



**Ziera Retail Australia Pty Limited (Administrators Appointed)  
ACN 069 685 383 (Ziera)**

**Initial Information for Creditors**

Katherine Sozou and I were appointed Joint and Several Voluntary Administrators of Ziera on 24 September 2019.

We have been appointed to represent the interests of all creditors. We are responsible for taking control of Ziera's assets and business, investigating Ziera's affairs, reporting and providing recommendations to creditors as to the future of Ziera. We will also hold meetings of creditors to make decisions on the future of Ziera.

According to Ziera's records, you may be a creditor of Ziera.

The purpose of this document is to provide you with information about the Voluntary Administration (**VA**) and your rights as a creditor.

**Declaration of Independence, Relevant Relationships and Indemnities (DIRRI)**

We enclose our DIRRI. Our independent status and who appointed us is outlined in our DIRRI.

**What you should do**

You should:

- read the enclosed information;
- decide whether you are going to participate in the first meeting; and if so
- complete and return your proof of debt and proxy form (if required) by 4:00pm, Thursday, 3 October 2019.

**Meetings of creditors**

As Voluntary Administrators, we are required to hold two meetings of creditors.

***First meetings of creditors***

The first meeting of creditors will be held as follows:

Date: Friday, 4 October 2019

Time: 10:00am

Address: Wesley Conference Centre, 220 Pitt Street, Sydney NSW 2000

The purpose of this meeting is to consider:

- our appointment; and
- whether to appoint a Committee of Inspection (**COI**).

We enclose a notice of meeting. To participate in this meeting, you must submit a proof of debt and information to substantiate your claim. If the creditor is a person and will attend the meeting, this is all that is required. However, if the creditor is another type of entity (such as a company), they must also appoint a person – a "proxy" or person authorised under a power of attorney – to vote on behalf of the creditor at the meeting. A proxy should also be appointed if the creditor is a person, but is not available to attend the meeting.

You can appoint the chairperson of the meeting as your proxy and direct the chairperson how you wish your vote to be cast. If you choose to do this, the chairperson must cast your vote as directed.

Proof of debt and proxy forms are enclosed, together with guidance notes to assist you when you complete them. To ensure that the meeting is conducted as efficiently as possible, completed proof of debt and, if applicable, proxy forms must be returned to my office by post, fax or email by 4:00pm on Thursday, 3 October 2019.

We also enclose general information for attending and voting at meetings of creditors.



### ***Committee of Inspection***

At the first meeting, creditors will consider whether a COI should be appointed. The role of a COI is to consult with the Voluntary Administrators and receive reports on the conduct of the administration. A COI can also approve the Voluntary Administrators' fees.

It is our opinion that a COI would be useful to assist with the conduct of the voluntary administration. We enclose a copy of the information sheet "Committees of Inspection" issued by ARITA. You should consider whether you would like to act as a member of the COI, if one is appointed.

However, it is for creditors to decide if they would like to form a COI in this VA.

### ***Second meeting of creditors***

We will also in due course call a second meeting of creditors.

The purpose of the second meeting is for creditors to consider the Administrators report and make a decision on the future of Ziera.

Before that meeting you will be sent the notice of meeting and a detailed report which will set out the options for Ziera's future. We will also provide our opinion as to what option we think is in the best interests of creditors. You are encouraged to attend these meetings and participate in the VA process.

Question	Answer
<b>What is a voluntary administration?</b>	<p>A VA, is a process initiated by the directors of a company or a secured creditor of a company when they form the view the company is, or is likely to become, insolvent. 'Insolvent' means that the company is, or is likely to become, unable to pay its debts when they fall due. Less commonly, a VA is commenced by a liquidator of the company. In this case, the VA appointment was made by the Directors of Ziera.</p> <p>The objective of a VA is to preserve as much as possible of the business of the company or, if not, seek a better outcome for creditors than a liquidation of the company. The process involves the appointment of a voluntary administrator to the company to administer and investigate the business, property, affairs and financial circumstances of the company. A voluntary administrator must complete investigations, form an opinion about the company's financial position and its future and issue a detailed report to creditors of the company. Creditors are then given the opportunity to vote on the future of the company.</p>
<b>What are your rights as a creditor?</b>	<p>We enclose a copy of the information sheet "Creditor Rights in Voluntary Administrations" issued by the Australian Restructuring Insolvency &amp; Turnaround Association (<b>ARITA</b>). It includes information on your rights to:</p> <ul style="list-style-type: none"><li>▪ make reasonable requests for information;</li><li>▪ give directions to the Administrators;</li><li>▪ appoint a reviewing liquidator; and</li><li>▪ replace us as Administrators.</li></ul>



Question	Answer
<p><b>What happens to your debt?</b></p>	<p>All creditors of Ziera are now creditors in the VA and your debt will be dealt with in the VA.</p> <p>It is important to note that a VA creates restrictions on creditors being able to enforce their rights. You generally cannot enforce your claim, recover your property, enforce your security, commence an action to place the company into liquidation or act on a personal guarantee.</p> <p>If you have leased property to Ziera, have a retention of title claim or have a registered personal property security interest in relation to Ziera, please contact <a href="mailto:ZieraGeneral@mcgrathnicol.com">ZieraGeneral@mcgrathnicol.com</a> as soon as possible.</p> <p>We are continuing to trade the business. If you are an employee, you should have received a separate communication on how this appointment affects your ongoing dealings with Ziera. If you have not, please contact <a href="mailto:ZieraEmployees@mcgrathnicol.com">ZieraEmployees@mcgrathnicol.com</a>.</p>
<p><b>What is the cost of the voluntary administration?</b></p>	<p>We get paid out of Ziera's money, including realisations from assets or from money paid to us by others, such as Ziera's directors. If there is not enough money in the VA, we do not get paid in full.</p> <p>We enclose our Initial Remuneration Notice which provides you with information about how we propose to be paid for undertaking VA.</p> <p>We have not been provided with any indemnities or upfront payments for remuneration or costs associated with the conduct of these voluntary administrations.</p> <p>We will seek your approval of our remuneration at the second meeting of creditors, unless that remuneration is approved earlier by a COI (if one is appointed). We will provide you with detailed information about what tasks we have undertaken and the costs of those tasks</p>
<p><b>What happens next with the voluntary administration?</b></p>	<p>We will proceed with the voluntary administration, which will include:</p> <ul style="list-style-type: none"> <li>▪ trading the business;</li> <li>▪ potentially realising some or all of the assets of Ziera, where it is the most appropriate course of action;</li> <li>▪ exiting unprofitable stores;</li> <li>▪ dealing with interested parties (i.e. employees, suppliers, landlords, etc.)</li> <li>▪ preparing for and holding the meetings of creditors;</li> <li>▪ investigating the Ziera's affairs;</li> <li>▪ analysing any offer for a Deed of Company Arrangement that is proposed; and preparing our report to creditors.</li> </ul> <p>As discussed above, you will receive further correspondence from us before the second meeting of creditors.</p>
<p><b>Where can you get more information?</b></p>	<p>ARITA provides information to assist creditors to understand voluntary administrations and insolvency. This information is available from ARITA's website at <a href="http://www.arita.com.au/creditors">www.arita.com.au/creditors</a>.</p> <p>A copy of the information sheet, "Insolvency information for directors, employees, creditors and shareholders", issued by the Australian Securities and Investments Commission (<b>ASIC</b>) is also enclosed for your information.</p>



**Further information**

If you have any queries, please contact Adam Ryan at [ZieraGeneral@mcgrathnicol.com](mailto:ZieraGeneral@mcgrathnicol.com) or +61 2 9338 2615.

For further information about this engagement, please refer to the website <https://www.mcgrathnicol.com/creditors/ziera-retail-australia-pty-limited/>.

Dated: 27 September 2019

A handwritten signature in blue ink, appearing to read 'Shaun Fraser', written over a light blue grid background.

Shaun Fraser  
*Joint and Several Administrator*

Enclosures:

- 1 ARITA Information Sheet - Creditor Rights in Voluntary Administrations
- 2 Declaration of Independence, Relevant Relationships and Indemnities
- 3 Notice of Meeting
- 4 Proof of Debt (Form 535)
- 5 Proof of Debt Guidance Notes
- 6 Proxy Form
- 7 Proxy Form Guidance Notes
- 8 ARITA Information Sheet – Committees of Inspection
- 9 Initial Remuneration Notice

# Creditor Rights in Voluntary Administrations

As a creditor, you have rights to request meetings and information or take certain actions:



## Right to request information

Information is communicated to creditors in a voluntary administration through reports and meetings.

In a voluntary administration, two meetings of creditors are automatically held. You should expect to receive reports and notice of these meetings:

- The first meeting is held within 8 business days of the voluntary administrator's appointment. A notice of meeting and other information for this meeting will be issued to all known creditors.
- The second, or decision, meeting is usually held within 6 weeks of the appointment, unless an extension is granted. At this meeting, creditors will get to make a decision about the company's future. Prior to this meeting the voluntary administrator will provide creditors with a notice of the meeting and a detailed report to assist in making your decision.

Important information will be communicated to creditors prior to and during these meetings. Creditors are unable to request additional meetings in a voluntary administration.

Creditors have the right to request information at any time. A voluntary administrator must provide a creditor with the requested information if their request is 'reasonable', the information is relevant to the voluntary administration, and the provision of the information would not cause the voluntary administrator to breach their duties.

A voluntary administrator must provide this information to a creditor within 5 business days of receiving the request, unless a longer period is agreed. If, due to the nature of the information requested, the voluntary administrator requires more time to comply with the request, they can extend the period by notifying the creditor in writing.

## Requests must be reasonable.

### They are not reasonable if:

- (a) complying with the request would prejudice the interests of one or more creditors or a third party
- (b) the information requested would be privileged from production in legal proceedings
- (c) disclosure would found an action for breach of confidence
- (d) there is not sufficient available property to comply with the request
- (e) the information has already been provided
- (f) the information is required to be provided under law within 20 business days of the request
- (g) the request is vexatious

If a request is not reasonable due to (d), (e) or (f) above, the voluntary administrator must comply if the creditor meets the cost of complying with the request.

Otherwise, a voluntary administrator must inform a creditor if their information request is not reasonable and the reason why.

## Right to give directions to voluntary administrator

Creditors, by resolution, may give a voluntary administrator directions in relation to a voluntary administration. A voluntary administrator must have regard to these directions, but they are not required to comply with the directions.

If a voluntary administrator chooses not to comply with a direction given by a resolution of the creditors, they must document their reasons for not complying.

An individual creditor cannot provide a direction to a voluntary administrator.

## Right to appoint a reviewing liquidator

Creditors, by resolution, may appoint a reviewing liquidator to review a voluntary administrator's remuneration or a cost or expense incurred in a voluntary administration. The review is limited to:

- remuneration approved within the six months prior to the appointment of the reviewing liquidator, and
- expenses incurred in the 12 months prior to the appointment of the reviewing liquidator.

The cost of the reviewing liquidator is paid from the assets of the voluntary administration, in priority to creditor claims.

An individual creditor can appoint a reviewing liquidator with the voluntary administrator's consent, however the cost of this reviewing liquidator must be met personally by the creditor making the appointment.

## Right to replace voluntary administrator

At the first meeting, creditors have the right to remove a voluntary administrator and appoint another registered liquidator to act as voluntary administrator.

A creditor must ensure that they have a consent from another registered liquidator prior to the first meeting if they wish to seek the removal and replacement of a voluntary administrator.

Creditors also have the opportunity to replace a voluntary administrator at the second meeting of creditors:

- If creditors vote to accept a proposed deed of company arrangement, they can appoint a different registered liquidator as the deed administrator.
- If creditors vote to place the company into liquidation, they can appoint a different registered liquidator as the liquidator.

It is however usual for the voluntary administrator to act as deed administrator or liquidator. It would be expected that additional costs would be incurred by an alternate deed administrator or liquidator to gain the level of knowledge of the voluntary administrator.

Like with the first meeting, a creditor must ensure that they have a consent from another registered liquidator prior to the second meeting if they wish to seek to appoint an alternative registered liquidator as deed administrator or liquidator.

**For more information, go to [www.arita.com.au/creditors](http://www.arita.com.au/creditors).  
Specific queries about the voluntary administration should be directed to the voluntary administrator's office.**



## **Declaration of Independence, Relevant Relationships and Indemnities (DIRRI)**

### **Ziera Retail Australia Pty Ltd (Administrators Appointed) ACN 069 685 383 (Ziera)**

The *Corporations Act 2001 (the Act)* and professional standards require the Practitioners appointed to an insolvent entity to make a declaration as to:

- A. their independence generally;
- B. relationships, including
  - a) the circumstances of the appointment;
  - b) any relationships with the company and others within the previous 24 months;
  - c) any prior professional services for the company within the previous 24 months;
  - d) that there are no other relationships to declare; and
- C. any indemnities given, or up-front payments made, to the Practitioner.

This declaration is made in respect of ourselves, our partners, the firm McGrathNicol Australia, which for the purpose of this declaration includes the McGrathNicol Partnership, the McGrathNicol Advisory Partnership and McGrathNicol Services Pty Ltd.

#### **A. Independence**

We, Shaun Fraser and Kathy Sozou, of the firm McGrathNicol Australia have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Joint and Several Administrators of Ziera in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to our independence. We are not aware of any reasons that would prevent us from accepting this appointment.

#### **B. Declaration of Relationships**

##### **(i) *Circumstances of appointment***

The partners of McGrathNicol New Zealand were approached by the Ziera Group, consisting of Ziera and New Zealand related entities consisting of Kumfs Group Limited, Kumfs Brand Limited, Ziera Retail NZ Limited and Ziera Shoes NZ Limited (**collectively referred to as the NZ Companies**) in late August 2019 to review the business and identify restructuring options.

We note that McGrathNicol New Zealand is a separate partnership to the McGrathNicol Australian partnership.

On 23 August 2019, Conor McElhinney and Andrew John Grenfell of McGrathNicol New Zealand were engaged by Kumfs Group Limited.

McGrathNicol New Zealand received remuneration of NZ\$37,500 plus GST for this engagement. McGrathNicol New Zealand have no unpaid accounts or accrued work in progress in relation to this engagement.

On 19 September 2019, the Directors of the NZ Companies requested a meeting with McGrathNicol New Zealand to advise that, based on their own assumptions and modelling, the shareholders and the board had determined that there was no sustainable restructuring option available. As such, the directors were of the view that Voluntary Administrators should be appointed and requested McGrathNicol New Zealand provide consents to act as Voluntary Administrators over the NZ Companies and undertake the necessary planning for an appointment.

Conor McElhinney telephoned Shaun Fraser of McGrathNicol Australia on 13 September 2019, to discuss the potential appointment of Voluntary Administrators to Ziera.



The Directors resolved to appoint Mr McElhinney and Mr Grenfell of McGrathNicol New Zealand as Joint and Several Administrators of the NZ Companies at 11:00am (NZST) on 24 September 2019.

Concurrently, the Directors resolved to appoint Shaun Fraser and Kathy Sozou of McGrathNicol Australia as Joint and Several Administrators of Ziera at 9:00am (AEST) on 24 September 2019.

In our opinion, McGrathNicol New Zealand's pre-appointment engagement with the NZ Companies and meetings with its Directors do not affect our independence for the following reasons:

- The nature of work performed by McGrathNicol New Zealand would not be subject to review and challenge during the course of the Ziera Voluntary Administration. Nor would the advice, which we were not involved in delivering, influence our ability to be able to fully comply with the statutory and fiduciary obligations associated with the administration in an objective and impartial manner; and
- The Voluntary Administrations of Ziera and the NZ Companies are being run separately.

**(ii) *Relevant Relationships (excluding professional services to the Insolvent)***

Neither we, nor our firm, have, or have had, within the preceding 24 months, any relationships with Ziera, an associate of Ziera, a former insolvency practitioner appointed to Ziera or any person or entity that has security over the whole or substantially the whole of Ziera's property.

**(iii) *Prior professional services to the Insolvent***

Neither we, nor our firm, have provided any professional services to Ziera, in the previous 24 months.

**(iv) *No other relevant relationships to disclose***

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with Ziera, an associate of Ziera, a former insolvency practitioner appointed to Ziera or any person or entity that has security over the whole or substantially the whole of the Focus Group's property that should be disclosed.

**C. *Indemnities and Up-front Payments***

We have not been provided with any indemnities or upfront payments for remuneration or costs associated with the conduct of these voluntary administrations.

This does not include statutory indemnities. We have not received any other indemnities or up-front payments that should be disclosed.

**D. *Appointments to Members of a Corporate Group***

As specified on page one of this Declaration, the Administrators have been appointed as Voluntary Administrators of Ziera whilst Mr McElhinney and Mr Grenfell of McGrathNicol New Zealand have also been appointed to four entities related entities of Ziera registered in New Zealand.

The Administrators are of the view that the McGrathNicol appointment to the group of companies will have significant benefits to the conduct of the administration, particularly in that this will provide for cost-savings and enable an accurate as possible view to be obtained of the activities and financial position of the companies as a whole. The Administrators are aware that it is probable that there have been inter-company transactions within the group but at this time are not aware of any potential conflicts of interest arising from the appointments over the various group members. However, to the extent it becomes apparent that pre-appointment dealings between companies in the group may give rise to a conflict which may impact the outcome for creditors of either company, then the Administrators undertake to disclose any such conflicts to the creditors and as appropriate, seek Court directions as to the means of resolving the potential conflict.



Dated: 24 September 2019

.....  
**Shaun Fraser**

.....  
**Kathy Sozou**

Note:

- 1 If the circumstances change or new information is identified, we are required under *the Act* and the ARITA CoPP to update this Declaration and provide a copy to creditors with our next communication, as well as table a copy of any replacement Declaration at the next meetings of the insolvent's creditors.
- 2 Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.

Please note that the presentation of the above information is in accordance with the standard format suggested by ARITA.



**NOTICE OF MEETING OF  
CREDITORS OF COMPANY UNDER EXTERNAL ADMINISTRATION**

**Ziera Retail Australia Pty Limited (Administrators Appointed)  
ACN 069 685 383 (Ziera)**

1. Notice is now given that a meeting of the creditors of Ziera will be held at 10:00am on **Friday, 4 October 2019** at the Wesley Conference Centre, 220 Pitt Street, Sydney NSW 2000.
2. The purpose of the meeting is to determine:
  - (a) if a committee of inspection should be formed; and
  - (b) if Shaun Fraser and Katherine Sozou should be replaced as Voluntary Administrators.
3. The effect of Insolvency Practice Rules (Corporations) section 75-85 (entitlement to vote as a creditor at meetings of creditors) is:
  - a. A person other than a creditor (or the creditor's proxy or attorney) is not entitled to vote at a meeting of creditors.
  - b. Subject to subsections (3), (4) and (5), each creditor is entitled to vote and has one vote.
  - c. A person is not entitled to vote as a creditor at a meeting of creditors unless:
    - i. his or her debt or claim has been admitted wholly or in part by the external administrator; or
    - ii. he or she has lodged, with the person presiding at the meeting, or with the person named in the notice convening the meeting as the person who may receive particulars of the debt or claim:
      - those particulars; or
      - if required—a formal proof of the debt or claim.
  - d. A creditor must not vote in respect of:
    - i. an unliquidated debt; or
    - ii. a contingent debt; or
    - iii. an unliquidated or a contingent claim; or
    - iv. a debt the value of which is not established;  
unless a just estimate of its value has been made.
4. Proofs of debt and proxies must be submitted by 4:00pm on Thursday, 3 October 2019.
5. Should a person, or the proxy or attorney of a person, wish to participate in the meeting using electronic facilities, please contact Adam Ryan on +61 2 9338 2615 to obtain the details and give to the convenor, no later than **4:00pm on Thursday, 3 October 2019**, a written statement setting out:
  - the name of the person and of the proxy or attorney (if any);
  - an address to which notices to the person, proxy or attorney may be sent; and
  - a method by which the person, proxy or attorney may be contacted for the purposes of the meeting.



Dated: 26 September 2019

A handwritten signature in blue ink, appearing to read 'Shaun Fraser', with a small dot at the end.

Shaun Fraser  
*Joint and Several Administrator*

McGrathNicol  
GPO Box 9986  
Sydney NSW 2001  
Australia  
+61 2 9338 2600

**FORM 535**

Subregulation 5.6.49(2)

*Corporations Act (2001)*

**FORMAL PROOF OF DEBT OR CLAIM  
(GENERAL FORM)**

To the Administrator of Ziera Retail Australia Pty Limited (Administrators Appointed)

1. This is to state that the company was on 24 September 2019, and still is, justly and truly indebted to:

*(full name and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor)*  
for \$ \_\_\_\_\_ and \_\_\_\_\_ cents.

Date	Consideration (state how the Debt arose)	Amount \$ c	Remarks (include details of voucher substantiating payment)

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: *(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).*

Date	Drawer	Acceptor	Amount \$c	Due Date

\*3. I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

\*3. I am the creditor's agent authorised in writing to make this statement in writing. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

.....  
Signature  
Occupation:  
Address

Dated

**Proof of Debt Reference:**

\*Do not complete if this proof is made by the creditor personally.



## **Proof of Debt Guidance Notes**

(Please read carefully before filling in Form 535)

It is a creditor's responsibility to prove their claim to our satisfaction.

When lodging claims, creditors must ensure:

- the proof of debt form is properly completed in every particular; and
- evidence, as set out under "Information to support your claim", is attached to the Form 535 or Form 536.

### **Directions for completion of a Proof of Debt**

1. Insert the full name and address of the creditor.
2. Under "Consideration" state how the debt arose, for example "goods sold to the company on \_\_\_\_\_".
3. Under "Remarks" include details of any documents that substantiate the debt (refer to the section "Information to support your claim" below for further information).
4. Where the space provided for a particular purpose is insufficient to contain all the information required for a particular item, please attach additional information.

### **Information to support your claim**

Please note that unless you provide evidence to support the existence of the debt, your debt is not likely to be accepted. Detailed below are some examples of debts creditors may claim and a suggested list of documents that should accompany a proof of debt to substantiate the debt.

#### **Trade Creditors**

- Invoice(s) and statement(s) showing the amount of the debt; and
- Advice(s) to pay outstanding invoice(s) (optional).

#### **Guarantees/Indemnities**

- Executed guarantee/indemnity;
- Notice of Demand served on the guarantor; and
- Calculation of the amount outstanding under the guarantee.

#### **Judgment Debt**

- Copy of the judgment; and
- Documents/details to support the underlying debt as per other categories.

#### **Deficiencies on Secured Debt**

- Security Documents (eg. mortgage);
- Independent valuation of the secured portion of the debt (if not yet realised) or the basis of the creditor's estimated value of the security;
- Calculation of the deficiency on the security; and
- Details of income earned and expenses incurred by the secured creditor in respect of the secured asset since the date of appointment.

#### **Loans (Bank and Personal)**

- Executed loan agreement; and



- Loan statements showing payments made, interest accruing and the amount outstanding as at the date of appointment.

#### **Tax Debts**

- Documentation that shows the assessment of debts, whether it is an actual debt or an estimate, and separate amounts for the primary debt and any penalties.

#### **Employee Debts**

- Basis of calculation of the debt;
- Type of Claim (eg. wages, holiday pay, etc);
- Correspondence relating to the debt being claimed; and
- Contract of Employment (if any).

#### **Leases**

- Copy of the lease; and
- Statement showing amounts outstanding under the lease, differentiating between amounts outstanding at the date of the appointment and any future monies.

**PROXY FORM**

**Ziera Retail Australia Pty Limited (Administrators Appointed)**

**ACN: 069 685 383**

**APPOINTMENT OF PROXY**

I/We (*if a firm, strike out "I" and set out the full name of the firm*) \_\_\_\_\_ of

\_\_\_\_\_ (*insert address*)

a creditor of **Ziera Retail Australia Pty Limited (Administrators Appointed)** appoint

\_\_\_\_\_ (*insert name, address and description of the person appointed*)

or in his or her absence

\_\_\_\_\_ (*insert name, address and description of the person appointed*)

as my/our general proxy to vote at the meeting of creditors to be held on 4 October 2019 at 10:00 AM or at any adjournment of that meeting.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 20

Name \_\_\_\_\_

Signature \_\_\_\_\_

**Notes:**

- (1) If a firm, strike out "I" and set out the full name of the firm.
- (2) Insert name, address and description of the person appointed.
- (3) If the creditor is a sole trader, the proprietor must sign the proxy form.  
If the creditor is a partnership, a partner of the partnership must sign the proxy form.  
If the creditor is a company, a director or an authorised representative must sign the proxy form.

**Proxy forms should be completed and returned by no later than 4:00 PM on 3 October 2019 to ZieraGeneral@mcgrathnicol.com.**

RETURN TO: **Ziera Retail Australia Pty Limited (Administrators Appointed)**

of care of McGrathNicol

Address: GPO Box 9986, Sydney NSW 2001 , Australia

Phone: +61 2 9338 2600

Fax: +61 2 9338 2699



### **Proxy Guidance Notes**

- Insert full name and address of creditor, contributory or member on the top line.
- On the second line, insert the address of the creditor, contributory or member.
- On the next line insert the name of the person you appoint as your proxy. You may insert "the Chairperson of the meeting" if you wish.
- You may appoint an alternate proxy on the fourth line who may act if your first appointed proxy cannot attend the meeting. You may insert "the Chairperson of the meeting" if you wish.
- Make sure you select whether the proxy is a general or special proxy.
- A general proxy is where you leave it to the proxy to decide how to vote on each of the resolutions put before the meeting.
- A special proxy is where you specify how the proxy is to vote on each resolution and the proxy must vote in accordance with that instruction.
- If the proxy is a special proxy, the form must include details of each resolution and whether the proxy holder is to cast their vote in favour or against each resolution or abstain from voting.
- Date and sign the Proxy form, indicating in which capacity you are signing the form. The person signing must be authorised to do so.

## Information Sheet: Committees of Inspection

You have been elected to be, or are considering standing for the role of, a member of a Committee of Inspection (COI) in either a liquidation, voluntary administration or deed of company arrangement of a company (collectively referred to as an external administration).

This information sheet is to assist you with understanding your rights and responsibilities as a member of a COI.

### What is a COI?

A COI is a small group of creditors elected to represent the interests of creditors in the external administration. The COI advises and assists the external administrator and also has the power to approve and request certain things – this is discussed in more detail below.

Membership of the COI is a voluntary, unpaid position.

### Who can be elected to a COI?

To be eligible to be appointed as a member of a COI, a person must be:

- A creditor
- A person holding the power of attorney of a creditor
- A person authorised in writing by a creditor; or
- A representative of the Commonwealth where a claim for financial assistance has, or is likely to be, made in relation to unpaid employee entitlements.

If a member of the COI is a company, it can be represented by an individual authorised in writing to act on that creditor's behalf. It also allows the creditor to maintain its representation if a change in the individual is required

A COI usually has between 5 and 7 members, though it can have more, or less, depending on the size of the external administration.

A member of a COI can be appointed by:

- resolution at a meeting of creditors
- an employee or a group of employees owed at least 50% of the entitlements owed to employees of the company
- a large creditor or group of creditors that are owed at least 10% of the value of the creditors' claims,

If an employee or group of employees, or a large creditor or group of creditors, appoints a member to the COI, they cannot vote on the general resolution of creditors to appoint members to the COI. Each of these groups also have the power to remove their appointed member of the COI and appoint someone else.

If you are absent from 5 consecutive meetings of the COI without leave of the COI or you become an insolvent under administration, you are removed from the COI.

## What are the roles and powers of a COI?

A COI has the following roles:

- to advise and assist the liquidator, voluntary administrator or deed administrator (collectively referred to as the external administrator)
- to give directions to the external administrator
- to monitor the conduct of the external administration.

In respect of directions, the external administrator is only required to have regard to those directions. If there is a conflict between the directions of the COI and the creditors, the directions of the creditors prevail. If the external administrator chooses not to comply with the directions of the COI, the external administrator must document why.

A COI also has the power to:

- approve remuneration of the external administrator after the external administrator has provided the COI with a Remuneration Approval Report (a detailed report setting out the remuneration for undertaking the external administration)
- approve the use of some of the external administrator's powers in a liquidation (compromise of debts over \$100,000 and entering into contracts over 3 months)
- require the external administrator to convene a meeting of the company's creditors
- request information from the external administrator
- approve the destruction of the books and records of the external administration on the conclusion of the external administration
- with the approval of the external administrator, obtain specialist advice or assistance in relation to the conduct of the external administration
- apply to the Court for the Court to enquire into the external administration.

An external administrator is not required to convene a meeting of creditors if the request by the COI is unreasonable, or provide requested information if the request is unreasonable, not relevant to the administration or would cause the external administrator to breach their duties.

A request to convene a meeting of creditors is unreasonable if:

- it would substantially prejudice the interests of a creditor or third party
- there are insufficient funds in the external administration to cover the cost of the request
- a meeting of creditors dealing with the same matters has already been held or will be held within 15 business days, or
- the request is vexatious.

If a request for a meeting is reasonable, the external administrator must hold a meeting of creditors as soon as reasonably practicable.

A request for information is unreasonable if:

- it would substantially prejudice the interests of a creditor or third party
- the information would be subject to legal professional privilege
- disclosure of the information would be a breach of confidence
- there are insufficient funds in the external administration to cover the cost of the request
- the information has already been provided or is required to be provided within 20 business days, or
- the request is vexatious.

If the request for information is not unreasonable, the external administrator must provide the requested information within 5 business days, but the law provides for further time in certain circumstances.

An external administrator must inform the COI if their meeting or information request is not reasonable and the reason why.

### How does the COI exercise its powers?

A COI exercises its powers by passing resolutions at meetings of the COI. To pass a resolution, a meeting must be convened and a majority of the members of the COI must be in attendance.

A meeting is convened by the external administrator by giving notice of the meeting to the members of the COI. Meetings of the COI can be convened at short notice.

The external administrator must keep minutes of the meeting and lodge them with ASIC within one month of the end of the meeting.

ASIC is entitled to attend any meeting of a COI.

### What restrictions are there on COI members?

A member of a COI must not directly or indirectly derive any profit or advantage from the external administration. This includes by purchasing assets of the company or by entering into a transaction with the company or a creditor of the company. This prohibition extends to related entities of the member of the COI and a large creditor(s) that appoints a member to the COI.

Creditors, by resolution at a meeting of creditors, can resolve to allow the transaction. The member of the COI or the large creditor(s) that appoints a member to the COI is not allowed to vote on the resolution.

### Where can you get more information?

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides information to assist creditors with understanding external administrations and insolvency.

This information is available from ARITA's website at [www.arita.com.au/creditors](http://www.arita.com.au/creditors).

ASIC provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at [www.asic.gov.au](http://www.asic.gov.au) (search "insolvency information sheets").



## Initial Remuneration Notice

### Ziera Retail Australia Pty Limited (Administrators Appointed) ACN 069 685 383 (Ziera)

The purpose of the Initial Remuneration Notice is to provide you with information about how we propose our remuneration for undertaking the voluntary administration will be set.

#### 1 Remuneration methods

There are four basic methods that can be used to calculate the remuneration charged by an insolvency practitioner. They are:

- A. Time based/hourly rates:** This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work, multiplied by the number of hours spent by each person on each of the tasks performed.
- B. Fixed Fee:** The total fee charged is normally quoted at the commencement of the external administration and is the total cost for the external administration.
- C. Percentage:** The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of asset realisations.
- D. Contingency:** The practitioners' fee is structured to be contingent on a particular outcome being achieved.

#### 2 Method chosen

Given the nature of this external administration, we propose that our remuneration be calculated on a time basis which will be recorded and charged in six minute increments. Details of the hourly rates for different levels of staff are included below. The complexity and demands of the external administration will determine the staff to be utilised for this appointment.

We have chosen the time based method because:

- This method is considered to be most suitable for this appointment as it ensures creditors are only charged for work that is performed in the external administration, which can be difficult to accurately estimate at the date of appointment.
- Even later than the date of appointment, it can be difficult to estimate the time that may be required in advance of the substantive work being undertaken. The time based method in this case again ensures that creditors are only charged for work that is actually performed in the external administration.
- The practitioner is required to perform a number of tasks which do not relate to the realisation of assets, for example responding to creditor enquiries, reporting to ASIC and distributing funds in accordance with the provisions of the *Corporations Act*.
- The practitioner has a time recording system that can produce a detailed analysis of time spent on each type of task by each individual staff member utilised in the external administration.
- Time based remuneration calculates fees upon a basis of time spent at the level appropriate to the work performed.



3 **Explanation of Hourly Rates**

The rates for our remuneration calculation are set out in the following table, together with a general guide showing the qualifications and experience of staff engaged in the external administration and the role they take in the external administration. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.

<b>Title</b>	<b>Description</b>	<b>Hourly rate (excl GST)</b>
Appointee/Partner	Registered liquidator, Chartered Accountant or equivalent and generally degree qualified with more than twelve years of experience. Leads assignments with full accountability for strategy and execution.	\$705
Director 1	Generally Chartered Accountant or comparable qualification and degree qualified with more than ten years of experience, including four years of Director or equivalent experience. Autonomously leads complex insolvency appointments reporting to Appointee/Partner.	\$650
Director	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than nine years of experience. Autonomously leads insolvency appointments reporting to Appointee/Partner.	\$610
Senior Manager	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than seven years of experience. Self-sufficiently conducts small to medium insolvency appointments and leads major workstreams in larger matters.	\$555
Manager	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than five years of experience. Self-sufficiently conducts small insolvency appointments and takes a supervisory role on workstreams in larger matters.	\$525
Assistant Manager	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than three years of experience. Autonomously manages workstream activity within appointments.	\$480
Senior Accountant	Generally degree qualified and undertaking Chartered Accountant's qualification or comparable relevant qualification with more than 16 months of experience. Completes tasks within workstreams and appointments under supervision.	\$435
Accountant	Generally degree qualified and undertaking or about to undertake Chartered Accountant's qualification or comparable relevant qualification with less than one year of experience. Assists with tasks within workstreams and appointments under supervision.	\$335



Title	Description	Hourly rate (excl GST)
Undergraduate/Cadet	Undertaking relevant degree. Assists with tasks within workstreams and appointments under supervision.	\$200
Practice Services Director	National Practice Service leaders, generally degree qualified with more than ten years of experience and reporting directly to partners. Technical experts in their specific areas and have team management responsibilities.	\$650
Senior Treasury staff	Appropriately experienced and undertakes senior Treasury activities such as oversight of the processing of payment of receipts and banking administration. May be responsible for day to day management of projects or operations and may have supervisory responsibility for junior staff.	\$425
Senior Client Administration and Treasury	Appropriately experienced and undertakes senior level administrative support activities or Treasury activities. May be responsible for day to day management of projects or operations and may have supervisory responsibility for junior staff.	\$335
Administration	Appropriately experienced and undertakes support activities such as meeting coordination and preparation of materials where it is efficient and appropriate to do so.	\$185

McGrathNicol reviews its hourly rates on either 31 December or 30 June. Creditors will be advised of any change to the hourly rates for this external administration.

#### 4 Disbursements

Disbursements are divided into three types:

- **Externally provided professional services** – these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- **Externally provided non-professional costs** – such as travel, accommodation, external printing services and search fees – these are recovered at cost.
- **Internal disbursements** – such as photocopying, printing and postage. These disbursements are generally charged at cost but may include, in the case of disbursements such as data storage and hosting, telephone calls, photocopying and printing, both direct variable and fixed costs. For example the rate per page for printing includes a reasonable and commercial allowance for paper, toner, depreciation, power and maintenance.

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

We are required to obtain creditor's consent for the payment of internal disbursements where there may be a profit or advantage. Creditors will be asked to approve our internal disbursements where there is a profit or advantage prior to these disbursements being paid from the external administration.



## McGrathNicol

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

For clarity, it is noted that any time costs of any employee of McGrathNicol or any associated entity will be reported as part of our remuneration, for which approval may be sought.

### *Basis of disbursement claim*

<i>Disbursement type</i>	<i>Rate \$A (Excl GST)</i>
Externally provided professional services	At cost
Externally provided non-professional services	At cost
Internal disbursements	
Advertising	At cost
Courier	At cost
Data hosting – data loading & processing fee	\$50-\$100 per gigabyte (GB)*
Data hosting – monthly hosting fee (for matters where data is required to be hosted online for more than 1 month)	Standard monthly hosting fee of \$2,000 per month (for up to 500GB of information loaded) plus \$2,000 per month for every additional 500GB block over and above 500GB
Printing – black and white	\$0.09 per page
Printing – Colour	\$0.28 per page
Postage	At cost
Stationery and other incidental disbursements	At cost
Staff per diem travel allowance**	\$89.00 per day***
Staff vehicle use	\$0.68 per km***
Telephony – mobile, fixed line and conference calls	At cost

\* Depending on volume of data to be hosted

\*\* Payable when partners or staff are required for business purposes to stay away from their usual place of residence overnight

\*\*\* These rates are deemed reasonable by the Australian Taxation Office



McGrathNicol

*Further explanation of data hosting disbursements*

In the conduct of this external administration, we may use McGrathNicol Technology Advisory to extract, aggregate, electronically process and/or host electronic data, which could be used for the:

- trade or sale of the business or assets; and/or
- investigations regarding transactions or potential recoveries available to creditors.

If data hosting is required and we choose not to use the services of McGrathNicol Technology Advisory, we will otherwise have to purchase those services from an alternative provider and/or use another method to achieve the same end, which will not be as efficient as using these available internal services.

We note that the data hosting rates above are no more than our standard commercial pricing available for the same services when they are provided to external parties.

**23 September 2019**