114 534 619

Australian Financial Services Licence No: 293586

FINANCIAL SERVICES GUIDE

Leadenhall Corporate Advisory Pty Ltd ("**Leadenhall**" or "**we**" or "**us**" or "**our**" as appropriate) has been engaged to issue general financial product advice in the form of a report to be provided to you.

Financial Services Guide

In providing this report, we are required to issue this Financial Services Guide ("**FSG**") to retail clients. This FSG is designed to help you to make a decision as to how you might use this general financial product advice and to ensure that we comply with our obligations as a financial services licensee.

Financial Services We are Licensed to Provide

We hold Australian Financial Services Licence 293586 which authorises us to provide financial product advice in relation to securities (such as shares and debentures), managed investment schemes and derivatives.

We provide financial product advice by virtue of an engagement to issue a report in connection with a financial product. Our report will include a description of the circumstances of our engagement and the party who has engaged us. You will not have engaged us directly but will be provided with a copy of the report because of your connection to the matters in respect of which we have been engaged to report.

Any report we provide is provided on our own behalf as a financial service licensee authorised to provide the financial product advice contained in that report.

General Financial Product Advice

The advice produced in our report is general financial product advice, not personal financial product advice, because it has been prepared without taking into account your personal objectives, financial situation or needs. You should consider the appropriateness of this general advice having regard to your own objectives, financial situation and needs before you act on the advice. Where the advice relates to the acquisition or possible acquisition of a financial product, you should also obtain a product disclosure statement relating to the product and consider that statement before making any decision about whether to acquire the product.

Benefits that We May Receive

We charge fees for providing reports. These fees will be agreed with the person who engages us to provide the report. Fees will be agreed on either a fixed fee or time cost basis. Leadenhall is entitled to receive a fixed fee of \$50,000 (excl. GST) for preparing this report. This fee is not contingent upon the outcome of the Proposed Transaction.

Except for the fees referred to above, neither Leadenhall, nor any of its directors, consultants, employees or related entities, receive any pecuniary or other benefit, directly or indirectly, for or in connection with the provision of this report.

Remuneration or Other Benefits Received by our Employees, Directors and Consultants

All our employees receive a salary. Our employees are eligible for bonuses which are not based on the outcomes of any specific engagement or directly linked to the provision of this report. Our directors and consultants receive remuneration based on time spent on matters.

Referrals

We do not pay commissions or provide any other benefits to any person for referring clients to us in connection with the reports that we are licensed to provide.

Complaints Resolution

As the holder of an Australian Financial Services Licence, we are required to have a system in place for handling complaints from persons to whom we have provided reports. All complaints must be in writing, to the following address:

Leadenhall Corporate Advisory Pty Ltd
GPO Box 1572
Adelaide SA 5001

Email: office@leadenhall.com.au

We will try to resolve your complaint quickly and fairly and will endeavour to settle the matter within 14 days from the time the matter is brought to our attention.

If you do not get a satisfactory outcome, you have the option of contacting the Australian Financial Complaints Authority ("**AFCA**"). The AFCA will then be able to advise you as to whether or not they can assist in this matter. The AFCA can be contacted at the following address:

Australian Financial Complaints Authority
GPO Box 3
Melbourne VIC 3001

Website: www.afca.org.au
Email: info@afca.org.au
Telephone: 1800 931 678 (free call)

Leadenhall's AFCA membership number is 12224

Compensation Arrangements

Leadenhall holds professional indemnity insurance in relation to the services we provide. The insurance cover satisfies the compensation requirements of the Corporations Act 2001.

1 December 2020

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1 THE PROPOSED TRANSACTION

1.1 Background

In the year ended 30 June 2019, PAS reported a “*particularly challenging year*” and that “*intensifying macro-economic pressures and industry headwinds continue to challenge the operating environment*”. At this time PAS reported it was “*executing on strategic priorities to drive sustainable profitable growth and shareholder value*.”

Prior to December 2019, management had been in the process of implementing a turnaround strategy, which in addition to focussing on delivering efficiencies across support functions, focussed on rationalising the retail and brand portfolio and enhancing the online presence.

In PAS' December 2019 half year report:

- ◆ Net profit for the half year from continued operations after tax decreased from \$1.3 million in the previous corresponding period to a loss of \$1.0 million.
- ◆ Underlying EBIT for the half year from continuing operations decreased by \$3.0 million on the previous corresponding period from \$6.7 million to \$3.7 million.
- ◆ It was disclosed as a subsequent event that:

“PAS sources a large component of its apparel from factories in China and the spread of coronavirus has resulted in extensions to the traditional Chinese New Year factory and port closures whilst quarantine restrictions have been implemented. The prolonged slowdown in industrial activity has resulted in delays to the resumption of production and shipping which we expect to have a negative impact on the industry as a whole and in particular on the delivery of orders to our wholesale and retail businesses. We have also observed further reductions to foot traffic in some key shopping precincts and until the potential shipping backlog is cleared from China and the local market response stabilizes, it is not possible to accurately forecast the impact the coronavirus may have on the full year financial results.”

PAS was in the midst of planning a rights issue when COVID-19 first hit, and the resultant impact on the stock market prevented this from proceeding. At the same time, PAS had been exploring the potential to conduct a placement, which was also abandoned due to the extremely difficult trading environment and the very low share price.

1.2 Administration process

The PAS Group Companies went into voluntary administration on 29 May 2020 at which time Martin Ford, Stephen Longley and David McEvoy of PwC, were appointed joint and several voluntary administrators of each of the PAS Group Companies.

At the second concurrent meetings of creditors of the PAS Group Companies on 17 August 2020, the creditors resolved that 18 of the PAS Group Companies, including PAS, enter identical “Transaction Support” Deeds of Company Arrangement (to facilitate a sale transaction) and that one PAS Group Company execute a “Distribution” Deed of Company Arrangement (to distribute proceeds of realisations to creditors via a distribution fund established under that deed). The DOCAs came into effect on 4 September 2020. Martin Ford, Stephen Longley and David McEvoy were appointed Deed Administrators.

The Deed Administrators continued to trade the various PAS businesses (subject to the various COVID19 restrictions) whilst undertaking a process to sell the businesses. After an extensive and competitive sales process, the Deed Administrators entered into binding agreements on 23 October 2020 with entities and persons associated with QLC for:

- ◆ the sale of the assets and undertakings of the wholesale Designworks business and the predominantly wholesale Yarra Trail business (“**Asset Sale Agreements**”)
- ◆ the potential sale of the remainder of the PAS Group Companies as a whole, including the possible transfer of all shares in PAS Group to the new purchaser (“**Implementation Deed**”)

(together, the “**Sale Transactions**”).

At the time of writing, the Asset Sale Agreements have not yet completed.

Prior to execution of the DOCAs, on 7 August 2020, the Deed Administrators entered into an agreement for the sale of the assets of the JETS Swimwear business to Seafolly Holdings Pty Ltd ("**Seafolly**"). Seafolly was under voluntary administration at the time of entry into that agreement.

1.3 Sales Process

We understand that following their appointment, the Administrators undertook a comprehensive sales process for PAS which included consideration of offers for the entire business and individual assets/brands. This process included:

- ◆ Advertisements calling for expressions of interest being placed in the Australian Financial Review
- ◆ 50 parties expressing interest in all, or parts of, PAS
- ◆ 45 parties being issued an Information Overview, after signing a Confidentiality Agreement
- ◆ 15 parties submitting non-binding indicative offers
- ◆ Detailed negotiations with several parties
- ◆ The re-testing of market interest and re-engagement in negotiation with several parties.

This process resulted in the sale of JETS Swimwear to Seafolly, and the entry into the Sale Transactions described above.

Based on our discussions with PwC and the information provided by them, in our opinion an extensive, independent and competitive sales process was undertaken by the Deed Administrators.

1.4 Sale Transaction

On 23 October 2020, PAS and the Deed Administrators entered into the Implementation Deed with, amongst other parties, PAS Group International Pty Ltd ("**PAS Purchaser**").

Under the Implementation Deed, the PAS Purchaser takes the economic benefit and burden of the PAS Group Companies' remaining businesses on and from 1 October 2020. The PAS Purchaser has agreed to (amongst other things):

- ◆ Acquire all the shares in PAS for a nominal purchase price of \$1, payable to the PAS Group Company which is the party to the Distribution DOCA, namely The PAS Group Distribution Company Pty Ltd (Subject to Deed of Company Arrangement) ACN 620 985 864 (formerly Bondi Bather Pty Limited) for distribution to creditors of the PAS Group Companies under the distribution fund, with such acquisition to occur by virtue of a transfer of shares under section 444GA of the Act.
- ◆ Reimburse the legal fees incurred by the Deed Administrators and PAS for making the Section 444GA Application up to a maximum of \$250,000.
- ◆ Accept liability on and from 1 October 2020 for:
 - ❖ operating costs of the PAS Group Companies' remaining businesses, including liabilities arising under purchase orders or customer orders and orders for new stock; and
 - ❖ certain employee wages and leave entitlements which will accrue in the period from 1 October 2020 until completion of the share sale.

Upon completion of the transfer of PAS shares pursuant to the Implementation Deed (by way of section 444GA of the Act) PAS and its remaining businesses will cease to be subject to the Transaction Support DOCAs and the PAS Purchaser will be the owner of PAS.

In the event the share sale does not proceed the PAS Purchaser may either:

- ◆ Instruct the Deed Administrators to commence a managed wind down of the PAS Group Companies' remaining businesses.
- ◆ Enter into an asset sale agreement for all or part of the assets of the remaining PAS Group Companies under which the PAS Purchaser:
 - ❖ may elect to acquire some or all assets which relate to or are used in connection with the PAS Group Companies' remaining businesses for a purchase price of \$2; and
 - ❖ will bear the costs of the managed wind down of the parts of the PAS Group Companies' remaining businesses it opts not to acquire.

The share sale is conditional upon, amongst other matters:

- ◆ The Court granting approval for the transfer of PAS shares to the PAS Purchaser under section 444GA of the Act.
- ◆ The PAS Purchaser applying for and obtaining from ASIC such exemptions or modifications from the takeover provisions in Chapter 6 of the Act as are necessary to enable the transfer of PAS shares to the PAS Purchaser in the Section 444GA Application ("**ASIC Relief**").

Further details concerning the Implementation Deed, the Section 444GA Application and the application for ASIC Relief, are included in the Deed Administrators' Explanatory Statement.

2 SCOPE

2.1 Purpose of the report

Court Approval of the Section 444GA Application

Pursuant to Section 444GA(3) of the Act, the Court may only approve a transfer of shares by the administrator of a deed of company arrangement if it is satisfied that the proposed share transfer will not *'unfairly prejudice the interests of members of the company'*. The transfer of shares contemplated by the Implementation Deed will not unfairly prejudice PAS' shareholders if PAS shares have no value. We understand that the Deed Administrators therefore intend to tender this report to the Court as evidence in support of the Section 444GA Application.

We have read the Federal Court of Australia's *Expert Evidence Practice Note (GPN-EXPT)*, which contains a copy of the Harmonised Expert Witness Code of Conduct and agree to be bound by it. The opinions stated in this report are based wholly, or substantially on specialised knowledge arising from training, study and experience in the field of business valuation. We have made all inquiries which we believe are appropriate and no relevant matters of significance have, to our knowledge, been withheld from the Court.

ASIC Relief

A transfer of shares that will result in a person's voting power in a public company increasing from 20% or below to more than 20%, or from a starting point that is above 20% and below 90%, is prohibited by Chapter 6 of the Act ("**Chapter 6**"), except in certain circumstances.

Pursuant to the share sale the PAS Purchaser will acquire 100% control of PAS. Accordingly, to enable the transfer of PAS shares to the PAS Purchaser under section 444GA of the Act, the purchaser needs to obtain relief from ASIC from the operation of the takeover's provisions contained in Chapter 6. We understand the PAS Purchaser intends to provide this report to ASIC in support of its application for ASIC Relief.

Information to Shareholders

We understand this report is also to be included in the Explanatory Statement to be sent to Shareholders advising them about the Section 444GA Application.

2.2 Basis of evaluation

For the purposes of the share valuation, we have been instructed to assume that the Asset Sale Agreements for the Designworks and Yarra Trail businesses are complete and therefore the valuation of shares is based on the assets and undertakings of the remaining PAS Group Companies' which are proposed to be sold via the Implementation Deed (including proceeds from the Asset Sale Agreements).

RG111 provides guidance on the preparation of experts' reports. RG111 requires experts to assess the value of a business that is subject to a DOCA based on the higher of the sum of the liquidation value of underlying assets or the value of the business as a whole. We consider this to be consistent with the definition of a liquidation basis of value, which is defined by the International Valuation Standard 104: Bases of Value as:

"The amount that would be realised when an asset or group of assets are sold on a piecemeal basis. Liquidation Value should take into account the costs of getting the assets into saleable condition as well as those of the disposal activity."

The International Valuation Standard 104 notes that a liquidation can be either "orderly" or "forced". For the reasons discussed in Section 5, we have assumed a forced liquidation as that is the likely consequence of the transfer of shares not being approved by the court.

Special value is defined as the amount a specific purchaser is willing to pay in excess of fair market value. A specific purchaser may be willing to pay a premium over fair market value as a result of potential economies of scale, reduction in competition or other synergies they may enjoy arising from the acquisition of the asset. However, to the extent a pool of hypothetical purchasers could all achieve the same level of synergies the value of those synergies may be included in fair market value. Special value is typically not considered in forming an opinion on the fair market value of an asset. Our valuation of PAS does not include any special value.

3 INDUSTRY ANALYSIS

3.1 Overview of the clothing retailing industry

The Australian clothing retailing industry consists of over 10,000 businesses that collectively generated an annual revenue of \$15.73 billion in FY2020. Between 2015 and 2020, the industry experienced a compound annual growth rate (“CAGR”) of 0.2%, compared to a CAGR of 1.4% over the preceding 5 years. A decline of 8.5% is anticipated for FY21 due to the impact of the COVID-19 outbreak on consumer sentiment, unemployment and retail activity. Nonetheless, reduced industry growth rates are also the product of increased competition and reduced consumer spending.

Australian apparel retailing is characterised by low market share concentration, with most participants being small, independent operators. However, the number of businesses operating in the sector has reduced from 12,406 in 2010 to 10,713 in 2020 due to an increased presence of large international players and heightened merger and acquisition activity. Nonetheless, the four largest players in the industry are expected to account for less than 40% of industry revenue, driven by fluctuating consumer preferences and low barriers-to-entry, especially for online-only stores.

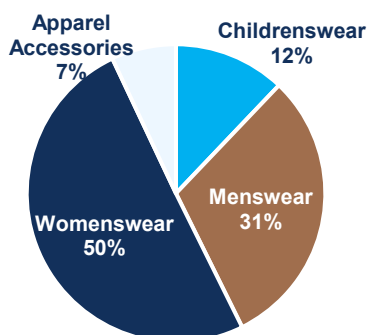
There has been a growing demand for online channels, particularly within the context of the coronavirus pandemic. According to IBISWorld, online apparel sales now generate a revenue of over \$2.5 billion, accounting for approximately 10% of total online shopping. This growth has also been driven by free delivery and return policies, increasing the convenience and affordability of online shopping. In contrast to the growing online presence, traditional bricks-and-mortar retailers have seen a reduced share of the overall retail clothing industry. Similar trends have been occurring globally, as highlighted by the retail sales data for the United States shown below.

3.2 Customers and services

All demographics are consumers in the clothing retailing industry, with women’s clothing being the industry’s largest segment. Clothing products can be broadly categorised into:

- ◆ **Women’s clothing:** Women tend to spend a higher proportion of their disposable income on clothing than men do, partially due to the increased seasonality of women’s clothing.
- ◆ **Men’s clothing:** Demand for menswear has risen over the past five years as men’s attitudes towards fashion have shifted. Particularly amongst younger generations, the frequency of replacing clothing has increased. This has encouraged several retailers to cater specifically to the menswear market.
- ◆ **Accessories:** Comprises items such as hosiery, scarves, gloves, ties, and headwear. Due to the essential nature of some accessories, and their use by all demographics, this segment has consistently accounted for a substantial share of industry revenue.
- ◆ **Children’s and infants’ clothing:** Due to the increased age of first-time parents (with higher disposable incomes), this segment has attracted larger revenues in recent years. Nonetheless, there is fierce competition from discount department stores, which offer lower prices for parents’ conscious of their children quickly out-growing their current wardrobe.

Figure 2: Major market segmentation



Source: Passport 2019

3.3 Profitability

The clothing retailing industry has seen declining profit margins over the past five years, with larger firms generally relying on high turnover to compensate for the lower profit margins. These trends have been caused by weakened consumer spending, growing competition (particularly online stores) and higher rental costs. Furthermore, drastic discounting strategies have diminished profit margins as retailers try to clear inventory, generate demand, and remain competitive.

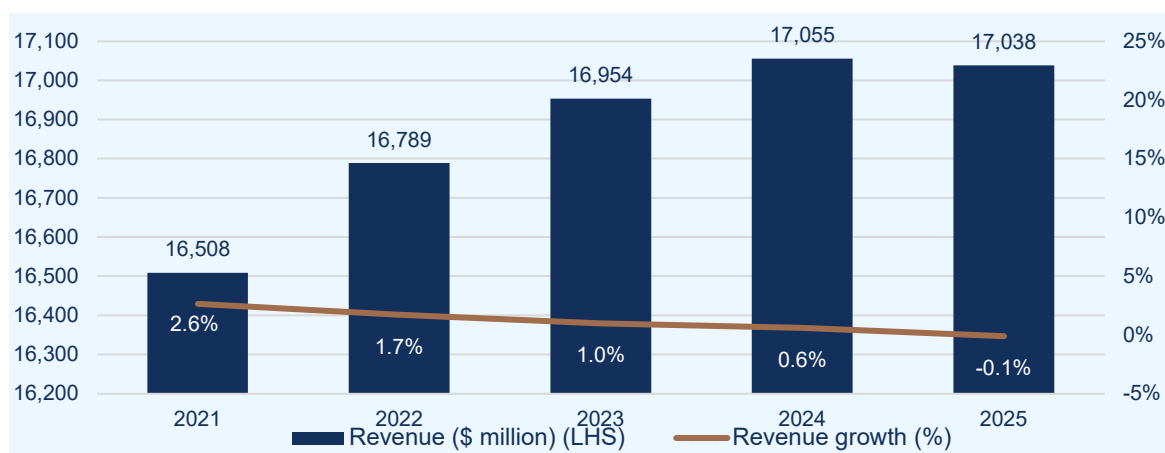
The key drivers of profitability for the clothing retailing industry include:

- ◆ **Real household disposable income:** An increase in disposable income enables consumers to increase discretionary spending on clothing, providing an opportunity for the industry to expand. Within the context of the COVID-19 pandemic, real household disposable income is expected to decrease in 2020.
- ◆ **Consumer sentiment:** When consumers feel more certain about their financial situation, they are likely to spend more on consumer goods, including clothing. Consumer sentiment is expected to decline and become negative in 2020.
- ◆ **Demand from online shopping:** Alongside rapid advancements in technology, there has been an increased presence of online clothing stores. Particularly within the current COVID-19 environment, demand for online shopping has risen, increasing industry competition from online-only stores. Whilst online-only stores threaten traditional bricks-and-mortar retailers, a significant proportion of traditional retailers have developed multichannel strategies to benefit from the growth in online shopping.
- ◆ **Demand from department stores:** Due to economies of scale, department stores such as Myer or David Jones can offer various clothing options at reduced prices, thereby competing with clothing retailers. Many department stores buy in bulk and often source goods directly from manufacturers, enabling lower prices compared to the industry average. Demand from department stores is forecast to increase in 2020 despite the COVID-19 outbreak.
- ◆ **Exchange rates:** The cost of imported clothing declines when the Australian dollar appreciates, which boosts demand for overseas goods. The Australian clothing industry imports most of its products, thus changes in the value of the Australian dollar can have a significant impact on industry costs. Over the next year, the Australian dollar is expected to depreciate relative to its major trading partners, making consumers more likely to purchase clothing from domestic retailers rather than overseas stores. However, this trend is also likely to increase purchase costs for industry players.

3.4 Outlook

Despite the significant fall in revenue in the year ended 30 June 2020, the clothing retailing industry is expected to recover over the next few years. Industry revenue is forecast to grow at an annualised 1.2% over the next five years to reach \$17.0 billion by 2025. This includes strong growth in 2021 as the industry is projected to recover from the negative effects of the COVID-19 outbreak.

Figure 3: Forecast industry revenue growth in Australia



Source: IBISWorld

4 PROFILE OF THE PAS GROUP

4.1 Background

PAS was established in 2004 and listed on the ASX in 2014, is headquartered in Melbourne and had approximately 1,200 employees across Australia prior to entering administration earlier this year.

PAS carried on a business as wholesalers and retailers of apparel and accessories. PAS' retail operations focussed on a multiple sales channel strategy across 218 retail stores, outlets and concessions with a diversified product range across 19 owned, licenced and private brands and 20-character, music and film licences. It targeted a broad range of customer demographics by age, gender, location and price point. PAS also had 1.4 million Loyalty Members with a highly engaged repeat customer base which generated in excess of 70% of the retail revenue.

PAS operated in predominantly two segments, being Retail and Wholesale.

- ♦ **Retail:** The Retail segment includes revenues and profits generated by a retail and online footprint associated with women's, men's and children's apparel and related products. This included 225 retail sites and a number of online sites.
- ♦ **Wholesale:** The wholesale segment includes revenues and profits associated with the wholesaling of women's, men's and children's apparel, sporting equipment and related products.

As discussed in Section 1, the PAS Group Companies were placed into voluntary administration on 29 May 2020. Since then the JETS Swimwear business has been sold and the Deed Administrators have entered into the Asset Sale Agreements in relation to the Designworks and Yarra Trail businesses and the Implementation Deed to give effect to the proposed transfer of PAS shares to the PAS Purchaser.

4.2 Overview of the Remaining Operations

Following entry into the Asset Sale Agreements, the Remaining Operations of PAS, proposed to be acquired by the PAS Purchaser under the Implementation Deed, consist of the retail operations of Review, and Black Pepper, the Fiorelli brand as well as the Corporate support division.

The retail operations can be summarised as follows:

Table 2: PAS' Remaining Operations

	REVIEW	BLACK PEPPER
Gender	Female	Both
Target age range	24 - 40	60 +
Products	Dresses, tops, skirts, knitware, pants, jackets, coats, accessories	Shirts, tees, polos, pants, shorts, tops, skirts, jeans, jackets, knnitware, dresses
# of Stores	26 Stores and 57 Myer Concessions	86 Stores
Brands	Review	Black Pepper and Breakaway
Revenue FY20	\$66.1 million (approx 53% of PAS Group retail revenue)	\$58.7 million (approx 47% of PAS Group retail revenue)
Headcount	485	458

Review Retail Operations

The Review business was established in 1985 and the brand has been built on a unique position offering feminine products inspired by vintage with a modern twist. The brand focuses on fashion for women aged between 24 and 40 and the key attributes of the brand are:

- ◆ Timeless Classics – celebrating vintage design in a modern way
- ◆ Sophisticated Playfulness – beautiful elegance with a playful character.

Review has previously captured a large share of the value chain through operating a vertical retail model, selling into 26 owned retail stores and outlets and 57 Myer store concessions.

Review has recently negotiated an exclusive three-year agreement with Myer that covers all 57 concessions. The agreement has resulted in Myer committing to increased store space, as well as improved locations within the stores. Review experienced significant growth in concession sales prior to the COVID-19 pandemic and is regularly in the top four performing concessions within Myer.

In the year ended June 2019 the Review business reported net sales of \$66.1 million. However, after allocation of an appropriate proportion of shared services costs (included below in PAS Corporate) the business has operated at an EBITDA loss since FY19 and is expected to do so in at least the near-term.

This division has been part of management restructuring activities with 10 stores closed in financial year ("FY") ending 30 June 2019 ("FY19"), 18 stores closing in FY ending 30 June 2020 ("FY20") and 9 stores closed in the three months ended 30 September 2020 ("YTD FY21"). The remaining 26 stores and outlets (excluding the 57 Myer concessions) are located in NSW 7, Qld 5, Vic 7, WA 2, SA 2, ACT 2 and NZ 1.

Review's 485 employees primarily include store managers and personnel across the retail portfolio, with 42 employees operating as a support function to the brand and footprint. The support office operates from PAS' Mount Waverley head office.

Black Pepper Retail Operations

Established in 1976, Black Pepper makes quality lifestyle leisurewear for both men (Breakaway) and women (Black Pepper).

Black Pepper is considered the leading leisurewear brand for the older female consumers in Australia and has enjoyed a strong following for a sustained period. Black Pepper is renowned for innovative design, quality fabrications sourced from around the world to create a unique quality garment.

Breakaway offers casual style for the Australian man. The brand positions itself as practical, quality, smart, comfortable and timeless that is suited to an active and outdoor lifestyle. Fabrics are specifically designed for durability, easy care and easy wear.

The Black Pepper and Breakaway brands are sold through the 86 store retail portfolio across Australia and New Zealand, with a growing online presence. Breakaway wholesale is sold via independents and Myer.

In the year ended June 2019 the Black Pepper business reported net sales of \$58.7 million. However, after allocation of an appropriate proportion of shared services costs (included below in PAS Corporate) the business operated at EBITDA loss since FY19 and is expected to do so in at least the near-term.

This division has been part of management restructuring activities with 14 stores closed in FY19, 6 stores closed in FY20 and 35 stores closing in YTD FY21. The remaining 86 stores and factory outlets are located in NSW 26, Vic 22, NZ 11, Qld 8, SA 9, WA 4, TAS 4 and ACT 2.

The Black Pepper division's 458 employees primarily includes store managers and personnel across the retail portfolio, with 39 employees operating as a support function from PAS' Mount Waverley head office.

Fiorelli Operations

Fiorelli is a company within the PAS Group which owns the Fiorelli licence. It was established in 1986 and acquired by the PAS Group in 2006. The Fiorelli brand is currently only operating in sunglasses, however it has historically operated in handbags, accessories and watches. The PAS Group receives a small amount of royalty revenue from the Fiorelli license, with it generating less than \$50,000 in profit (prior to the allocation of shared service costs) in the last two years, and hence has not been analysed in detail in this report.

PAS Corporate

The PAS corporate divisions provided support predominantly to the Review and Black Pepper divisions in the following areas:

- ◆ Digital advertising, marketing and public relations
- ◆ Human resources
- ◆ Property negotiation
- ◆ IT and e-commerce development.

In the year ended June 2019 the PAS Corporate division reported a normalised divisional EBITDA loss of \$10.42 million. The vast majority of these costs are required to operate the retail networks of the Review and Black Pepper divisions, with approximately \$1.0 million estimated to relate to operating the ASX corporate operations (e.g. share registry, ASX fees and audit fees).

4.3 Financial Performance

PAS' management has prepared the following summary of the historical financial performance of the Remaining Operations, which has been extracted from the audited consolidated statements of financial performance for the FY ending 30 June 2018 ("FY18"), FY19, FY20 and for the YTD FY21.

Table 3: PAS' financial performance

\$'000	FY18	FY19	FY20	YTD 21
Revenue	139,874	124,813	99,445	20,984
Total Direct Costs	(48,742)	(44,456)	(36,722)	(9,633)
Contribution Margin	91,132	80,357	62,723	11,352
Advertising, Marketing & PR	(3,888)	(4,421)	(4,108)	(497)
Employment Costs	(50,142)	(47,993)	(43,431)	(11,335)
Property & Occupancy Costs	(28,091)	(25,580)	(19,495)	(3,916)
General Expenses	(6,883)	(6,298)	(6,429)	(3,012)
Other (Expenses) / Income	2,125	1,443	8,270	8,895
EBITDA	4,252	(2,492)	(2,470)	1,486
Depreciation and amortisation expense	(6,497)	(6,164)	(5,412)	(1,465)
Impairment loss	(4,213)	-	(14,253)	-
EBIT	(6,458)	(8,657)	(22,135)	21
Interest expenses	(604)	(943)	(1,297)	(133)
Profit before tax	(7,062)	(9,600)	(23,432)	(112)
Income tax benefit/(expense)	(498)	1,233	3,879	(64)
Profit after tax	(7,560)	(8,367)	(19,553)	(176)
Other information				
Sales growth		-11%	-20%	n/m
Contrib. margin %	65%	64%	63%	54%
EBITDA margin %	3%	-2%	-2%	7%

Source: PAS

Notes:

1. EBITDA for YTD21 includes increased sales at lower margins to maximise cashflow, significantly reduced advertising expenditure, government JobKeeper subsidies of approximately \$9.3 million, reduced rentals and other short-term saving expenditure reductions. On a normalised basis the business would have reported an EBITDA loss.
2. Impact of AASB16 – Lease accounting has been excluded from all years to aid comparability.

In relation to the historical financial performance of the Remaining Operations of PAS, we note the following:

- ◆ Revenue declined between FY18 and FY19 as a result of store closures and difficult trading conditions caused in part by a highly promotional environment. Revenue further declined in FY20 as a result of the economic impact of COVID19 and suspension of retail trading in many states and particularly Victoria.
- ◆ Contribution margin declined due to difficult trading conditions, with the significant fall in the current financial year due to heavy discounting to clear slow-moving stock.
- ◆ Advertising, marketing & PR has remained relatively stable between FY18 and FY20, with the significant fall in the current period a result of significantly reduced advertising spending during COVID19.
- ◆ Employment costs have reduced over the last three financial years as a result of reduced store numbers and more recently due to reduction of staff hours during COVID19 restrictions.
- ◆ Property & occupancy costs have reduced over the last three financial years as a result of reduced store numbers and more recently due to rental reductions as a result of COVID19 restrictions.
- ◆ Other expenses / income were immaterial until FY20. The high level of income in FY20 and YTD21 reflects the wage subsidies received as a result of COVID19, with approximately \$9.3 million received in YTD21.

Based on the FY19 results, on the existing cost base revenue would need to increase by more than 10%, with no increase in operating costs before the business would break even. Accordingly, without the government subsidies received in YTD21, the Remaining Operations of PAS have operated at a loss for at least the last three financial years and have little prospect of becoming profitable in the short term.

4.4 Financial Position

Management has prepared the following summary of the historical financial position of the Remaining Operations which have been extracted from the audited consolidated statements as at 30 June 2018, 30 June 2019, 30 June 2020 and 30 September 2020.

In relation to the historical financial position of PAS set out below, we note the following:

- ◆ Inventories relate primarily to stock in stores and in transit for the Review and Black Pepper retail operations.
- ◆ Property, plant and equipment relates primarily to shop fitouts and IT systems.
- ◆ Right of use assets are the right to use the leased stores and were recognised for the first time in June 2020 in accordance with AASB 16 – Lease Accounting. This asset is fully offset by the current and non-current lease liability.
- ◆ Intangibles includes goodwill of \$18 million, brand names of \$15 million and capitalised software and web development costs of \$3 million.
- ◆ Other non-current financial assets relate to intercompany loans and is largely offset by borrowings.
- ◆ Provisions relate predominantly to employee leave liabilities with other amounts relating to provisions for make good and outstanding gift vouchers.

Table 4: PAS' financial position

\$'000	30-Jun-18	30-Jun-19	30-Jun-20	30-Sep-20
Current assets				
Cash and cash equivalents	(4,569)	307	6,707	8,560
Trade and other receivables	2,912	2,772	5,438	5,965
Inventories	20,751	20,864	15,538	12,381
Other current assets	2,242	3,013	1,705	613
Total current assets	22,609	27,477	29,388	27,518
Non-current assets				
Trade and other receivables	32	46	17	17
Property, plant and equipment	10,213	7,720	5,335	4,233
Right of use asset	-	-	13,394	9,073
Deferred tax assets	6,587	8,339	15,913	15,983
Intangible assets	48,097	49,069	47,328	47,252
Total non-current assets	64,929	65,174	81,988	76,559
Total assets	87,538	92,650	111,376	104,077
Current liabilities				
Trade and other payables	(10,491)	(10,762)	(12,498)	(11,599)
Borrowings	-	-	(3,868)	(3,410)
Provisions	(4,062)	(4,286)	(5,147)	(5,596)
Financial liabilities	-	-	-	(254)
Lease liabilities	-	(1,103)	(9,317)	(5,874)
Tax liabilities	(5)	(3)	(50)	(21)
Other liabilities	(2,375)	(3,371)	(868)	(856)
Total current liabilities	(16,934)	(19,526)	(31,747)	(27,610)
Non-current liabilities				
Provisions	(659)	(717)	(755)	(741)
Other non-current liabilities	(2,571)	(1,621)	-	-
Lease liability	(600)	-	(7,061)	(5,358)
Deferred tax liability	(5,091)	(5,227)	(10,659)	(10,362)
Total non-current liabilities	(8,922)	(7,564)	(18,474)	(16,461)
Total liabilities	(25,856)	(27,090)	(50,222)	(44,071)
Net assets	61,682	65,560	61,154	60,006

Source: PAS

Notes: Impact of AASB16 – Lease accounting has been included in the 30 June 2020 and the 30 September 2020 results.

5 VALUATION METHODOLOGY

To estimate the fair market value of PAS, we have considered common market practice and the valuation methodologies recommended in RG 111. There are a number of methods that can be used to value a business including:

- ◆ The discounted cash flow method
- ◆ The capitalisation of future maintainable earnings method
- ◆ Asset based methods
- ◆ Analysis of share market trading
- ◆ Industry specific rules of thumb

Each of these methods is appropriate in certain circumstances and often more than one approach is applied. The choice of methods depends on several factors such as the nature of the business being valued, the return on the assets employed in the business, the valuation methodologies usually applied to value such businesses and availability of the required information. A detailed description of these methods and when they are appropriate is provided in Appendix 2.

In assessing the value of PAS shares we have taken account of the financial difficulties faced by the company.

RG111 requires experts to assess the value of a business that is subject to a DOCA based on the higher of the sum of the liquidation value of underlying assets or the value of the business as a whole. We consider this to be consistent with the definition of a liquidation basis of value, which is defined by the International Valuation Standard 104: Bases of Value as:

"The amount that would be realised when an asset or group of assets are sold on a piecemeal basis. Liquidation Value should take into account the costs of getting the assets into saleable condition as well as those of the disposal activity."

The International Valuation Standard 104 notes that a liquidation can be either "orderly" or "forced".

As the Remaining Operations of PAS:

- ◆ are operating at a loss (after normalising the impact of government COVID19 subsidies)
- ◆ have little prospect of becoming profitable in the short term (without a significant increase in revenue or decrease in costs)
- ◆ would need to incur significant costs to order stock for the winter 2021 season (and the existing summer 2020 stock will be obsolete by March 2021)
- ◆ have already been through an extensive sales campaign

our approach has been to value the shares on a liquidation (forced transaction) basis, as this is the most likely consequence of the transfer of shares not being approved. We have assumed the retail stores are closed in an orderly process while attempting to maximise the sale proceeds from the existing inventory.

6 VALUATION OF PAS

6.1 Approach

Leadenhall has determined the value of PAS' equity on a liquidation basis in accordance with RG 111. Our liquidation value takes into account PAS' current financial situation where it is currently loss-making on a normalised basis and that it does not have sufficient funding to pursue its operations for the foreseeable future. Furthermore, the sales process undertaken by the Deed Administrators indicates the value for the Remaining Operations would be maximised through a sale of its business assets.

Our liquidation valuation of PAS assumes the Remaining Operations of PAS aggregates the amount that could be realised if its assets were sold in a reasonably short time frame, which is the likely outcome if the Sale Transactions, including the transfer of PAS shares under the Implementation Deed do not complete.

6.2 Liquidation value

Our assessed value of the net assets of PAS Group on a forced liquidation basis is summarised below.

Table 5: Liquidation value of PAS shares

\$'000	Consolidated Group	Liquidation Values	
		Low	High
Current assets			
Cash and cash equivalents	21,743	21,743	21,743
Trade and other receivables	24,201	19,361	19,361
Inventories	12,381	2,476	6,191
Other current assets	613	-	-
Total current assets	58,938	43,580	47,294
Non-current assets			
Trade and other receivables	17	-	-
Property, plant and equipment	4,233	-	423
Right of use asset	9,073	-	-
Deferred tax assets	15,983	-	-
Intangible assets	47,306	-	473
Total non-current assets	76,613	-	896
Total assets	135,551	43,580	48,191
Current liabilities			
Trade and other payables	(28,724)	(28,724)	(28,724)
Borrowings	(5,309)	(5,309)	(5,309)
Provisions	(6,096)	(17,720)	(15,525)
Financial liabilities	(254)	(254)	(254)
Lease liabilities	(5,874)	(5,874)	(5,874)
Tax liabilities	(194)	(194)	(194)
Other liabilities	(856)	(856)	(856)
Total current liabilities	(47,307)	(58,930)	(56,736)
Non-current liabilities			
Provisions	(741)	(741)	(741)
Other non-current liabilities	0	0	0
Lease liability	(5,358)	(5,358)	(3,751)
Deferred tax liability	(10,362)	-	-
Total non-current liabilities	(16,461)	(6,099)	(4,492)
Total liabilities	(63,768)	(65,030)	(61,227)
Net assets	71,784	(21,450)	(13,037)

Source: Leadenhall analysis

Assessed Liquidation Value Analysis

The above statement of financial position differs from Table 4 in Section 4.4 as that analysis was prepared based on the Remaining Operations, whereas the above PAS Consolidated Group statement of financial position incorporates the residual impact of the businesses that have been sold (e.g. Designworks accounts receivable are to be collected by the Deed Administrators and the accounts payable are to be paid by them.) In determining the value of PAS' Consolidated Group net assets using a liquidation value analysis, we have made the following assumptions:

- ◆ **Cash:** PAS' bank accounts and term deposits are assumed to be fully realisable in a liquidation scenario. The balance includes the proceeds from the sale of JETS, Designworks and Yarra Trail. Although some of these amounts may be subject to potential setoffs where there are offsetting creditor positions, we have not included any potential reduction to the liabilities in this analysis and hence made no corresponding adjustment to the balance of realisable cash.
- ◆ **Trade and other receivables:** We have assumed 80% of the book value is recoverable in both the low and high cases to make allowance for the cost of recovery.
- ◆ **Inventories:** Inventory predominantly include finished goods and prepayments for stock in transit. In the low case we have assumed PAS will cease trading quickly and much of this stock will need to be sold via other channels. Accordingly, we have assumed a recovery of 20% of the book value in the low case. In the high case we have assumed the store network is progressively closed while attempting to maximise the sale proceeds from the summer stock currently in store. In this case we have assumed a recovery of 50% of the book value to allow for the cost of operating the stores and expected heavy discounting required to clear the stock.
- ◆ **Other current assets:** The balance of other current assets consist mainly of prepayments, including for insurance. We have assumed some of these prepayments will be difficult to obtain reimbursements for and / or it will not be cost effective to make a claim for the amount prepaid. As a result, we have assumed no value for these assets.
- ◆ **Property, plant and equipment:** The majority of this balance relates to furniture and fittings in the various stores, with a smaller amount relating to computer equipment. As the stores and computer equipment will be stripped out and disposed of, we have assumed a recovery of 0% of the book value in the low case and 20% in the high case. An additional amount has been included in provisions for the expected make good costs.
- ◆ **Right of use assets:** Right of use assets are incorporated on the statement of financial position as a result of AASB16 – Leases and recognise the future right to occupy the leased premises. As PAS' operations will be discontinued, the right to occupy the various premises has no value.
- ◆ **Deferred tax assets:** Deferred tax losses include a component of past tax losses. We have not ascribed any value to the deferred tax assets as they will provide no benefit.
- ◆ **Intangible Assets:** This balance consists of the capitalised value of goodwill, brand names and software. As a liquidation basis assumes PAS will cease trading, no value has been allocated to any of these assets. In support of this assumption, the Deed Administrators have undertaken a comprehensive process and did not receive offers of any significant amount for the brands.
- ◆ **Current Liabilities:** We have included all current liabilities as per the 30 September 2020 statement of position.
- ◆ **Provisions:** The book value of provisions predominantly relates to leave liabilities. Adjustments have been made for redundancy payments (including payments in lieu of notice) and also for make good costs on leased shop stores. As a result, we have increased the liability to \$17.7 million in the low case and \$15.5 million in the high case based on discussions with PAS management.
- ◆ **Lease Liabilities:** While PAS is liable for the rent for the remaining period of the lease term, we have assumed this liability could be minimised or reduced as many of the stores are in prime locations and incentives may make it attractive for new tenants to lease the premises. As a result, we have assumed a payment of 100% of the book value in the low case and 70% in the high case (i.e. a decreased liability in the high case, resulting in a higher total value).

- ◆ **Deferred tax liability:** We have not ascribed any value to the deferred tax liabilities.

In addition to the items recognised on the statement of financial position and by the Deed Administrators, the following items need to be considered when assessing the value of the equity.

- ◆ **Tax Losses:** As at 30 June 2019 PAS has carried forward revenue tax losses of \$5.6 million recognised on its balance sheet. These are the balance as at 30 June 2019 (as the tax return has not been completed for 30 June 2020) but the revenue losses would be significantly higher as at the date of this report due to the substantial losses in FY20. We have not attributed any value to these tax losses as these would not be utilised in a liquidation of the business as no taxable income is likely to be generated to offset the losses.
- ◆ **Franking Credits:** The franking account balance as at 30 June 2019 was \$40.1 million. This is also expected to approximate the balance as at 30 June 2020. On a liquidation basis, we have not attributed any value to PAS' franking credits as they will not be able to be distributed to Shareholders.
- ◆ **Listed Shell:** Whilst there arguably could be value to the listed company shell in a liquidation, it would likely be negligible in the context of PAS and would not change our conclusions on the liquidation value.

Liquidation Value Conclusion

As the calculated value of the net assets in both the high and low liquidation scenarios is less than zero, we have assessed the value of the equity as zero in all situations.

6.3 Cross Check to Estimated Outcome Statement

The Deed Administrators have provided us with the PAS Group estimated outcome statement ("EOS") as at 30 September 2020, which is an assessment of the residual value to creditors on the following basis:

- ◆ Voluntary Administration - which assumes the sale of retail operations facilitated by the Transaction Support and Distribution DOCA structure
- ◆ Liquidation – which assumed the sale of the Designworks and Yarra Trail businesses and a forced liquidation of the retail operations.

We have discussed this analysis with PwC but not conducted a detailed review. For the purposes of this cross check, we have adopted the Deed Administrators' assessment of realisable values and claims, as this represents their best estimate as to the expected surplus to or deficit to unsecured creditors as a consequence of the administration.

Table 6: Liquidation value of PAS after Sale of Designworks and Yarra Trail

PwC's Estimated Outcome Statement			
	Voluntary Administration	Liquidation High	Low
Total circulating assets	47,624	55,328	53,342
Priority creditors	(25,440)	(42,725)	(53,317)
Surplus/(deficit) available to CBA	22,184	12,603	25
Non-circulating assets (net of costs)	-	-	-
Surplus/(deficit) available to creditors	22,184	12,603	25
Secured creditor - CBA	(4,026)	(4,026)	(4,026)
Surplus/(deficit) available to unsecured creditors	18,158	8,577	(4,001)
Adjustment for non-DOXG companies' returns	(1,798)	3,966	6,612
Surplus/(deficit) available to unsecured creditors	16,360	12,543	2,611
Unsecured creditors (excluding related entities)	(22,228)	(40,500)	(40,030)
Calculated value of 100% of Equity	(5,868)	(27,957)	(37,419)
Assessed value of 100% of Equity	- Nil -	- Nil -	- Nil -
Other information			
Cents in dollar return to unsecured creditors	73.6	31.0	6.5

Source: Summary of PwC analysis

In relation to the estimated outcome statement set out above, we note the following:

- ◆ The liquidation scenario assumes the sale of Designworks and Yarra Trail completes and the Remaining Operations (predominantly the retail operations) remain to be liquidated.
- ◆ The value of circulating assets is lower in the voluntary administration scenario as there will be no proceeds from the sale of inventory, which will be partially offset by the expected business sale proceeds. The impact of a business sale is addressed further below.
- ◆ The total of priority creditors is higher in the liquidation scenarios as additional rent will be payable while the stores are kept operating during the winding up process and additional professional fees will be payable. Also, an increased amount has been included for contingencies.
- ◆ As some of the PAS companies are not parties to the deed of cross guarantee ("**DOXG**"), an adjustment has been made for non-DOXG company returns as they are liquidated separately, and then any surplus returned to PAS.
- ◆ Unsecured creditors are higher in the liquidation scenario due primarily to additional contingent liability for make good and contracted rent upon exit. These contingent liabilities will be significantly reduced in the voluntary administration scenario as the acquirer of the business will take on the majority of these costs.

The above analysis supports our conclusions as the calculated value of the equity is less than zero.

6.4 Premium for control

A premium for control can be defined as an amount or a percentage by which the pro-rata value of a controlling interest exceeds the pro-rata value of a non-controlling interest in a business enterprise, to reflect the power of control. The requirement for an explicit valuation adjustment for a control premium depends on the valuation methodology and approach adopted. This valuation is based on a liquidation approach, which is premised on the ability to control the assets of an entity and therefore incorporates any relevant premium for control. Thus, no further adjustment is required.

6.5 Summary

Based on the analysis set out above we have assessed the value of a PAS share to be nil on a liquidation basis.

APPENDIX 1: GLOSSARY

Term	Meaning
Act	Corporations Act 2001(Cth)
AFCA	Australian Financial Complaints Authority
AIFRS	Australian equivalent to international financial reporting
ASIC	Australian Securities and Investments Commission
ASIC Relief	The PAS Purchaser applying for and obtaining from ASIC such exemptions or modifications from the takeover provisions in Chapter 6 of the Act as are necessary to enable the transfer of PAS shares to the PAS Purchaser in the Section 444GA Application
Asset Sale Agreements	The binding agreements entered into on 23 October 2020 by the Deed Administrators with entities associated with QLC for the sale of the assets and undertakings of the wholesale Designworks business and the predominantly wholesale Yarra Trail business
ASX	ASX Limited
AUD	Australian Dollar
Buyer	QLC
CAGR	Compound Annual Growth Rate
CAPM	Capital Asset Pricing Model
Chapter 6	Chapter 6 of the Act
Court	Federal Court of Australia
Deed Administrators	Martin Ford, Stephen Longley and David McEvoy of PwC
DOCA	Transaction Support and Distribution Deed of Company Arrangements
DOXG	Deed of cross guarantee between PAS Group Companies
EBIT	Earnings before interest and tax
EBITDA	Earnings before interest, tax, depreciation and amortisation
EOS	Estimated outcome statement prepared by the Deed Administrators
Explanatory Statement	Explanatory statement sent by the Deed Administrators to PAS shareholders prior to the hearing of the Section 444GA Application, containing information about the Sale Transactions, Section 444GA Application and the application for ASIC Relief.
Fair market value	The price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arms' length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts
FOS	Financial Ombudsman Service
FSG	Financial Services Guide
FY	Financial year
FY18	FY ending 30 June 2018
FY19	FY ending 30 June 2019
FY20	FY ending 30 June 2020
FY21	FY ending 30 June 2021
IER	Independent Expert's Report

Term	Meaning
Implementation Deed	Binding agreement signed by the Deed Administrators with entities and persons associated with QLC. It is intended the sale of PAS and its remaining businesses will complete pursuant to the Implementation Deed, involving a transfer of PAS shares under section 444G of the Act, with the option of those remaining businesses being acquired by the PAS Purchaser under an asset sale agreement if necessary approvals of the Section 444GA Application and ASIC Relief application are not obtained.
Item 7	Item 7 of Section 611 of the Corporations Act
Leadenhall	Leadenhall Corporate Advisory Pty Ltd
Liquidation value	The amount that would be realised when an asset or group of assets are sold on a piecemeal basis. Liquidation Value should take into account the costs of getting the assets into saleable condition as well as those of the disposal activity. Liquidation Value can be determined under two different premises of value: (a) an orderly transaction with a typical marketing period, or (b) a forced transaction with a shortened marketing period."
NPAT	Net profit after tax
P / E	Price to Earnings
PAS	The PAS Group Limited
PAS Group Companies	PAS and 18 of its Australian subsidiaries that went into voluntary administration on 29 May 2020
PAS Purchaser	PAS Group International Pty Ltd, the party that entered into the Implementation Deed
PBT	Profit before tax
Proposed Transaction	The acquisition of PAS' Remaining Operations by the PAS Purchaser under the Implementation Deed, including the transfer of PAS shares to the PAS Purchaser under section 444GA of the Act.
PwC	PricewaterhouseCoopers
QLC	Queens Lane Capital Pty Ltd
Remaining Operations	The retail operations of Review and Black Pepper as well as any other residual assets or liabilities in the corporate structure including the Fiorelli brand (excluding the JETS Swimwear business, which was sold prior to entry into the DOCAs, and the wholesale operations of Designworks and predominantly wholesale operations of Yarra Trail which are to be acquired under the Asset Sale Agreements).
RG111	Regulatory Guide 111: Content of Expert Reports
RG112	Regulatory Guide 112: Independence of experts
RG74	Regulatory Guide 74: Acquisitions Approved by Members
Sale Transactions	The Asset Sale Agreements and the Implementation Deed
Seafolly	Seafolly Holdings Pty Ltd
Section 444GA Application	Application intended to be issued to the Federal Court by the Deed Administrators under section 444GA of the Corporations Act 2001 (Cth)
Section 655(1)(a)	Section 655(1)(a) of the Corporations Act 2001
Section 606	Section 606 of the Corporations Act 2001
Shareholders	Shareholders in PAS
YTD FY21	The three months ended 30 September 2020

APPENDIX 2: VALUATION METHODOLOGIES

In preparing this report we have considered valuation methods commonly used in practice and those recommended by RG 111. These methods include:

- ◆ The discounted cash flow method
- ◆ The capitalisation of earnings method
- ◆ Asset based methods
- ◆ Analysis of share market trading
- ◆ Industry specific rules of thumb

The selection of an appropriate valuation method to estimate fair market value should be guided by the actual practices adopted by potential acquirers of the company involved.

Discounted Cash Flow Method

Description

Of the various methods noted above, the discounted cash flow method has the strongest theoretical standing. It is also widely used in practice by corporate acquirers and company analysts. The discounted cash flow method estimates the value of a business by discounting expected future cash flows to a present value using an appropriate discount rate. A discounted cash flow valuation requires:

- ◆ A forecast of expected future cash flows
- ◆ An appropriate discount rate

It is necessary to project cash flows over a suitable period of time (generally regarded as being at least five years) to arrive at the net cash flow in each period. For a finite life project or asset this would need to be done for the life of the project. This can be a difficult exercise requiring a significant number of assumptions such as revenue growth, future margins, capital expenditure requirements, working capital movements and taxation.

The discount rate used represents the risk of achieving the projected future cash flows and the time value of money. The projected future cash flows are then valued in current day terms using the discount rate selected.

The discounted cash flow method is often sensitive to a number of key assumptions such as revenue growth, future margins, capital investment, terminal growth and the discount rate. All of these assumptions can be highly subjective sometimes leading to a valuation conclusion presented as a range that is too wide to be useful.

Use of the Discounted Cash Flow Method

A discounted cash flow approach is usually preferred when valuing:

- ◆ Early stage companies or projects
- ◆ Limited life assets such as a mine or toll concession
- ◆ Companies where significant growth is expected in future cash flows
- ◆ Projects with volatile earnings

It may also be preferred if other methods are not suitable, for example if there is a lack of reliable evidence to support a capitalisation of earnings approach. However, it may not be appropriate if:

- ◆ Reliable forecasts of cash flow are not available and cannot be determined
- ◆ There is an inadequate return on investment, in which case a higher value may be realised by liquidating the assets than through continuing the business

Capitalisation of Earnings Method

Description

The capitalisation of earnings method is a commonly used valuation methodology that involves determining a future maintainable earnings figure for a business and multiplying that figure by an appropriate capitalisation multiple. This methodology is generally considered a short form of a discounted cash flow, where a single representative earnings figure is capitalised, rather than a stream of individual cash flows being discounted. The capitalisation of earnings methodology involves the determination of:

- ◆ A level of future maintainable earnings
- ◆ An appropriate capitalisation rate or multiple.

A multiple can be applied to any of the following measures of earnings:

- ◆ **Revenue** – most commonly used for companies that do not make a positive EBITDA or as a cross-check of a valuation conclusion derived using another method.
- ◆ **EBITDA** - most appropriate where depreciation distorts earnings, for example in a company that has a significant level of depreciating assets but little ongoing capital expenditure requirement.
- ◆ **EBITA** - in most cases EBITA will be more reliable than EBITDA as it takes account of the capital intensity of the business.
- ◆ **EBIT** - whilst commonly used in practice, multiples of EBITA are usually more reliable as they remove the impact of amortisation which is a non-cash accounting entry that does not reflect a need for future capital investment (unlike depreciation).
- ◆ **NPAT** - relevant in valuing businesses where interest is a major part of the overall earnings of the group (e.g. financial services businesses such as banks).

Multiples of EBITDA, EBITA and EBIT are commonly used to value whole businesses for acquisition purposes where gearing is in the control of the acquirer. In contrast, NPAT (or P/E) multiples are often used for valuing minority interests in a company.

The multiple selected to apply to maintainable earnings reflects expectations about future growth, risk and the time value of money all wrapped up in a single number. Multiples can be derived from three main sources. Using the guideline public company method, market multiples are derived from the trading prices of stocks of companies that are engaged in the same or similar lines of business and that are actively traded on a free and open market, such as the ASX. The merger and acquisition method is a method whereby multiples are derived from transactions of significant interests in companies engaged in the same or similar lines of business. It is also possible to build a multiple from first principles.

Use of the Capitalisation of Earnings Method

The capitalisation of earnings method is widely used in practice. It is particularly appropriate for valuing companies with a relatively stable historical earnings pattern which is expected to continue. This method is less appropriate for valuing companies or assets if:

- ◆ There are no suitable listed company or transaction benchmarks for comparison
- ◆ The asset has a limited life
- ◆ Future earnings or cash flows are expected to be volatile
- ◆ There are negative earnings or the earnings of a business are insufficient to justify a value exceeding the value of the underlying net assets

Asset Based Methods

Description

Asset based valuation methods estimate the value of a company based on the realisable value of its net assets, less its liabilities. There are a number of asset based methods including:

- ◆ Orderly realisation
- ◆ Liquidation value
- ◆ Net assets on a going concern basis
- ◆ Replacement cost
- ◆ Reproduction cost

The orderly realisation of assets method estimates fair market value by determining the amount that would be distributed to shareholders, after payment of all liabilities including realisation costs and taxation charges that arise, assuming the company is wound up in an orderly manner. The liquidation method is similar to the orderly realisation of assets method except the liquidation method assumes the assets are sold in a shorter time frame. Since wind up or liquidation of the company may not be contemplated, these methods in their strictest form may not necessarily be appropriate. The net assets on a going concern basis method estimates the market values of the net assets of a company but does not take account of realisation costs.

The asset / cost approach is generally used when the value of the business' assets exceeds the present value of the cash flows expected to be derived from the ongoing business operations, or the nature of the business is to hold or invest in assets. It is important to note that the asset approach may still be the relevant approach even if an asset is making a profit. If an asset is making less than an economic rate of return and there is no realistic prospect of it making an economic return in the foreseeable future, an asset approach would be the most appropriate method.

Use of Asset Based Methods

An asset-based approach is a suitable valuation method when:

- ◆ An enterprise is loss making and is not expected to become profitable in the foreseeable future
- ◆ Assets are employed profitably but earn less than the cost of capital
- ◆ A significant portion of the company's assets are composed of liquid assets or other investments (such as marketable securities and real estate investments)
- ◆ It is relatively easy to enter the industry (for example, small machine shops and retail establishments)

Asset based methods are not appropriate if:

- ◆ The ownership interest being valued is not a controlling interest, has no ability to cause the sale of the company's assets and the major holders are not planning to sell the company's assets
- ◆ A business has (or is expected to have) an adequate return on capital, such that the value of its future income stream exceeds the value of its assets

Analysis of Share Trading

The most recent share trading history provides evidence of the fair market value of the shares in a company where they are publicly traded in an informed and liquid market. There should also be some similarity between the size of the parcel of shares being valued and those being traded. Where a company's shares are publicly traded then an analysis of recent trading prices should be considered, at least as a cross-check to other valuation methods.

Industry Specific Rules of Thumb

Industry specific rules of thumb are used in certain industries. These methods typically involve a multiple of an operating figure such as eyeballs for internet businesses, numbers of beds for hotels etc. These methods are typically fairly crude and are therefore usually only appropriate as a cross-check to a valuation determined using an alternative method.

APPENDIX 3: QUALIFICATIONS, DECLARATIONS AND CONSENTS

Responsibility and purpose

This report has been prepared for PAS for the purpose of assessing the fair market value of a PAS share on a liquidation basis. Leadenhall expressly disclaims any liability, whether for our negligence or otherwise, if the report is used for any other purpose or by any other person.

Reliance on information

In preparing this report we relied on the information provided to us by PAS and the Deed Administrators being complete and accurate and we have assumed it has been prepared in accordance with applicable Accounting Standards and relevant national and state legislation. We have not performed an audit, review or financial due diligence on the information provided. Drafts of our report were issued to PAS and the Deed Administrators for confirmation of factual accuracy.

Market conditions

Leadenhall's opinion is based on prevailing market, economic and other conditions as at the date of this report. Conditions can change over relatively short periods of time. Any subsequent changes in these conditions could impact upon the conclusion reached in this report.

As a valuation is based upon expectations of future results it involves significant judgement. Although we consider the assumptions used and the conclusions reached in this report are reasonable, other parties may have alternative expectations of the future, which may result in different valuation conclusions. The conclusions reached by other parties may be outside Leadenhall's preferred range

Indemnities

In recognition that Leadenhall may rely on information provided by the Deed Administrators and their colleagues, PAS, via the Deed Administrators (solely in their capacity as joint and several Deed Administrators of PAS and subject to the terms of the disclaimer agreed by the parties in Leadenhall's engagement letter), agreed that it will not make any claim against Leadenhall to recover any loss or damage which it may suffer as a result of that reliance and that it will indemnify Leadenhall against any liability that arises out of Leadenhall's reliance on the information provided by PAS and the Deed Administrators and their colleagues or the failure by PAS and the Deed Administrators and their colleagues to provide Leadenhall with any material information relating to this report.

Qualifications

The personnel of Leadenhall principally involved in the preparation of this report were Dave Pearson, BCom., CA, CFA, CBV, M.App.Fin; Simon Dalgarno, B.Ec, FCA, F.FINSIA; Richard Norris, BA (Hons), FCA, M.App.Fin, F.Fin; Bruce Li, BCom., CA, CA BV Specialist; and Vicky Lau, BCom., CA.

This report has been prepared in accordance with "APES 225 – Valuation Services" issued by the Accounting Professional & Ethical Standards Board and this report is a valuation engagement in accordance with that standard.

Independence

Leadenhall has acted independently of PAS and the Deed Administrators. Compensation payable to Leadenhall is not contingent on the conclusion, content or future use of this report.



Appendix 3

Originating process documents for the Section 444GA Application

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 27/11/2020 2:49:39 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	VID761/2020
File Title:	IN THE MATTER OF THE PAS GROUP LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 169 477 463
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Hearing
Time and date for hearing:	18/12/2020, 9:00 AM
Place:	Please check Daily Court List for details



A handwritten signature in blue ink that reads "Sia Lagos".

Dated: 27/11/2020 3:10:38 PM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



ORIGINATING PROCESS

No. VID of 2020

Federal Court of Australia

District Registry: Victoria

Division: General

IN THE MATTER OF THE PAS GROUP LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 169 477 463

MARTIN FRANCIS FORD, STEPHEN GRAHAM LONGLEY AND DAVID LAURENCE MCEVOY, IN THEIR CAPACITY AS JOINT AND SEVERAL DEED ADMINISTRATORS OF THE PAS GROUP LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 169 477 463 AND EACH OF THE COMPANIES NAMED IN THE SCHEDULE

Plaintiffs

A. DETAILS OF APPLICATION

This application is made under sections 444GA and 447A of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the Insolvency Practice Schedule (Corporations), being Schedule 2 to the Corporations Act (**Insolvency Practice Schedule**).

The Plaintiffs, in their capacity as joint and several deed administrators of The PAS Group Limited (Subject to Deed of Company Arrangement) ACN 169 477 463 (**PAS Group**), seek orders for leave pursuant to section 444GA(1)(b) of the Corporations Act to transfer all of the existing shares of PAS Group to PAS Group International Pty Ltd ACN 645 134 247 (**PAS Group International**), in accordance with the terms of the Implementation Deed executed on 23 October 2020 (**Implementation Deed**).

On the facts stated in the supporting affidavits, the Plaintiffs seek orders that -

- 1 The Plaintiffs, in their capacity as joint and several deed administrators of PAS Group, be granted leave pursuant to section 444GA(1)(b) of the Corporations Act to transfer all of the issued shares in PAS Group from the members (as defined by the Corporations Act) (**Members**) to PAS Group International, in accordance with the terms of the Implementation Deed.

Filed on behalf of: the Plaintiffs

Prepared by: Ben Mahoney

Ref: 011915027

Law firm: **ARNOLD BLOCH LEIBLER**

Tel: 9229 9999 Fax: 9229 9900

Email: bmahoney@abl.com.au

Address for service: Level 21, 333 Collins Street, Melbourne, VIC 3000



- 2 Pursuant to section 447A(1) of the Corporations Act and/or section 90-15(1) of the Insolvency Practice Schedule, any of the Plaintiffs may jointly or severally:
- (a) execute on behalf of the Members share transfer forms and any other documents ancillary or incidental to effecting the transfer of PAS Group shares referred to in Order 1; and
 - (b) enter or procure the entry of the name of PAS Group International in PAS Group's register of members in respect of all shares transferred to PAS Group International in accordance with Order 1.
- 3 Such further or other orders as the Court deems fit.

DATE: 27 November 2020

A handwritten signature in black ink, which appears to read 'Ben Mahoney', is written over a large, faint circular stamp.

Ben Mahoney
ARNOLD BLOCH LEIBLER
Solicitors for the Plaintiffs

This application will be heard by the Federal Court of Australia, 305 William Street, Melbourne at 9.00 am on 18 December 2020.

B. NOTICE TO DEFENDANT(S) (IF ANY)

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the Plaintiffs.



Note: Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not applicable.

D. FILING

Date of filing:

.....
An officer acting with the authority of the
DISTRICT REGISTRAR

This originating process is filed by Arnold Bloch Leibler of Level 21, 333 Collins Street, Melbourne, VIC, 3000, solicitors for the Plaintiffs.

E. SERVICE

The Plaintiffs' address for service is C/- Arnold Bloch Leibler, Level 21, 333 Collins Street, Melbourne, VIC, 3000.

A copy of this originating process will be provided to the Australian Securities and Investments Commission and made available to shareholders and creditors of PAS Group.

It is intended to serve a copy of this originating process on each defendant and on any person listed below:



Schedule

No. VID of 2020

Federal Court of Australia

District Registry: Victoria

Division: General

IN THE MATTER OF THE PAS GROUP LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 169 477 463

MARTIN FRANCIS FORD, STEPHEN GRAHAM LONGLEY AND DAVID LAURENCE MCEVOY, IN THEIR CAPACITY AS JOINT AND SEVERAL DEED ADMINISTRATORS OF THE PAS GROUP LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 169 477 463 AND EACH OF THE COMPANIES NAMED IN THE SCHEDULE

Plaintiffs

- 1 AFG Retail Pty Limited (Subject to Deed of Company Arrangement) ACN 133 613 251
- 2 Black Pepper Brands Pty Limited (Subject to Deed of Company Arrangement) ACN 112 065 559
- 3 The PAS Group Distribution Company Pty Ltd (Subject to Deed of Company Arrangement) ACN 620 985 864 (formerly Bondi Bather Pty Limited)
- 4 Chestnut Apparel Pty Limited (Subject to Deed of Company Arrangement) ACN 112 091 522
- 5 Designworks Clothing Company Pty Limited (Subject to Deed of Company Arrangement) ACN 117 343 807
- 6 Designworks Holdings Pty Limited (Subject to Deed of Company Arrangement) ACN 113 900 057
- 7 Fiorelli Licensing Pty Limited (Subject to Deed of Company Arrangement) ACN 122 295 827
- 8 JETS Swimwear Pty Limited (Subject to Deed of Company Arrangement) ACN 068 819 581
- 9 Metpas Pty Ltd (Subject to Deed of Company Arrangement) ACN 127 957 653



- 10 PAS Finance Pty Ltd (Subject to Deed of Company Arrangement) ACN 169 478 291 ★
- 11 PASCO Group Pty Ltd (Subject to Deed of Company Arrangement) ACN 117 244 943
- 12 PASCO Operations Pty Ltd (Subject to Deed of Company Arrangement) ACN 112 078 547
- 13 Review Australia Pty Limited (Subject to Deed of Company Arrangement) ACN 122 295 836
- 14 The Capelle Group Pty Limited (Subject to Deed of Company Arrangement) ACN 121 867 641
- 15 The Hopkins Group Aust Pty Limited (Subject to Deed of Company Arrangement) ACN 119 023 273
- 16 World Brands Pty Ltd (Subject to Deed of Company Arrangement) ACN 075 219 135
- 17 Yarra Trail Holdings Pty Limited (Subject to Deed of Company Arrangement) ACN 110 901 561
- 18 Yarra Trail Pty Limited (Subject to Deed of Company Arrangement) ACN 110 902 102

Date: 27 November 2020

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 27/11/2020 2:49:39 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
File Number:	VID761/2020
File Title:	IN THE MATTER OF THE PAS GROUP LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 169 477 463
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 27/11/2020 3:11:05 PM AEDT

A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

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AFFIDAVIT

No. VID of 2020

Federal Court of Australia

District Registry: Victoria

Division: General

IN THE MATTER OF THE PAS GROUP LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 169 477 463

MARTIN FRANCIS FORD, STEPHEN GRAHAM LONGLEY AND DAVID LAURENCE MCEVOY, IN THEIR CAPACITY AS JOINT AND SEVERAL DEED ADMINISTRATORS OF THE PAS GROUP LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 169 477 463 AND EACH OF THE COMPANIES NAMED IN THE SCHEDULE

Plaintiffs

Affidavit of: **Stephen Graham Longley**
Address: 2 Riverside Quay, Southbank, Victoria
Occupation: Chartered accountant and registered liquidator
Date: 27 November 2020

Contents

Document number	Details	Paragraph	Page
1	Affidavit of Stephen Graham Longley in support of application for orders under sections 444GA and 447A of the <i>Corporations Act 2001</i> (Cth) (Act) and section 90-15 of the Insolvency Practice Schedule (Corporations), being Schedule 2 to the Act, sworn on 27 November 2020, addressing the following matters:	1-143	1-40
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	Summary	8	4-6
	Structure and business of the PAS Group Companies	9-21	6-9
	Deed of Cross Guarantee	22-23	9-10
	Multi-option Facility Agreement and Merchant Facility Agreement with the CBA	24-29	10-11
	Debtor Finance Agreement with Moneytech Finance Pty Limited	30-38	11-13

Filed on behalf of: the Plaintiffs

Prepared by: Ben Mahoney

Ref: 011915027

Law firm: **ARNOLD BLOCH LEIBLER**

Tel: 9229 9999 Fax: 9229 9900

Email: bmahoney@abl.com.au

Address for service: Level 21, 333 Collins Street, Melbourne, VIC 3000

Ben Mahoney *Stephen Longley*

	Background to the appointment of the Administrators	39-50	13-16
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	Creditors of the PAS Group Companies	71-81	21-23
	Sale Campaign	82-90	23-24
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	Report to Creditors	94-103	25-28
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	PAS DOCAs	107-115	29-31
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	Consequences if the Section 444GA Application is unsuccessful	121-122	33
	Estimated returns to creditors	123-126	34-35
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2	Exhibit “ SGL-1 ”, being a folder of documents referred to in this affidavit	7	43 - 891

Affidavit of the Administrator *R Long*

I, **STEPHEN GRAHAM LONGLEY** of PricewaterhouseCoopers Australia, 2 Riverside Quay, Southbank in the State of Victoria, chartered accountant and registered liquidator, **SAY ON OATH:**

- 1 I am a chartered accountant, registered liquidator and a partner of the firm PricewaterhouseCoopers Australia (**PwC**). I have over 25 years' experience as an accountant in corporate insolvency and restructuring matters. I have been involved in a number of complex matters including Nine Entertainment Group, National Leisure & Gaming Limited, Cockatoo Coal Limited, Caledon Coal Pty Limited and Linc Energy Limited.
- 2 Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information and belief, I believe those matters to be true.

Introduction

- 3 Together with Mr David McEvoy and Mr Martin Ford, I am a joint and several deed administrator of The PAS Group Limited (Subject to Deed of Company Arrangement) ACN 169 477 463 (**PAS Group**) and 18 of its subsidiaries, which are listed in the Schedule (together, the **PAS Group Companies**).
- 4 Prior to the execution of the deeds of company arrangement (**PAS DOCAs**) described at paragraphs 107-114 below, Mr McEvoy, Mr Ford and I were the joint and several voluntary administrators of the PAS Group Companies.
- 5 I am authorised to make this affidavit on behalf of Mr McEvoy and Mr Ford. References in this affidavit to "we", "us", "our" or "ourselves" are references to me, Mr McEvoy and Mr Ford. I refer to Mr McEvoy, Mr Ford and myself in this affidavit as the **Deed Administrators** or the **Administrators** as appropriate. Where I depose below to the view or the views held by the Deed Administrators, they are the views that Mr McEvoy, Mr Ford and I hold as at the date of this affidavit.
- 6 I make this affidavit in support of the Originating Process filed by the Deed Administrators seeking the following orders:
 - (a) an order that the Deed Administrators be granted leave pursuant to section 444GA(1)(b) of the *Corporations Act 2001* (Cth) (**Act**) to transfer all of the issued shares in PAS Group to PAS Group International Pty Ltd ACN 645 134 247 (**PAS Group International**), in accordance with the terms of the

Stephen Graham Longley

Implementation Deed executed on 23 October 2020 (**Section 444GA Application**);

- (b) an order enabling any of the Deed Administrators to jointly or severally:
 - (i) execute on behalf of the PAS Group members share transfer forms and any other documents ancillary or incidental to effecting the transfer of PAS Group shares pursuant to the Section 444GA Application; and
 - (ii) enter or procure the entry of the name of PAS Group International in PAS Group's register of members in respect of all shares transferred to PAS Group International in accordance with the Section 444GA Application.

7 Now exhibited to this affidavit and shown to me is a bundle of documents marked "**SGL-1**" to which I refer in this affidavit. A reference to a Tab in this affidavit is a reference to a Tab in **SGL-1**.

Summary

8 As set out in more detail below:

- (a) On 29 May 2020, Mr McEvoy, Mr Ford and I were appointed joint and several voluntary administrators of the PAS Group Companies by resolution of the PAS Group Companies' directors under section 436A of the Act.
- (b) Shortly after our appointment, Mr McEvoy, Mr Ford and I commenced seeking expressions of interest for the potential sale or recapitalisation of the PAS Group Companies (**Sale Campaign**).
- (c) The Sale Campaign was conducted by PricewaterhouseCoopers Securities Ltd's Mergers and Acquisitions Division.
- (d) One of the offers received by the Administrators during the Sale Campaign was from Queens Lane Capital Pty Ltd ACN 617 339 563 (**QLC**).
- (e) On 9 June 2020, the Federal Court made orders in proceeding number VID 379 of 2020 regarding matters including the electronic provision of notices to creditors, the establishment of a single committee of inspection for the PAS Group Companies and the Administrators' personal liability in relation to:

Attorney General *R Long*

- (i) property leased, used or occupied by the PAS Group Companies; and
 - (ii) certain loan, credit card and merchant facilities between the PAS Group Companies and the Commonwealth Bank of Australia (**CBA**).
- (f) On 11 June 2020, the concurrent first meetings of creditors of the PAS Group Companies were held electronically using a video conference facility.
- (g) On 22 June 2020, the Federal Court made orders in proceeding VID 379 of 2020 extending the convening period for the concurrent second meetings of creditors of the PAS Group Companies to 29 September 2020.
- (h) On 7 August 2020, the Administrators issued a report to creditors pursuant to section 75-225 of the Insolvency Practice Rules (Corporations), being Schedule 2 to the Act, and section 439A of the Act (**Report to Creditors**), in which we expressed the opinion that:
 - (i) the return to creditors under a deed of company arrangement was likely to be materially higher than in a liquidation scenario; and
 - (ii) it was in the creditors' best interests for the PAS Group Companies to execute the proposed PAS DOCAs (comprising Transaction Support and Distribution DOCAs) which would confer powers on the Deed Administrators to arrange the PAS Group Companies' assets and liabilities in a way which would optimise a sale transaction.
- (i) On 7 August 2020, the Administrators also sold the assets of JETS Swimwear Pty Ltd (Subject to Deed of Company Arrangement) ACN 068 819 581 (**JETS Swimwear**).
- (j) On 12 August 2020, the Federal Court made orders in proceeding number VID 432 of 2020 declaring that rent payable by the PAS Group Companies during 29 May to 22 June 2020 for leases or real property used, occupied or in the possession of the PAS Group Companies constituted an expense properly incurred by the Administrators within the meaning of section 556(1)(a) of the Act.
- (k) On 14 August 2020, the Federal Court made orders in proceeding VID 379 of 2020 concerning the Administrators' personal liability for debts incurred pursuant to a debtor finance agreement and deed of indemnity between



Designworks Clothing Company Pty Limited and Moneytech Finance Pty Ltd (**Moneytech**).

- (l) On 17 August 2020, the concurrent second meetings of creditors of the PAS Group Companies were held electronically using a video conference facility. The creditors resolved to execute the PAS DOCAs.
- (m) The PAS DOCAs were executed across 3 and 4 September 2020 and came into effect on 4 September 2020.
- (n) Following the Sale Campaign, the Deed Administrators determined that a “whole of Group” offer from QLC represented the best alternative of the offers received. QLC’s offer involved the acquisition of the Designworks and Yarra Trail businesses under asset sale agreements, and acquisition of the shares in PAS Group pursuant to a share sale agreement.
- (o) On 23 October 2020, the Deed Administrators entered into sale transactions to give effect to the terms of the agreement reached between the Deed Administrators and QLC, including an Implementation Deed to facilitate the acquisition of the shares in PAS Group by QLC’s nominee, PAS Group International (**Implementation Deed**).
- (p) One of the conditions of the Implementation Deed is that all issued shares in PAS Group are transferred to PAS Group International pursuant to the Section 444GA Application.
- (q) In this application, Mr McEvoy, Mr Ford and I, in our capacity as joint and several Deed Administrators, seek leave of the Court to transfer all of the issued shares in PAS Group to PAS Group International in accordance with the terms of the Implementation Deed.

Structure and business of the PAS Group Companies

- 9 The PAS Group Companies are an Australian-based retail fashion group, with interests in both retail and wholesale segments of the market, and a significant online business. PAS Group’s head office is located in Mount Waverley, Victoria.
- 10 PAS Group is a publicly listed company and the ultimate holding company of each of the other PAS Group Companies. A diagram setting out the corporate structure of the



PAS Group Companies at the date of our appointment as Administrators is at Tab 1 of SGL-1.

- 11 PAS Group was listed on the Australian Stock Exchange (**ASX**) on 16 June 2014 with the issuer code "PGR".
- 12 Trading of PAS Group shares on the ASX was suspended upon the appointment of the Administrators on 29 May 2020, at which time PAS Group shares were trading at a price of 5.2 cents per share. Prior to the PAS Group Companies' entry into administration, PAS Group's share price had peaked at a price of \$1.12 per share on 22 August 2014.
- 13 As at 29 May 2020, PAS Group had 136,690,860 ordinary paid shares on issue, held by 461 shareholders.
- 14 Major shareholders of PAS Group include:
 - (a) HSBC Custody Nominees (Australia) Ltd, which has a 48.6% interest;
 - (b) Brand Acquisition Company LLC, which has a 16.4% interest;
 - (c) Cannes Management Pty Ltd (controlled by Larry Kestelman, the chair of QLC) which has a 10.1% interest; and
 - (d) Citicorp Nominees Pty Limited, which has a 5.6% interest.
- 15 A list of the top 20 shareholders of PAS Group as at 29 May 2020 is at Tab 2 of SGL-1. A list of all shareholders of PAS Group as at 29 May 2020 is at Tab 3 of SGL-1.
- 16 A copy of a search of current extracts of the records maintained by the Australian Securities and Investments Commission (**ASIC**) in respect of PAS Group, obtained on 20 November 2020 is at Tab 4 of SGL-1.
- 17 At the time the PAS Group Companies entered administration, the primary operating entities were:
 - (a) PAS Group;
 - (b) Black Pepper Brands Pty Ltd ACN 112 065 559 (**Black Pepper**), which operated a retail fashion business in 120 retail stores in Australia and New Zealand, and online;



- (c) Designworks Clothing Company Pty Ltd ACN 117 343 807 (**Designworks**), which designed, supplied and marketed fashion apparel for major retailers, with licensed brands including Everlast, Russell Athletic, B.O.D By Finch, Lonsdale, Review Kids, Mooks Clothing Co, Republic, Sista, Slazenger and Dunlop and licensing partners including Marvel, Disney, Star Wars, 20th Century Fox, Coca-Cola, DreamWorks, Sony, Universal, Nickelodeon, Mattel, Beatrix Potter, Hasbro and Sesame Street;
 - (d) JETS Swimwear, which operated a swimwear brand in three retail stores and online, and engaged in the local and international wholesale market;
 - (e) Review Australia Pty Ltd ACN 122 295 836 (**Review**), which operated a retail fashion business in 36 stores and outlets, 57 concessions within Myer stores in Australia, and online; and
 - (f) Yarra Trail Pty Ltd ACN 110 902 102 (**Yarra Trail**), which operated a wholesale fashion business through Myer, in more than 200 independent retailers across Australia, New Zealand and South Africa, and online.
- 18 The remaining 13 entities comprising the PAS Group Companies are either holding companies or dormant entities.
- 19 PAS Group also has several overseas subsidiaries that are not subject to an external administration process, including entities based in New Zealand, South Africa, the United States, the Netherlands, the United Kingdom, China and Hong Kong. As these entities are 100% owned subsidiaries of the PAS Group Companies, they were placed under the control of the Administrators.
- 20 At the date of our appointment as Administrators, the PAS Group Companies:
- (a) operated 143 retail stores and outlets in Australia and 18 retail stores and outlets in New Zealand;
 - (b) were parties to 166 real property leases (147 in Australia, 18 in New Zealand and one in Shanghai);
 - (c) were subject to a licence agreement pursuant to which Review operated the 57 concessions within Myer stores;



- (d) occupied five offices and warehouse premises across Australia, New Zealand, and China (three offices in Australia, one warehouse in New Zealand and a Shanghai office);
- (e) employed approximately 1,200 employees across Australia and 80 employees in New Zealand; and
- (f) were subject to the following security interests:
 - (i) AllPAAP registrations on the Personal Property Securities Register (**PPSR**) against each of the PAS Group Companies by both Moneytech and the CBA; and
 - (ii) 53 non-AllPAAP registrations on the PPSR.

21 Since our appointment:

- (a) 41 retail stores have been closed;
- (b) approximately 982 employees have been retained across Australia and 80 employees in New Zealand;
- (c) we have sold the assets of the JETS Swimwear business (described further in paragraphs 91-93 below); and
- (d) we have renegotiated the terms of agreements between the PAS Group Companies and a variety of parties including financiers, landlords and suppliers.

Deed of Cross Guarantee

22 The following 11 PAS Group Companies are subject to and have the benefit of a Deed of Cross Guarantee dated 24 July 2014 (**DOXG**), made for the purposes of ASIC Class Order 98/1418 (now repealed and replaced with ASIC Corporations (Wholly-owned Companies) Instrument 2016/785):

- (a) PAS Group;
- (b) Black Pepper (formerly Breakaway Apparel Pty Limited);
- (c) Chestnut Apparel Pty Ltd ACN 112 091 522;




- (d) Designworks;
 - (e) Designworks Holdings Pty Ltd ACN 113 900 057;
 - (f) Metpas Pty Ltd (formerly Metalicus Pty Limited) ACN 127 957 653;
 - (g) PAS Finance Pty Ltd ACN 169 478 291;
 - (h) PASCO Group Pty Ltd ACN 117 244 943;
 - (i) PASCO Operations Pty Ltd ACN 112 078 547;
 - (j) Review; and
 - (k) The Hopkins Group Aust Pty Ltd ACN 119 023 273.
- 23 Each of the PAS Group Companies which is a party to the DOXG guarantees payment of the debts of each other DOXG party. The DOXG is enforceable upon the winding up of any party. A copy of the DOXG is at Tab 5 of SGL-1.

Multi-option Facility Agreement and Merchant Facility Agreement with the CBA

- 24 On 9 January 2017, the PAS Group Companies entered a multi-option facility agreement with the CBA (**CBA Facility**) with a total accommodation limit of \$12.8 million, pursuant to which the CBA provided trade financing to the PAS Group Companies. A copy of the CBA Facility is at Tab 6 of SGL-1.
- 25 The CBA Facility was originally due to expire on 9 January 2020. It was subsequently amended to extend its term to 31 August 2020.
- 26 In March 2020, the PAS Group Companies informed the CBA that they expected to breach covenant requirements at 31 March 2020 under the CBA Facility, due to operational disruptions caused by COVID-19. In a letter to PAS Group's Chief Financial Officer on 26 March 2020, CBA stated that it would waive covenant compliance for the March 2020 period. In addition, the CBA agreed to waive retail store closures (also attributable to the impacts of COVID-19) as an "Event of Default" under the CBA Facility, provided certain conditions were met. Those conditions required the PAS Group Companies to immediately close out and crystallise their cash position under foreign exchange hedging transactions and hold the cash proceeds in a deposit account with the CBA. No withdrawal of the cash would be permitted without the prior written consent of the CBA.



- 27 On 26 May 2020, the PAS Group Companies and the CBA entered into a deed of amendment to the CBA Facility (**Amendment Deed**) which, amongst other things, reduced the total accommodation limit of the CBA Facility to \$8.1 million and required PAS Group to provide weekly progress reports to the CBA in respect of matters including the PAS Group Companies' cash flow, inventory position and negotiations with landlords. A copy of the Amendment Deed is at Tab 7 of SGL-1.
- 28 The PAS Group Companies are also party to a merchant facility agreement (**MFA**) with the CBA used to facilitate electronic payments to the PAS Group Companies in consumer transactions. Management of the PAS Group advised us that the MFA is essential to the operation of the PAS Group Companies as it is the only way the PAS Group Companies can receive payments online, and payments through credit and debit card transactions.
- 29 Following our appointment as Administrators, we sought and obtained orders in the Federal Court of Australia relieving us from personal liability for debts incurred in relation to the operation of the CBA Facility and MFA, discussed further at paragraphs 55-56 below.

Debtor Finance Agreement with Moneytech Finance Pty Limited

- 30 On 18 December 2019, Moneytech and Designworks entered into a Debtor Finance Agreement pursuant to which Moneytech agreed to provide finance to Designworks (**Moneytech Agreement**). The arrangement enables Designworks to access cash for working capital purposes in advance of the actual payment of debts by Designworks customers.
- 31 Pursuant to the Moneytech Agreement:
- (a) Designworks assigns "Debts" to Moneytech, comprised primarily of debts owed to Designworks by Designworks customers in respect of purchase orders;
 - (b) Moneytech undertakes to provide funding to Designworks calculated by reference to:
 - (i) a percentage of the value of "Approved Debts" prior to their collection (currently 89%);
 - (ii) the value of "Disapproved Debts" that are collected; and
 - (iii) the value of "Approved Debts" that are collected to the extent that amount exceeds the amount in paragraph (b)(i) above;

- (c) the funds received by Designworks are used by Designworks as a source of working capital;
- (d) Designworks collects all Debts as Moneytech's agent; and
- (e) Moneytech is entitled to interest on the balance recorded in the "Debtor Finance Account" and various fees and charges.

A copy of the Moneytech Agreement is at Tab 8 of SGL-1.

- 32 Prior to our appointment, the facility limit of the Moneytech Agreement was:
- (a) \$22,000,000 in the period from 1 January to 31 March each year; and
 - (b) \$11,000,000 in the period from 1 April to 31 December each year.
- 33 Each of the PAS Group Companies (other than Designworks) is party to a Guarantee and Indemnity Agreement under which those companies have guaranteed Designworks' obligations under the Moneytech Agreement (**Moneytech Guarantee and Indemnity Agreement**).
- 34 Each of the PAS Group Companies (**Grantors**) is party to a General Security Agreement under which each Grantor grants a security interest over all of its present and after-acquired property in favour of Moneytech to secure the obligations owed by the Grantors to Moneytech (**Moneytech Security**).
- 35 Following our appointment on 29 May 2020, we entered discussions with Moneytech regarding terms on which Moneytech would permit Designworks to continue utilising the facility provided for in the Moneytech Agreement.
- 36 The Administrators' strategy for Designworks, and for the PAS Group Companies more broadly, was to continue trading on as close to a "business as usual" basis as possible (given Designworks' administration and the ongoing impacts of COVID-19 on the retail sector) while we conducted the Sale Campaign for the PAS Group Companies and their businesses, so as to preserve the value of the PAS Group Companies as going concerns.
- 37 On 6 July 2020, Moneytech, the Administrators and Designworks executed an Indemnity and Variation Deed (**Moneytech Variation Deed**) which, among other things, provided that:

- (a) the Moneytech Agreement remains in full force and effect subject to the variations provided for in the Moneytech Variation Deed (clause 6.1), which include a reduction in the facility limit to \$5,000,000 and an increase in the “Monthly Service Fee” to \$25,000 (clause 1.1);
- (b) the Administrators are personally liable for Designworks’ obligations in respect of “Financial Accommodation” provided by Moneytech to Designworks during the Administration Period (clause 3.3(e));
- (c) any interest (including any right of indemnity or lien) which the Administrators have or may obtain in any Debts is subordinated to Moneytech’s interest under the Moneytech Agreement and Moneytech Security (clause 3.3(g));
- (d) the Administrators must pay Moneytech a \$50,000 continuation fee (clause 5.1);
- (e) the Administrators indemnify Moneytech against any liability, expense or loss that Moneytech may suffer or incur due to Designworks’ failure to perform its obligations under the Moneytech Agreement, with the indemnity limited to the amounts which the Administrators are able to recover pursuant to their lien under section 443F of the Act (clause 4.1); and
- (f) the Administrators’ liability in respect of all liabilities, expense or loss arising out of the Variation Deed is limited to the amount which the Administrators are able to recover pursuant to their lien under section 443F of the Act, except with respect to negligence, fraud, breaches of the duty to act in good faith or any other contraventions of the law (clause 4.2).

A copy of the Moneytech Variation Deed is at Tab 9 of SGL-1.

- 38 The Administrators subsequently sought orders in the Federal Court of Australia to give effect to the limitation of their personal liability in clauses 4.1 and 4.2 of the Moneytech Variation Deed, discussed further at paragraphs 69-70 below.

Background to the appointment of the Administrators

- 39 In the three-year period prior to our appointment, the PAS Group Companies experienced:

- (a) an ongoing decline in EBITDA, with reported EBITDA of:



- (i) \$11,307,000 in FY18;
 - (ii) \$6,405,000 in FY19, and
 - (iii) \$672,000 for the 11 months prior to end of May 2020;
 - (b) a decrease in net asset position from \$122,300,000 at 30 June 2018 to \$115,200,000 at 29 May 2020; and
 - (c) an increase in borrowings between 30 June 2019 and 29 May 2020, due to a drawdown of \$10,800,000 from the secured financing facilities (comprising approximately \$7,000,000 drawn down under the CBA Facility and the remaining \$3,800,000 drawn down under the Moneytech Agreement).
- 40 Section 6 of the Report to Creditors at Tab 10 of SGL-1 describes the PAS Group Companies' financial position in further detail. Copies of the PAS Group Annual Reports for the financial years ending 30 June 2018 and 30 June 2019 (containing audited financial statements for PAS Group and its controlled entities), and the interim financial report for the half year ended 31 December 2019, are at Tabs 11-13 of SGL-1.
- 41 In June 2019, the PAS Group Companies began to explore recapitalisation options to repay and refinance the CBA Facility, which was due to expire on 9 January 2020. A deed of amendment to the CBA Facility was subsequently executed on 17 December 2019, extending the terms of the CBA Facility to 31 August 2020. In addition, the PAS Group Companies entered into the Moneytech Agreement, which matures on 16 December 2021.
- 42 On 24 February 2020, at the time of reporting results for the half year ended 31 December 2020, PAS Group announced that the Board was undertaking a strategic review of the business and that it would provide an update to the market at the end of the financial year. A copy of the PAS Group's FY2020 Half Year Results Announcement is at Tab 14 of SGL-1.
- 43 In the first quarter of 2020, the PAS Group Companies experienced a challenging retail environment attributable to the COVID-19 pandemic, which:
- (a) significantly disrupted the production and delivery of orders for the PAS Group Companies' wholesale and retail businesses, due to factory and port closures caused by the imposition of quarantine restrictions; and

- (b) led to the closure of retail stores and concessions in Australia, and retail stores in New Zealand, as a result of Government-mandated lockdown measures.

Section 7.2 of the Report to Creditors at Tab 10 of SGL-1 contains a February to March year-on-year revenue comparison for FY19 and YTD20 showing the detrimental impact of the COVID-19 pandemic on the PAS Group Companies' retail and wholesale revenue.

- 44 As a result of the operational disruptions caused by COVID-19, the PAS Group Board decided to accelerate the strategic review process. In late March 2020, the PAS Group Companies engaged PwC to assist with a review and assessment of restructuring options prepared by management.
- 45 On 27 March 2020, PAS Group issued a "COVID-19 Update" to the ASX in which it announced:
- (a) it would temporarily suspend all operations in its "bricks-and-mortar stores" in Australia with effect from close of business that day;
 - (b) online stores across all brands would remain open; and
 - (c) all employees affected by the store closures and a large number of office support staff would be stood down whilst PAS Group took "necessary steps to reduce costs of doing business".

A copy of the ASX announcement is at Tab 15 of SGL-1.

- 46 On 23 April 2020, PAS Group requested its securities be temporarily placed in trading halt pending its release of an announcement to the market. A copy of that ASX announcement is at Tab 16 of SGL-1.
- 47 On 27 April 2020, PAS Group issued an announcement to the ASX concerning the acceleration of the strategic review process and the Board's continued pursuit of restructuring options in consultation with its advisers. A copy of the ASX announcement is at Tab 17 of SGL-1.
- 48 On 8 May 2020, PAS Group issued a further "COVID-19 Update" to the ASX in which it announced:
- (a) it had made the decision to begin progressively re-opening Australian stores, with the intention of re-opening stores by the end of May; and



- (b) its New Zealand stores would remain closed until such time as the New Zealand Government lifted restrictions.

A copy of the ASX announcement is at Tab 18 of SGL-1.

- 49 On or about 27 May 2020, Review's 57 Myer concessions reopened when Myer stores recommenced trading.
- 50 During May 2020, PwC worked with the PAS Group Companies to prepare plans for either a solvent restructure contingent on a successful capital raising, or a potential voluntary administration in the event a capital raising did not proceed. At a meeting on 28 May 2020, the Board of PAS Group determined that a large injection of funding was required to effect a restructure of the business outside of a voluntary administration process, and that such a source of funding was unable to be procured.

Voluntary administration

- 51 On 29 May 2020, the Board of Directors of each of the PAS Group Companies resolved pursuant to section 436A of the Act to appoint Mr Ford, Mr McEvoy and me as Administrators. A copy of the ASX announcement issued on 29 May 2020 in relation to our appointment is at Tab 19 of SGL-1.
- 52 Copies of the Administrators' instruments of appointment lodged with ASIC for each of the PAS Group Companies are at Tabs 20 to 38 of SGL-1, as set out below:

Entity (all subject to deed of company arrangement)	ACN	Tab
The PAS Group Limited	169 477 463	20
AFG Retail Pty Limited	133 613 251	21
Black Pepper Brands Pty Limited	112 065 559	22
Bondi Bather Pty Limited (since renamed The PAS Group Distribution Company Pty Limited)	620 985 864	23
Chestnut Apparel Pty Limited	112 091 522	24
Designworks Clothing Company Pty Limited	117 343 807	25
Designworks Holdings Pty Limited	113 900 057	26
Fiorelli Licensing Pty Limited	122 295 827	27
JETS Swimwear Pty Limited	068 819 581	28
Metpas Pty Ltd	127 957 653	29
PAS Finance Pty Ltd	169 478 291	30
PASCO Group Pty Ltd	117 244 943	31

Adam McEvoy

R Long

PASCO Operations Pty Ltd	112 078 547	32
Review Australia Pty Limited	122 295 836	33
The Capelle Group Pty Limited	121 867 641	34
The Hopkins Group Aust Pty Limited	119 023 273	35
World Brands Pty Ltd	075 219 135	36
Yarra Trail Holdings Pty Limited	110 901 561	37
Yarra Trail Pty Limited	110 902 102	38

53 The Administrators have established a website concerning the administration of the PAS Group Companies, through which we disseminate information to shareholders, employees, noteholders and creditors, and their representatives (**PAS Administration Website**). The PAS Administration Website can be accessed using the following link: <https://insolvency.pwc.com.au/groupEntityCases/the-pas-group-ltd-and-associated-entities-all-administrators-appointed/casePage>.

54 On 1 June 2020, the Administrators uploaded an Initial Notice to Creditors to the PAS Administration Website, which contained, amongst other things:

- (a) a notice of the first meetings of creditors of the PAS Group Companies to be held concurrently on 11 June 2020 (**First Creditors' Meeting**);
- (b) an Initial Remuneration Notice; and
- (c) a Declaration of Independence, Relevant Relationships and Indemnities (**DIRRI**).

A copy of the Initial Notice to Creditors is at Tab 39 of SGL-1.

Court orders relating to conduct of administration and Administrators' liability to the CBA

55 On 4 June 2020, the Administrators filed an originating process in the Federal Court of Australia seeking orders pursuant to sections 443B(8) and 447A of the Act, and section 90-15 of the Insolvency Practice Schedule (Corporations), in relation to matters including:

- (a) electronic provision of notices to creditors;




- (b) the establishment of a single committee of inspection in respect of the PAS Group Companies;
- (c) the period of time in which the Administrators were:
 - (i) not personally liable for any liability with respect to property leased, used or occupied by the PAS Group Companies;
 - (ii) able to determine not to propose to exercise rights in relation to a property under section 443B(3) of the Act; and
- (d) the limitation of the Administrators' personal liability for debts incurred by the PAS Group Companies in respect of loan, credit card and merchant facilities with the CBA (being the CBA Facility and MFA).

56 On 9 June 2020, Justice O'Callaghan made orders in Federal Court of Australia proceeding number VID 379 of 2020 (**9 June Orders**), including an order (**Standstill Order**) that the Administrators were not personally liable for any liability to lessors with respect to property leased, used or occupied by the PAS Group Companies in the period 29 May to 22 June 2020 inclusive (**Standstill Period**). A copy of Justice O'Callaghan's orders is at Tab 40 of SGL-1.

First Creditors' Meeting

57 On 9 June 2020, the Administrators uploaded to the PAS Administration Website a copy of the 9 June Orders and a notice concerning the following matters to be addressed at the First Creditors' Meeting:

- (a) the Administrators' intention to form a single committee of inspection (**COI**) in respect of PAS Group, which it was proposed would operate as if it was a COI for each of the PAS Group Companies;
- (b) the Administrators' recommendation that creditors of the remaining PAS Group Companies not establish a COI for those PAS Group Companies; and
- (c) the individuals and companies the Administrators proposed to be nominated for election to the COI, and any creditor's entitlement to seek nomination to the COI at the First Creditors' Meeting.

A copy of the notice is at Tab 41 of SGL-1.



- 58 On 10 June 2020, the Administrators caused Link Market Services Ltd (**Link**), the manager of PAS Group's share register, to send a communication to known creditors of the PAS Group Companies to provide notice of the 9 June Orders and the resolutions the Administrators intended to propose at the First Creditors' Meeting. A copy of the communication to creditors is at Tab 42 of SGL-1.
- 59 The First Creditors' Meeting was held on 11 June 2020. The meeting was convened electronically using a video conference facility, due to the enforcement of social distancing measures in Victoria in response to COVID-19.
- 60 I acted as chairperson of the First Creditors' Meeting. 179 creditors attended (either in person or by proxy). A copy of the minutes of the First Creditors' Meeting is at Tab 43 of SGL-1.
- 61 At the First Creditors' Meeting, the creditors of the PAS Group Companies resolved to form a single COI for PAS Group, comprising:
- (a) a representative of Moneytech;
 - (b) a representative of the CBA;
 - (c) a representative of the Deputy Commissioner of Taxation;
 - (d) a representative of Scentre Group;
 - (e) a representative of Vicinity Centres;
 - (f) Sheridan Roworth, an employee representative for PAS Group;
 - (g) Rachel Digby, an employee representative for Black Pepper;
 - (h) Karen Brewster, an employee representative for Review;
 - (i) Patrick Burris, an employee representative for Yarra Trail;
 - (j) Darren Stephen, an employee representative for Designworks and JETS Swimwear;
 - (k) Marcus Crowe, an employee representative for PAS Group; and
 - (l) Brooke Norton, an employee representative for Designworks.



Court orders regarding extension of convening period for second meetings of creditors

- 62 On 19 June 2020, the Administrators filed an originating process in the Federal Court of Australia seeking orders pursuant to sections 439A and section 447A of the Act, and section 90-15 of the Insolvency Practice Schedule (Corporations), to extend the convening period for the second creditors' meetings of the PAS Group Companies (**Second Creditors' Meeting**).
- 63 The Administrators sought an extension of time to hold the Second Creditors' Meeting in order to continue trading the PAS Group Companies' business during the convening period, with a view to the Administrators conducting and concluding an orderly Sale Campaign and thereby maximising the chances of the PAS Group Companies, or their business, continuing in existence.
- 64 On 22 June 2020, Justice O'Callaghan made orders in Federal Court of Australia proceeding number VID 379 of 2020 extending the convening period for the Second Creditors' Meeting of the PAS Group Companies to midnight on 29 September 2020. A copy of Justice O'Callaghan's orders is at Tab 44 of SGL-1.

Court proceeding regarding rent payable during Standstill Period

- 65 In the originating process filed in the Federal Court of Australia on 19 June 2020, the Administrators also sought, relevantly, a declaration pursuant to section 90-15 of the Insolvency Practice Schedule (Corporations) that rent payable by the PAS Group Companies in respect of the Standstill Period constitutes an unsecured debt or claim which is not entitled to priority over other debts or claims against the PAS Group Companies pursuant to section 556(1) of the Act (**Rent Proceeding**).
- 66 The Administrators commenced the Rent Proceeding to, amongst other reasons, prevent unfair prejudice to other creditors, such as employees, by treating rent payable by the PAS Group Companies during the Standstill Period as an expense of the administrations (which would mean payment of that rent would be afforded priority over payment of other creditors' claims, including employee entitlements).
- 67 The Rent Proceeding was heard by Justice O'Callaghan on 9 July 2020. Scentre Management Limited was joined to the proceeding by consent to represent the interests of all landlords of the PAS Group Companies affected by the Standstill Order and the relief sought by the Administrators in the Rent Proceeding.

- 68 On 21 July 2020, Justice O’Callaghan delivered judgment in Federal Court of Australia proceeding number VID 432 of 2020, holding that the rent payable in respect of the Standstill Period constituted an expense properly incurred by the Administrators and should be afforded priority for payment under section 566(1)(a) of the Act. A copy of Justice O’Callaghan’s orders in the Rent Proceeding is at Tab 45 of SGL-1.

Court orders concerning Administrators’ liability to Moneytech

- 69 On 12 August 2020, the Administrators filed an interlocutory process in the Federal Court of Australia seeking relief from personal liability in relation to debts incurred under the Moneytech Agreement and the Moneytech Variation Deed.
- 70 On 14 August 2020, Justice O’Callaghan made orders relieving the Administrators of personal liability for any debts incurred to Moneytech in connection with the Moneytech Agreement, any “Transaction Document” defined in the Moneytech Agreement, and the Moneytech Variation Deed, to the extent that the property of Designworks was insufficient to satisfy the debts and liabilities incurred by the Administrators. A copy of Justice O’Callaghan’s orders is at Tab 46 of SGL-1.

Creditors of the PAS Group Companies

- 71 At the date of our appointment, we estimated approximately \$57.6 million was owing to creditors of the PAS Group Companies. Since our appointment, the quantum of outstanding creditor claims has been reduced by way of duress payments, the payment of a dividend to the CBA and the clearing of outstanding debt to Moneytech. Accordingly, we now estimate approximately \$48.6 million is owed to the creditors of the PAS Group Companies.
- 72 The main categories of creditor claims are secured creditors, employee entitlements and unsecured creditors. The following information was disclosed in Section 4.6 of the Report to Creditors, concerning creditors’ claims. Where applicable, any post-appointment updates to that information are noted.

Secured creditors

- 73 The two largest secured creditors of the PAS Group Companies are the CBA and Moneytech.
- 74 At the date of our appointment, the PAS Group Companies owed approximately \$4.026 million under the CBA Facility, and \$3.83 million under the Moneytech Agreement.



- 75 These outstanding amounts have since been revised, such that approximately \$3.776 million is currently owed to the CBA, and the pre-appointment debt under the Moneytech Agreement has been paid. The Designworks business has, however, continued to incur post-appointment liabilities to Moneytech.
- 76 Each of the PAS Group Companies has granted a security interest to CBA and Moneytech pursuant to the following financing and security documents:
- (a) CBA Facility (Tab 6 of SGL-1);
 - (b) Amendment Deed (Tab 7 of SGL-1);
 - (c) General Security Deed between the PAS Group Companies (excluding Bondi Bather Pty Limited ACN 620 985 864 (**Bondi Bather**)) and CBA (Tab 47 of SGL-1);
 - (d) General Security Deed between Bondi Bather and CBA (Tab 48 of SGL-1);
 - (e) Moneytech Agreement (Tab 8 of SGL-1);
 - (f) Moneytech Variation Deed (Tab 9 of SGL-1);
 - (g) Moneytech Guarantee and Indemnity Agreement (Tab 49 of SGL-1); and
 - (h) Moneytech Security (Tab 50 of SGL-1).

Employee entitlements

- 77 As noted above, at the date of our appointment, the PAS Group Companies employed approximately 1,200 employees across Australia and 80 employees in New Zealand.
- 78 Our investigations to date reveal:
- (a) outstanding priority employee entitlements at the date of our appointment in the amount of \$4,323,810, mainly comprising accrued annual leave and long service leave; and
 - (b) contingent employee liabilities (comprising payment in lieu of notice (**PILN**) and redundancy pay) around the date of our appointment of approximately \$11,290,682.

Attachment *R Long*

Unsecured creditors

79 At the date of our appointment, the PAS Group Companies' unsecured creditor claims totalled \$44,171,697, comprising:

- (a) trade/external creditors: \$20,699,095;
- (b) contingent landlord claims: \$19,861,823; and
- (c) the Australian Taxation Office: \$3,610,779.

80 I observe that of the \$44,171,697 owing to unsecured creditors at that time, approximately \$42,411,000, being approximately 96% of the total amount, was owed by companies subject to the DOXG, referred to at paragraphs 22-23 above.

81 As a result of duress payments made by the Administrators since our appointment, the amount owing to trade/external creditors has reduced to approximately \$15.946 million.

Sale Campaign

82 Based on our review of the business and operations of the PAS Group Companies, we formed the view that a sale of the PAS Group Companies, or the individual businesses carried on by the PAS Group Companies, was in the best interests of creditors.

83 Accordingly, shortly after our appointment, we commenced a campaign seeking expressions of interest for a potential sale and/or recapitalisation of the PAS Group Companies (**Sale Campaign**).

84 We engaged additional staff from PricewaterhouseCoopers Securities Ltd's Mergers and Acquisitions Division to assist with the conduct of the Sale Campaign.

85 During the Sale Campaign, we decided to continue trading the PAS Group Companies on a "business as usual" basis.

86 The Administrators placed advertisements in the *Australian Financial Review* on 4 June and 9 June 2020, calling for the submission of expressions of interest (**EOI**) in the Sale Campaign. The EOIs were due by 12 June 2020. Copies of the EOI advertisements are at Tabs 51 and 52 of SGL-1.

87 During the Sale Campaign:

- (a) the Administrators received 50 EOIs;



- (b) an information memorandum was prepared and distributed to 45 parties;
- (c) PwC established a dataroom containing documents required for potential purchasers to conduct due diligence on the PAS Group Companies;
- (d) the Administrators received non-binding indicative offers (**NBIOs**) from 15 parties;
- (e) after reviewing and assessing the NBIOs, the Administrators invited several parties to undertake due diligence and submit a final offer by 20 July 2020; and
- (f) the Administrators received indicative offers from two parties that were considered credible and capable of completion.

88 The Administrators ultimately determined that a “whole of Group” offer received from QLC presented the best alternative of the offers received during the Sale Campaign.

89 QLC is a Melbourne-based private equity investment firm which operates as the private investment arm of the LK Group. The LK Group is a Melbourne-based family of private companies founded by Larry Kestelman which holds interests in the property, technology, human resources, business transformation and outsourcing, digital animation and sports sectors. Larry Kestelman is the chair of QLC and the controller of Cannes Management Pty Ltd which, as noted above, currently holds 10.1% of the issued shares in PAS Group.

90 I intend to swear an additional affidavit in support of this application setting out further details regarding the Sale Campaign and the offers received by the Administrators.

Sale of JETS Swimwear business

91 Whilst the Sale Campaign was on foot, on 7 August 2020 the Administrators entered into an agreement with Seafolly Holdings Pty Ltd ACN 602 624 466 (**Seafolly**) for the sale of the assets of the JETS Swimwear business (including its brand name, inventory and intellectual property). At the time of entry into that agreement, Seafolly was under voluntary administration.

92 The Administrators believed that the JETS Swimwear business was not integral to the main offers received in the Sale Campaign and that its assets could therefore be transacted separately.

Affirmation/Declaration *Q Langley*

- 93 As disclosed in Section 5.2.2 of the Report to Creditors, pursuant to the agreement reached with Seafolly, seven JETS Swimwear employees were offered ongoing roles (including preservation of their employee entitlements). We consider this to be a positive outcome for the JETS Swimwear business.

Report to Creditors

- 94 On 7 August 2020, the Administrators issued the Report to Creditors (see Tab 10 of SGL-1).
- 95 The Report to Creditors contained details of the Second Creditors' Meeting to be held on 17 August 2020, including how to participate and submit votes at the meeting.
- 96 On 7 August 2020, the Administrators also uploaded to the PAS Administration Website a notice to creditors which:
- (a) advised the Report to Creditors was available for download from the PAS Administration Website; and
 - (b) provided details of the voting process for the Second Creditors' Meeting and strongly recommended that all creditors submit votes prior to the meeting.

A copy of the notice to creditors is at Tab 53 of SGL-1.

- 97 In the Report to Creditors, the Administrators recommended that it was in creditors' interests to vote in favour of each of the PAS Group Companies executing the proposed PAS DOCAs. The PAS DOCAs are described in further detail at paragraphs 107-114 below.
- 98 Section 2.4 of the Report to Creditors stated the following regarding the DOCA proposal:

By entering into the DOCAs on the terms set out in section 2.7 below, the Administrators consider that the structure will:

- *provide the best prospect of preserving ongoing employment for PAS Group staff and future trading opportunities for PAS Group suppliers;*
- and*



- *improve the prospects of achieving the highest sale price for the PAS Group companies or their businesses, and therefore the highest return for creditors.*

99 Section 2.7 of the Report to Creditors stated that under the proposed “Transaction Support and Distribution” DOCA structure:

- a. 18 companies will enter into identical DOCAs empowering the deed administrators to transfer assets and novate (or extinguish) liabilities between those companies to facilitate one or more sale transactions (**Transaction Support DOCAs**); and*
- b. one company will enter a DOCA under which the proceeds of all realisations will be aggregated and distributed to creditors via a distribution fund (**Distribution DOCA**).*

100 The Report to Creditors also referred to the Administrators’ strategy of continuing to trade the PAS Group Companies on a “business as usual” basis, with the wholesale businesses continuing to trade as normal, and retail stores operating as normal (in accordance with any COVID-19 restrictions in force in Australia and New Zealand). Section 5.2.1 of the Report to Creditors noted that strategy had yielded positive outcomes for the PAS Group Companies to date:

This strategy has resulted in a strong trading performance and positive cash flow to date, enabling us to:

- *keep as many stores as possible open, while developing a store and overhead rationalisation plan with management*
- *avoid any employee redundancies. In June 2020, approximately 85% of the Group’s c. 1,180 employees were either actively employed or receiving the Federal Government’s Job Keeper payments, which the Group enrolled in prior to our appointment. The remaining employees were deemed ineligible for the program in accordance with the ATO’s instructions*
- *be flexible with retail operations and Head Office staffing despite COVID-19 restrictions, particularly given Melbourne’s Stage 3 (now Stage 4) lockdown*



- 101 In the Report to Creditors, Mr McEvoy, Mr Ford and I also expressed our opinion that:
- (a) in our preliminary view, prior to our appointment the PAS Group Companies were trading below expectations but did not appear to be insolvent (Section 7.4, page 36);
 - (b) in line with the assessment of the PAS Group Companies' directors, the PAS Group Companies' financial difficulties were attributable to operational disruptions caused by the COVID-19 pandemic, which were further compounded by an already challenging retail environment attributable to soft consumer sentiment (Sections 7.1-7.2, page 34);
 - (c) we expected the return to each creditor under a DOCA scenario was likely to be materially higher than a downside liquidation scenario and likely to be in line with our liquidation high case estimates (Section 2.8, page 10); and
 - (d) under the proposed DOCA structure, specifically the DOCA "waterfall" pursuant to which the Deed Administrators would make distributions to creditors, there would be insufficient realisations to make any distributions to shareholders (Section 9.2, page 46).
- 102 Section 10 of the Report to Creditors included the below table comparing the estimated returns to creditors under a "high" and "low" case liquidation scenario:

Affirmation/Chairman *R. Langley*

Creditor type	Liquidation High Cents in the dollar	Liquidation Low Cents in the dollar
Secured creditors (all Group companies)	100	100
Employees (all Group companies)	100	100
Unsecured creditors*		
YARRA TRAIL	1.8	0.1
BLACK PEPPER	19.0	3.9
DESIGNWORKS CLOTHING COMPANY	19.0	3.9
REVIEW	19.0	3.9
JETS	22.0	3.9
PASCO OPERATIONS	19.0	3.9
BONDI BATHER	0.0	0.0
PAS FINANCE	0.0	0.0
PASCO GROUP	0.0	0.0
DESIGNWORKS HOLDINGS	0.0	0.0
AFG RETAIL	0.0	0.0
CHESTNUT APPAREL	0.0	0.0
YARRA TRAIL HOLDINGS	0.0	0.0
CAPELLE GROUP	0.0	0.0
FIORELLI	0.0	0.0
METPAS	0.0	0.0
HOPKINS GROUP	0.0	0.0
WORLD BRANDS	0.0	0.0
PAS GROUP LIMITED	19.0	3.9

- 103 On 10 August 2020, the Administrators issued an ASX announcement for PAS Group informing the market that the Report to Creditors had been issued and providing notice and details of the Second Creditors' Meeting. A copy of the ASX announcement is at Tab 54 of SGL-1.

Second Creditors' Meeting

- 104 The Second Creditors' Meeting was held on 17 August 2020. Once again, the meeting was convened electronically using a video conference facility, due to the enforcement of social distancing measures in Victoria in response to COVID-19.
- 105 Martin Ford acted as chairperson of the Second Creditors' Meeting. Approximately 178 creditors attended the meeting (either in person or by proxy).
- 106 At the Second Creditors' Meeting, the creditors of the PAS Group Companies resolved to execute the PAS DOCAs. A copy of the minutes of the Second Creditors' Meeting is at Tab 55 of SGL-1.

Attorney General *R Long*

PAS DOCAs

- 107 As described in Section 2.7 of the Report to Creditors (see paragraph 99 above), the PAS DOCAs adopted a “Transaction Support and Distribution” DOCA structure, which would facilitate the conferral of broad powers on the Deed Administrators to arrange the PAS Group Companies’ assets and liabilities in a way that would optimise a proposed sale transaction.
- 108 Bondi Bather was designated the “Distribution Co” in respect of which the Administrators would execute the Distribution DOCA.
- 109 The remaining 18 PAS Group Companies would become parties to Transaction Support DOCAs.
- 110 In summary, the key features of the PAS DOCAs are as follows:
- (a) continuation of the voluntary administration enforcement moratorium and prohibition on share transfers in PAS Group until the PAS DOCAs terminate;
 - (b) extinguishment or novation of creditors’ claims under the Transaction Support DOCAs, entitling each creditor to submit a proof of debt for an equivalent claim under the Distribution DOCA;
 - (c) the grant of a range of broad powers to the Deed Administrators, including to, relevantly:
 - (i) sell or realise all the assets and undertakings of each PAS Group Company as the Deed Administrators think fit; and
 - (ii) transfer the shares, debentures or other interests of a PAS Group Company, subject to the Deed Administrators providing a written report to the PAS Group Creditors’ Committee prior to any share sale, in accordance with clause 7 of the PAS DOCAs;
 - (d) the Deed Administrators’ allocation of contracts between a creditor and a PAS Group Company to one of three categories, depending on whether the Deed Administrators would cause the contract to continue to be performed by a PAS Group Company on their current or amended terms as agreed by the parties, and if so, the terms and conditions on which it would be performed;
 - (e) continuation of the COI as the PAS Group Creditors’ Committee;



- (f) a requirement for the Deed Administrators to obtain the approval of the PAS Group Creditors' Committee of any sale transactions for Designworks, Review or Black Pepper;
 - (g) payments to creditors out of the Distribution Fund established under clause 13 of the Distribution DOCA, according to the order of priority set out in the "Waterfall" contained in clause 18.2 of the Distribution DOCA (which mirrors the order of priority set out in section 556 of the Act);
 - (h) when applying the Distribution Fund to admitted claims of unsecured creditors under the Waterfall, the Deed Administrators are to ensure no unsecured creditor of a PAS Group Company is materially or unfairly prejudiced when compared to the position they would have been in had they been proving in a liquidation of that PAS Group Company; and
 - (i) the PAS DOCAs' termination upon the earlier of liquidation, payment of all creditor entitlements, or the discretion of the Deed Administrators.
- 111 The PAS DOCAs were executed across 3 and 4 September 2020 and commenced operation on 4 September 2020. A copy of the executed Transaction Support DOCA in respect of PAS Group (the terms of which are identical to the Transaction Support DOCAs executed by the 17 other PAS Group Companies) is at Tab 56 of SGL-1. A copy of the Distribution DOCA executed by the Administrators and Bondi Bather is at Tab 57 of SGL-1.
- 112 On 7 September 2020, the Deed Administrators caused a letter to be uploaded to the PAS Administration Website informing creditors that:
- (a) the PAS DOCAs had been executed (enclosing a formal notice pursuant to section 450B of the Act); and
 - (b) the Deed Administrators would inform creditors in due course in respect of the timing and quantum of any future dividends.
- A copy of the letter to creditors is at Tab 58 of SGL-1.
- 113 On 7 September 2020, the Deed Administrators also issued an ASX announcement for PAS Group informing the market that the PAS DOCAs had commenced operation on 4 September 2020 and that the Administrators were "continuing to pursue the sale of the broader Group". A copy of the ASX announcement is at Tab 59 of SGL-1.



114 The Deed Administrators subsequently caused copies of the PAS DOCAs to be uploaded to the PAS Administration Website.

115 Since the execution of the PAS DOCAs:

- (a) as noted above, Bondi Bather's entity name was changed to The PAS Group Distribution Company Pty Ltd on 20 October 2020;
- (b) 12 of the PAS Group Companies which are parties to Transaction Support DOCAs remain dormant;
- (c) six of the PAS Group Companies which are parties to Transaction Support DOCAs have entered into asset sale agreements with entities associated with QLC for the acquisition of the Designworks and Yarra Trail businesses, described further in paragraph 117 below;
- (d) six of the PAS Group Companies which are parties to Transaction Support DOCAs, and The PAS Group Distribution Company Pty Ltd (Subject to Deed of Company Arrangement) (formerly Bondi Bather), have entered into an Implementation Deed with entities and persons associated with QLC, described further in paragraphs 117-118 below; and
- (e) the Deed Administrators have sought and obtained the necessary approval under the PAS DOCAs of the PAS Group Creditors' Committee for the sale of the Designworks, Review and Black Pepper businesses to entities and persons associated with QLC pursuant to the asset sale agreements and Implementation Deed described in subparagraphs (c) and (d) above.

A table summarising the status of each of the PAS Group Companies following execution of the PAS DOCAs is at Tab 60 of SGL-1.

Entry into Implementation Deed

116 On 20 September 2020, the Deed Administrators reached in principle agreement with QLC regarding the terms of a sale transaction, pursuant to which QLC would ultimately acquire ownership and control of the PAS Group Companies (and the overseas subsidiaries of PAS Group) through:

- (a) the acquisition of the Designworks and Yarra Trail businesses under asset sale agreements; and



- (b) the acquisition of the shares in PAS Group (whose assets comprise the Black Pepper and Review retail businesses, the other PAS Group Companies and the overseas subsidiaries of PAS Group) under a share sale agreement.
- 117 On 23 October 2020, the Deed Administrators and entities and persons associated with QLC entered into the following sale transactions:
- (a) asset sale agreements whereby QLC's nominees will acquire the Designworks and Yarra Trail businesses and the majority of their assets (**Asset Sale Agreements**); and
- (b) the Implementation Deed which, amongst other matters, provides for the potential sale of shares in PAS Group to QLC's nominee PAS Group International,
- (together, the **QLC Sale Transactions**).
- 118 Completion of the share sale in the Implementation Deed is subject to the satisfaction of certain conditions, including:
- (a) the Deed Administrators obtaining Court approval for the transfer of shares to PAS Group International in the Section 444GA Application; and
- (b) PAS Group International applying for and obtaining a grant from ASIC of such exemptions or modifications to the operation of Chapter 6 of the Act as required to permit the transfer of shares to PAS Group International pursuant to the Section 444GA Application and the Implementation Deed (**ASIC Relief Application**).
- 119 On 27 October 2020, PAS Group published an announcement on the ASX concerning the Deed Administrators' entry into the QLC Sale Transactions (**Administration Update**). A copy of the Administration Update is at Tab 61 of SGL-1.
- 120 The following day, on 28 October 2020, the Deed Administrators caused a letter to be uploaded to the PAS Administration Website providing creditors with notice of the Administration Update (annexing a copy of the Administration Update) and the Deed Administrators' intention to make the Section 444GA Application. Creditors were advised that the Deed Administrators would send separate correspondence to shareholders regarding the Section 444GA Application in due course. A copy of the letter to creditors is at Tab 62 of SGL-1.



Consequences if the Section 444GA Application is unsuccessful

- 121 Should the Section 444GA Application (and consequently the ASIC Relief Application) not succeed, the Implementation Deed grants PAS Group International options to:
- (a) instruct the Deed Administrators to commence a managed wind down of the PAS Group Companies' remaining businesses (**Managed Wind Down**); or
 - (b) complete an asset sale agreement for all or part of the assets of the PAS Group Companies pursuant to which PAS Group International:
 - (i) may elect what assets it acquires which relate to or are used in connection with the PAS Group Companies' remaining businesses; and
 - (ii) will bear the costs of the managed wind down of those parts of the PAS Group Companies' business it opts not to acquire.
- 122 Should none of the QLC Sale Transactions complete, we expect the remaining PAS Group Companies would enter liquidation, involving a complete wind down of those businesses. We expect any liquidation of the PAS Group Companies would involve:
- (a) closure of the PAS Group Companies' retail businesses;
 - (b) exit and early termination of the leases for all retail stores and the head office property;
 - (c) redundancy of all employees of the PAS Group Companies, including both retail store and head office employees;
 - (d) unsecured creditors of the PAS Group Companies receiving distributions of between approximately 0 and 21 cents in the dollar, save for unsecured creditors of the JETS Swimwear business who are estimated to receive between approximately 30 and 33 cents in the dollar and unsecured creditors of the Yarra Trail business who are estimated to receive between approximately 0 and 2 cents in the dollar; and
 - (e) shareholders of the PAS Group Companies receiving no distribution.

Attorney General *R. Long*

Estimated returns to creditors

123 The Deed Administrators have prepared the below table comparing estimated returns to creditors of the PAS Group Companies under the following scenarios:

- (a) completion of the QLC Sale Transactions, including the transfer of PAS Group's shares to PAS Group International under section 444GA of the Act in accordance with the terms of the Implementation Deed (shown in the "Sale" column);
- (b) the Asset Sale Agreements complete but the Section 444GA Application fails, meaning the Managed Wind Down would be conducted under the terms of the Implementation Deed (shown in the "Managed Wind Down" column); and
- (c) liquidation, where none of the QLC Sale Transactions complete, involving a managed wind down of the PAS Group Companies' remaining businesses and a "high" or "low" estimated return based on the extent of wind down costs borne by the Deed Administrators and the quantum of outstanding creditor claims (shown in the "Liquidation" column).

Estimated c/\$ return to unsecured creditors	Sale	Managed Wind Down	Liquidation
YARRA TRAIL	60 to 80	25 to 35	0 to 2
BLACK PEPPER	60 to 80	25 to 35	0 to 21
DESIGNWORKS CLOTHING COMPANY	60 to 80	25 to 35	0 to 21
REVIEW	60 to 80	25 to 35	0 to 21
JETS	60 to 80	25 to 35	30 to 33
PASCO OPERATIONS	-	-	-
BONDI BATHER	-	-	-
PAS FINANCE	-	-	-
PASCO GROUP	-	-	-
DESIGNWORKS HOLDINGS	-	-	-
AFG RETAIL	-	-	-
CHESTNUT APPAREL	-	-	-
YARRA TRAIL HOLDINGS	-	-	-
CAPELLE GROUP	-	-	-
FIORELLI	-	-	-
METPAS	-	-	-
HOPKINS GROUP	-	-	-
WORLD BRANDS	-	-	-
PAS GROUP LIMITED	60 to 80	25 to 35	0 to 20

124 The "Liquidation" scenario above assumes the assets of each company which is a party to the DOXG are pooled and available to satisfy the aggregated claims against the



DOXG companies. Neither JETS Swimwear nor Yarra Trail are parties to the DOXG. Accordingly, the estimated returns to unsecured creditors of those companies are based on the realisation of those companies' assets only.

125 In our view, the "Sale" scenario above, which would involve, amongst other matters, the transfer of PAS Group's shares to PAS Group International if the necessary approvals of the Section 444GA Application and ASIC Relief Application are obtained, would produce the highest estimated return to creditors of the PAS Group Companies.

126 We also note there is a difference in the estimated return to creditors under the "Managed Wind Down" and "Sale" scenarios above of approximately 35-45 cents in the dollar. In our view, that represents the value to creditors of the transfer of PAS Group's shares to PAS Group International completing in accordance with the terms of the Implementation Deed, if the necessary approvals are obtained for the Section 444GA Application and the ASIC Relief Application.

Value of PAS Group shares

127 We note the following matters in relation to the value of PAS Group's shares:

- (a) trading of PAS Group's shares on the ASX was suspended upon our appointment on 29 May 2020;
- (b) PAS Group shares last traded publicly at a price per share of 5.2 cents and previously traded at a maximum of \$1.12 per share;
- (c) QLC's "whole of Group" offer was the preferred proposal received during the Sale Campaign;
- (d) we have not received any subsequent proposal for the sale and/or recapitalisation of the PAS Group Companies;
- (e) further to (d) above, we received no credible proposal capable of execution during the Sale Campaign for the recapitalisation of the PAS Group Companies, which would have enabled the PAS Group Companies to continue to trade in accordance with their pre-administration business structure;
- (f) if the QLC Sale Transactions are effectuated, we expect unsecured creditors will receive a return of between 60 to 80 cents in the dollar. The factors which




we had regard to when determining this range, which will affect final creditor returns, include:

- (i) the final quantum of secured and unsecured creditor claims; and
 - (ii) contingencies related to debtor collections;
- (g) under a scenario where a Managed Wind Down is completed in accordance with the terms of the Implementation Deed, we expect unsecured creditors will receive a return of between 25 to 35 cents in the dollar;
- (h) under an alternative liquidation scenario, we expect unsecured creditors will receive a return of between 0 and 21 cents in the dollar, save for unsecured creditors of the JETS Swimwear business who are estimated to receive between approximately 30 and 33 cents in the dollar and unsecured creditors of the Yarra Trail business who are estimated to receive between approximately 0 and 2 cents in the dollar; and
- (i) in our opinion, there will be no return for shareholders of PAS Group under any of the above scenarios.

128 The Deed Administrators have retained and briefed Leadenhall Corporate Advisory Pty Ltd to prepare an independent expert report on the value of the equity in PAS Group (**Independent Expert's Report**) for the purposes of the Section 444GA Application.

Section 444GA(3) – no unfair prejudice to members

129 The Deed Administrators understand that the Court will not grant leave under section 444GA(1)(b) of the Act for the transfer of all shares in PAS Group to PAS Group International unless the Court is satisfied that transfer would not unfairly prejudice the interests of the members of PAS Group.

130 Having regard to the investigations undertaken to date, and the matters outlined in paragraph 127 above, the Deed Administrators believe the transfer of PAS Group shares to PAS Group International, as provided in the Implementation Deed, will not cause unfair prejudice to PAS Group members for the following reasons:

- (a) in our opinion, PAS Group's shares currently do not have any value; and
- (b) in our opinion, there will be no return for shareholders of PAS Group under any of the "Sale", "Managed Wind Down" or "Liquidation" scenarios discussed in



paragraph 127 above, as we do not expect unsecured creditor claims to be satisfied in full under any of those scenarios.

ASIC Relief Application

131 I am informed by Michelle Chan of Minter Ellison, the solicitors acting for QLC, that on 20 November 2020 Minter Ellison submitted the ASIC Relief Application on behalf of PAS Group International online via the ASIC Regulatory Portal. The ASIC Relief Application enclosed copies of the following documents:

- (a) a draft of the Independent Expert's Report; and
- (b) a draft of the Explanatory Statement to be provided to shareholders of PAS Group to inform them of the Section 444GA Application and the ASIC Relief Application.

132 I am also informed by Michelle Chan of Minter Ellison that on 23 November 2020, Minter Ellison received an email from ASIC referring to the ASIC Relief Application and noting that ASIC will endeavour to provide an in-principle decision by 3 December 2020.

Notice to ASIC

133 We intend to provide a copy of this application and any supporting affidavits to ASIC.

Notice to PAS Group shareholders and creditors

134 We intend to give notice of this application to all shareholders and creditors of PAS Group.

135 The Deed Administrators intend to send a notice to members and creditors of PAS Group (a draft of which is at Tab 63 of SGL-1) (**Notice**) which will:

- (a) explain the background to and purpose of the Section 444GA Application, and the effect it will have on members of PAS Group;
- (b) explain the process for opposing the Section 444GA Application if any member or creditor wishes to do so;



(c) advise members and creditors of their ability to access copies of the following documents from the PAS Administration Website, the PAS Group website and the ASX website:

- (i) an Explanatory Statement, which will:
 - (A) provide further detail regarding the Section 444GA Application process and its consequences and how a party may object to it;
 - (B) explain the requirement for PAS Group International to make the ASIC Relief Application;
 - (C) annex a copy of the Independent Expert's Report and the originating process documents for the Section 444GA Application;
- (ii) the Independent Expert's Report; and
- (iii) certain non-confidential documents filed in the Section 444GA Application, when they become available.

136 We propose to send the Notice to members and creditors of PAS Group by:

- (a) sending the Notice by email to the email address of each member and creditor that is provided to the Deed Administrators, or that is recorded in the books and records of PAS Group;
- (b) where an email address has not been provided or is not recorded in the books and records of PAS Group, sending the Notice by post to the postal address of each member and creditor that is recorded in the books and records of the PAS Group;
- (c) publishing the Notice on the PAS Administration Website and PAS Group website; and
- (d) including the Notice in an ASX Announcement.

137 We will also make available on the PAS Administration Website and the PAS Group website copies of the originating process documents and any orders made by the Court in respect of the Section 444GA Application.

Share transfer form

138 As noted above, one of the orders sought by the Deed Administrators in the originating process is an order pursuant to section 447A(1) of the Act and/or section 90-15(1) of the Insolvency Practice Schedule enabling any of the Deed Administrators to jointly or severally execute on behalf of the members of PAS Group share transfer forms and any other documents ancillary or incidental to effecting the transfer of PAS Group shares to PAS Group International in accordance with the terms of the Implementation Deed.

139 A draft share transfer form is at Tab 64 of SGL-1.

Urgency of application

140 As noted in paragraph 118 above, completion of the share sale in the Implementation Deed is subject to certain conditions, relevantly:

- (a) the Deed Administrators obtaining Court approval of the Section 444GA Application; and
- (b) PAS Group International obtaining the relief sought in the ASIC Relief Application.

141 The Implementation Deed requires the necessary approvals for the Section 444GA Application and ASIC Relief Application to be obtained as soon as reasonably practicable and in any event before 5.00pm on the "Sunset Date", being 31 January 2021 (or such other date as agreed by the parties to the Implementation Deed in writing).

142 Mr McEvoy, Mr Ford and I request that this application be determined on an expedited basis to enable satisfaction of the relevant conditions for completion of the share sale in the Implementation Deed on or before the Sunset Date.

143 Effectuation of the QLC Sale Transactions, including the share sale in the Implementation Deed, is necessary in order to:

- (a) facilitate QLC's investment in, and acquisition of, PAS Group and the remaining businesses of the PAS Group Companies;
- (b) ensure the PAS Group Companies' remaining businesses remain viable and can continue to operate in a challenging retail environment;



- (c) facilitate payments to creditors of the PAS Group Companies under the PAS DOCAs as soon as practicable; and
- (d) provide greater certainty to employees, landlords and suppliers regarding the future of the PAS Group Companies.

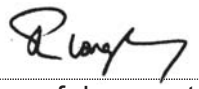
SWORN by the deponent

at Melbourne

in Victoria

on 27 November 2020 and signed by
electronic means

Before me, by audio visual link:



 Signature of deponent

Signature of witness on 27 November 2020 affixed by electronic means on an electronic copy of the affidavit.

In accordance with s 49E of the *Oaths and Affirmations Act 2018* (Vic), I confirm:

- (a) this affidavit as signed and notated by me, was signed by the deponent by electronic means;
- (b) this affidavit was signed and sworn in my presence by the deponent by means of audio visual link; and
- (c) this affidavit is an electronic copy, not an original.

Alexandra Jacinta Harrison-Ichlov

Arnold Bloch Leibler

Level 21, 333 Collins Street, Melbourne 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Victoria)

SCHEDULE

No. VID of 2020

Federal Court of Australia

District Registry: Victoria

Division: General

IN THE MATTER OF THE PAS GROUP LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 169 477 463

MARTIN FRANCIS FORD, STEPHEN GRAHAM LONGLEY AND DAVID LAURENCE MCEVOY, IN THEIR CAPACITY AS JOINT AND SEVERAL DEED ADMINISTRATORS OF THE PAS GROUP LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 169 477 463 AND EACH OF THE COMPANIES NAMED IN THE SCHEDULE

Plaintiffs

- 1 AFG Retail Pty Limited (Subject to Deed of Company Arrangement) ACN 133 613 251
- 2 Black Pepper Brands Pty Limited (Subject to Deed of Company Arrangement) ACN 112 065 559
- 3 The PAS Group Distribution Company Pty Ltd (Subject to Deed of Company Arrangement) ACN 620 985 864 (formerly Bondi Bather Pty Limited (Subject to Deed of Company Arrangement) ACN 620 985 864)
- 4 Chestnut Apparel Pty Limited (Subject to Deed of Company Arrangement) ACN 112 091 522
- 5 Designworks Clothing Company Pty Limited (Subject to Deed of Company Arrangement) ACN 117 343 807
- 6 Designworks Holdings Pty Limited (Subject to Deed of Company Arrangement) ACN 113 900 057
- 7 Fiorelli Licensing Pty Limited (Subject to Deed of Company Arrangement) ACN 122 295 827
- 8 JETS Swimwear Pty Limited (Subject to Deed of Company Arrangement) ACN 068 819 581

- 9 Metpas Pty Ltd (Subject to Deed of Company Arrangement) ACN 127 957 653
- 10 PAS Finance Pty Ltd (Subject to Deed of Company Arrangement) ACN 169 478 291
- 11 PASCO Group Pty Ltd (Subject to Deed of Company Arrangement) ACN 117 244 943
- 12 PASCO Operations Pty Ltd (Subject to Deed of Company Arrangement) ACN 112 078 547
- 13 Review Australia Pty Limited (Subject to Deed of Company Arrangement) ACN 122 295 836
- 14 The Capelle Group Pty Limited (Subject to Deed of Company Arrangement) ACN 121 867 641
- 15 The Hopkins Group Aust Pty Limited (Subject to Deed of Company Arrangement) ACN 119 023 273
- 16 World Brands Pty Ltd (Subject to Deed of Company Arrangement) ACN 075 219 135
- 17 Yarra Trail Holdings Pty Limited (Subject to Deed of Company Arrangement) ACN 110 901 561
- 18 Yarra Trail Pty Limited (Subject to Deed of Company Arrangement) ACN 110 902 102

Date: 27 November 2020