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12 December 2022

**CIRCULAR TO ELIGIBLE EMPLOYEE CREDITORS**  
**ELLUME LIMITED (ADMINISTRATORS APPOINTED)**  
**ACN 141 767 660**  
**("THE COMPANY")**

I refer to the appointment of John Park and I, Joanne Dunn, as Joint and Several Administrators of the Company on 31 August 2022 and to the notice of the upcoming Second Meeting of Creditors to be held on Tuesday, 20 December 2022 at 2:00PM (AEST).

The intention of this circular is to provide employees with information for the purposes of the meeting of eligible employee creditors of the Company, which is to be held on **Tuesday, 20 December 2022 at 11:30AM (AEST)** (prior to the Second Meeting of Creditors to be held on Tuesday, 20 December 2022 at 2:00PM (AEST)).

The Administrators are required by law to convene a meeting of eligible employee creditors where a Deed of Company Arrangement ("DOCA") is proposed, which does not include a provision whereby employee creditors are entitled to a priority at least equal to what they would have been entitled in accordance with certain sections of the Corporations Act ("the Priority Provisions").

This circular explains further below how the proposed DOCA impacts employees' entitlements and ongoing employment, and the alternate option of a liquidation and its impact on employees.

The full details of the future options available to the Company, the estimated return to creditors under the available options, and the Administrators' recommendation, is provided in our report which will be available for download by 5:00PM (AEST) on Monday, 12 December 2022 from the FTI Consulting Creditor Portal: <https://www.fticonsulting.com/creditors/ellume-limited>

## **1. DOCA Proposal**

### **1.1 What is a DOCA?**

A DOCA is a formal agreement between a company, its creditors and the DOCA proponent.

The DOCA proponent is an interested party who wishes the creditors to consider their proposal – usually involving a compromise of creditors' claims as opposed to either winding up the company (liquidation) or returning the company to its director.

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## 1.2 Proposal for a DOCA

A DOCA has been proposed by Hough Consolidated Pty Ltd (“the Proponent” or “Hough”).

The basic features of the DOCA are as follows:

- Restructure the Company’s debts, with Hough acquiring 100% of the issued shares in the Company.
- The Company enters a DOCA whilst the required approvals, consents or waivers are obtained from ASIC and the Court.
- Following all conditions precedent being met, the DOCA will effectuate, ownership of all shares in Ellume Limited will transfer to Hough (or its nominee) and a Creditors’ Trust is established to satisfy the claims of creditors.

Section 7 of our Report to Creditors contains further details of the DOCA proposal.

The proposed DOCA **WILL NOT** include a provision to the effect that employees will receive a priority equal to what they would have been entitled under the Priority Provisions of the Corporations Act (“the Act”).

The Priority Provisions of the Act require all employees to be paid out entitlements prior to any other creditor receiving distributions. However, the DOCA proposes claims for leave entitlements of continuing employees will not be paid from the DOCA. Instead, such claims will be preserved and be paid by the Company in the ordinary course of business (as and when employees take leave, subject to usual business requirements).

Similarly, continuing employees will not be able to make claims for redundancy or other termination entitlements because their employment will continue.

## 1.3 Return under the proposed DOCA

The non-inclusion of the Priority Provisions will likely result in the payment in full of the following employee entitlements from the Creditors’ Trust (which is formed when the DOCA completes):

1. Superannuation for the period 1 August 2022 to 31 August 2022;
2. Outstanding leave entitlements for staff who were made redundant or resigned prior to, or during the Voluntary Administration or Deed of Company Arrangement; and
3. Payment in lieu of notice and redundancy entitlements outstanding to employees who were terminated during the Voluntary Administration.

## 1.4 Variation to priority entitlements

The deferment of the payment of entitlements of continuing employees is a variation to the Priority Provisions under Section 556 of the Act. We therefore must hold a separate meeting of eligible employee creditors to vote on this aspect of the proposed DOCA, in order for the DOCA Proposal to then be considered by all creditors, at the upcoming Second Meeting of Creditors.

## 2. Liquidation

In the alternate to a DOCA, creditors can resolve that the Company be wound up and placed into liquidation. Under a liquidation scenario, the Liquidators will likely conduct an orderly wind down which would not see continued employment for staff.

Should the Company be wound up, employees will be able to lodge a claim under the Federal Government's Fair Entitlements Guarantee ("FEG") Scheme (subject to certain FEG scheme eligibility criteria) for their entitlements.

The FEG Scheme does not extend to superannuation entitlements.

The timeframe for payment under the FEG Scheme may be several months, depending on FEG's capacity to review and process claims.

## 3. Administrators' Recommendation

It is the Administrators' opinion the non-inclusion of the Priority Provisions in the DOCA Proposal would likely result in a better outcome for employee creditors as a whole than would result from an immediate winding up of the Company for the following reasons:

1. If the Administrators sought to include the Priority Provisions, the DOCA would not be workable and would likely be withdrawn. If the DOCA were withdrawn, the alternative would be to place the Company in liquidation.
2. It is anticipated the Company would cease trading in a winding up scenario, which would result in the termination of the employment all staff.
3. It is estimated there would be insufficient asset realisations in a winding up scenario to enable the payment of all employee entitlements in full.
4. Although the FEG Scheme might enable payment in a liquidation scenario of some, or all of each employees' claim (subject to the program's usual eligibility requirements), we note the following:
  - i. The FEG Scheme does not cover all entitlements (namely it does not cover superannuation);
  - ii. Employees would no longer have ongoing employment in a liquidation scenario whereas under the proposed DOCA, continuing employees will retain their employment; and
  - iii. If at the Second Meeting of Creditors the creditors' vote for the DOCA Proposal, but the DOCA later fails, the Company would then be placed into liquidation and employees would, at that time, have access to the FEG Scheme (subject to the program's usual eligibility requirements).

Further, it is not appropriate that the voluntary administration ends as the Company is insolvent.

**In these circumstances, the Administrators consider that it is in the interests of the eligible employee creditors to vote for the non-inclusion of the Priority Provision in the DOCA Proposal and to vote for the Company executing a Deed Of Company Arrangement.**

#### **4. Meeting of Eligible Employee Creditors**

As discussed above, as the Hough DOCA Proposal **DOES NOT** include a provision to the effect employees will receive a priority equal to what they would have been entitled under the Priority Provisions of the Act, a meeting of eligible employee creditors must be convened to obtain the approval of eligible employee creditors to vary the statutory priorities under Section 556 of the Act.

The meeting of eligible employee creditors of the Company will be held on **Tuesday, 20 December 2022 at 11:30AM (AEST)** via electronic means.

The meeting of eligible employee creditors is being held virtually and all creditors wanting to attend the meeting are required to attend via Zoom.

You must register to attend and vote at the meeting. To register go to this link:

##### **[Meeting Registration Form](#)**

If you wish to attend the eligible employee creditor meeting, **you must** complete the meeting registration form before **11:30AM (AEST), Monday, 19 December 2022**. Once you have registered to attend the meeting a link for the Zoom meeting will be sent to you via email.

The following documents will be available for viewing and download by 5:00PM (AEST) on Monday, 12 December 2022 from the FTI Consulting Creditor Portal:

<https://www.fticonsulting.com/creditors/ellume-limited>

1. Circular to Eligible Employees
2. Notice of Eligible Employee Meeting
3. Appointment of Proxy Form for Eligible Employee Meeting

The Administrators will admit for voting purposes all employees outstanding entitlement values, which will be advised to you prior to the meeting. Should you disagree with the amount, please send us the details of the amounts you disagree with, together with documentation to support your claim. Please send this information to [Ellume@fticonsulting.com](mailto:Ellume@fticonsulting.com).

Should you still wish to submit a formal proof of debt form, which is available at the above FTI Consulting Creditor Portal link, please also submit this to [Ellume@fticonsulting.com](mailto:Ellume@fticonsulting.com). However, you are not required to submit a proof of debt form as you will have already been admitted for voting.

In addition to completing the meeting registration via the zoom link, your proxy (if you want someone else to attend on your behalf) form should be returned by **11:30AM (AEST), Monday, 19 December 2022** via email to [Ellume@fticonsulting.com](mailto:Ellume@fticonsulting.com).

## **5. Frequently Asked Questions by Employees**

We have prepared a list of frequently asked questions by employees, which is enclosed as **Annexure A**.

## **6. Contact Details**

Should you have any queries in relation to the Eligible Employee Meeting, the enclosed documents or the voluntary administration generally, please contact this office on (07) 3225 4900 or [Ellume@fticonsulting.com](mailto:Ellume@fticonsulting.com).

Yours faithfully



Joanne Dunn  
Administrator



## Ellume Limited (Administrators Appointed)

### Frequently Asked Questions For Eligible Employee Meeting

The below frequently asked questions are designed to assist employees with questions they may have regarding the DOCA proposal and what it means for them.

#### 1. What happens to my employment if the DOCA is approved?

The Hough DOCA proposal provides ongoing employment with the Company for currently employed employees. Hough is purchasing all shares in the Company under their DOCA proposal which means Hough will own the Company if the DOCA completes.

Further, all continuing employees will remain employed by the Company until completion of the DOCA.

#### 2. What happens to employee entitlements under the DOCA?

Entitlements owed to continuing employees (i.e. employees currently working for the Company) such as annual leave, long service leave and personal leave will be paid in the ordinary course, as and when leave is taken.

Under the terms of the DOCA, non-continuing employees (resigned or terminated) will be paid their outstanding employee entitlements owed as at the date of our appointment (31 August 2022) from funds held in a Creditors Trust.

In the event an employee resigns, or has resigned, the Administrators have not/will not immediately pay out entitlements which were owed at the date of their appointment (31 August 2022).

If you resign, you will not be entitled to a redundancy payment.

If you resign, you will not be considered a 'continuing employee' under the DOCA proposal.

#### 3. What is the timeline for the sale process to be completed via the DOCA?

The following table summarises the key events (in sequence), expected to occur to seek creditor approval of the DOCA proposal and for the sale process to be completed via the DOCA, if approved.

| Key event                              | Explanation                                                                                                                                                                                                                                                                                                                                                             | Expected date                  |
|----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| Meeting of eligible employee creditors | <p>A meeting of 'eligible employees' is required by law where a DOCA proposal does <u>not</u> give employees the same priority which they would have in a liquidation.</p> <p>Because continuing employees do not have their claims at 31 August 2022 paid from the Creditors Trust (the entitlements carry forward and are paid later), we must hold this meeting.</p> | 11:30 AM (AEST)<br>20 Dec 2022 |



## Frequently Asked Questions

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| Key event                                    | Explanation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Expected date                                         |
|----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|
| Second meeting of creditors                  | <p>At this meeting, creditors/employees are given the opportunity to decide the Company's future by choosing one of the following options:</p> <ul style="list-style-type: none"><li>■ approve a DOCA through which the company will pay all or part of its debts and then be free of those debts; or</li><li>■ put the Company into Liquidation; or</li><li>■ end the voluntary administration and return the company to the directors' control (if the Company is solvent, which it is not).</li></ul>   | 2:00 PM (AEST)<br>20 Dec 2022                         |
| DOCA execution                               | <p>The DOCA will be signed by the parties subject to the deed. This is expected to occur shortly after the forthcoming meeting of creditors.</p> <p>The draft DOCA proposal provides for DOCA execution within 2 business days after the second meeting of creditors (if approved).</p> <p>Ordinarily all parties subject to the Deed have a maximum of 15 business days after the meeting to sign the DOCA. If the DOCA is not signed within this time, the Company would be placed into liquidation.</p> | Within 2 business days after second creditors meeting |
| All conditions precedent are satisfied       | <p>Once the DOCA is signed, there are a number of things which need to happen (conditions precedent).</p> <p>The Deed Administrators and Hough will endeavour to satisfy all conditions precedent outlined in the DOCA as soon as possible.</p>                                                                                                                                                                                                                                                            | Early-mid March 2023                                  |
| A Creditors' Trust is established with funds | <p>Once all conditions precedent are satisfied, a Creditors' Trust will be established and a Creditors' Trust Fund will exist to pay creditors.</p>                                                                                                                                                                                                                                                                                                                                                        | Early-mid March 2023                                  |
| The DOCA is fully effectuated                | <p>Once all conditions precedent are satisfied and the Creditors' Trust Fund is established the DOCA achieves its purpose (effectuates).</p> <p>At this point the Company will be owned by Hough.</p>                                                                                                                                                                                                                                                                                                      | Early-mid March 2023                                  |
| Ellume Limited exits Deed Administration     | <p>Ellume Limited continues to operate under the ownership of Hough.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                   | Early-mid March 2023                                  |
| Dividend to creditors                        | <p>Under the Creditors' Trust a dividend process will be undertaken. This will involve creditors submitting a proof of debt to substantiate their claim. These claims will then be adjudicated on and a dividend paid to creditors.</p> <p>Non-continuing employees will be paid their outstanding employee entitlements as part of this process.</p>                                                                                                                                                      | March to May 2023                                     |
| Sunset date                                  | <p>If the DOCA has not effectuated prior to the sunset date, currently 6 months after the execution of the DOCA, or any such later date agreed to by the Deed Administrators, the Deed Administrators are required to convene a meeting of creditors to decide the future of the Company.</p>                                                                                                                                                                                                              | Mid-June 2023 (if relevant)                           |

Please refer to **Section 7** of the Voluntary Administrators' report to creditors for further details of the DOCA proposal and process. The Voluntary Administrators' report to creditors is available on the FTI Consulting Creditor Portal: <https://www.fticonsulting.com/creditors/ellume-limited>



#### **4. What would happen if creditors voted for the Company to go into Liquidation?**

If the Company is placed into liquidation, and there is no successful sale or recapitalisation of the Company, all employees would be terminated and will be able to claim their entitlements via the Government's Fair Entitlement Guarantee Scheme ("FEG") (subject to meeting eligibility requirements).

#### **5. Can I still access the FEG scheme if a DOCA proposal is accepted?**

No, neither current nor former employees will be able to access the FEG Scheme if the Company executes a DOCA as the FEG Scheme is only available if a company goes into liquidation.

#### **6. What is the meeting of eligible employee creditors and why is it required?**

A meeting of employees is required by law where a DOCA proposal does not give employees the same priority which they would have in a liquidation.

A meeting of eligible employee creditors is required because the Hough DOCA proposal does not give employees the same priority as a liquidation because:

- continuing employees will not be paid leave entitlements, but instead these leave entitlements would be preserved and paid in the ordinary course (i.e. as and when they take leave); and
- continuing employees will not be able to make claims for redundancy or other termination entitlements because their employment will continue.

The main purpose of the meeting of eligible employee creditors is to:

1. Receive any questions regarding the various options available to employees of the Company to be voted on at the second meeting of creditors;
2. Obtain approval from eligible employee creditors to vary the statutory priorities under section 556 of the Corporations Act 2001, being a requirement under section 444DA(2)(a) of the Corporations Act 2001, in order for the DOCA to be approved by creditors; and
3. Discuss any other business.

If eligible employee creditors agree to vary the statutory priorities by voting for the resolution at the meeting of eligible employee creditors, this means they are in favour of the DOCA proposal proceeding on the terms outlined in our report to creditors.



## 7. Do I need to attend any of the meetings?

It is not compulsory to attend the meetings, however, if you want to have your say on the future of the Company you should consider attending personally or by appointing a person to attend on your behalf.

To appoint someone to attend on your behalf you are required to complete and return a proxy form.

If you want to appoint someone to attend as your proxy for both meetings held on 20 December 2022, you need to complete two proxy forms (they are both on the FTI website [here](#)) because the meetings are separate to each other.

## 8. How can I attend the meeting of eligible employee creditors and second meeting of creditors?

Both meetings are being held virtually [via Zoom](#) on **Tuesday, 20 December 2022** at the following times:

|                 |                                        |
|-----------------|----------------------------------------|
| 11:30 AM (AEST) | Meeting of eligible employee creditors |
| 2:00 PM (AEST)  | Second meeting of creditors            |

You **must** register to attend and vote at the meeting. To register, please complete the meeting registration form within 24hr prior to the meeting to allow FTI Consulting to register your attendance, and send you your individual link to the meetings.

Both meeting registration forms can be accessed below:

### Meeting registration form links:

|                                        |                                           |
|----------------------------------------|-------------------------------------------|
| Meeting of eligible employee creditors | <a href="#">Meeting Registration Form</a> |
| Second meeting of creditors            | <a href="#">Meeting Registration Form</a> |

A link to the Zoom meeting will be sent to you via email once your registration has been processed by our team.

This link will be unique to you, and should not be shared.

## 9. Do I need to lodge a proof of debt?

No you don't, the Administrators will register your claim for outstanding entitlements for voting purposes at the meeting.

So you are aware of your claim registered for these meetings, you will receive an email outlining what those entitlements are. If you disagree with these figures, please contact Neil Dempster or Brooke Petersen of FTI Consulting in the first instance. If you still disagree you can submit a separate proof of debt.

You may note when reviewing these communications your superannuation has been removed as a claim you are entitled to vote for. This is because the unpaid super for August 2022 is now overdue, and the ATO will step in as a collection agent for this debt (for all outstanding superannuation).



### 10. Do I need to lodge a proxy form?

You can complete and submit a proxy form if you wish to appoint another person to attend either meeting and vote on your behalf.

If you are attending the meeting yourself, you do not need to complete a proxy form.

### 11. Who do we contact if we have questions about the Voluntary Administration?

Please contact FTI Consulting with any queries relating to the Voluntary Administration.

FTI Consulting staff will endeavour to respond to your enquiry as soon as possible.

| Query Type                 | Staff                                                           | Contact Details                                                                                                                                                                  |
|----------------------------|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| General query email        | All FTI staff                                                   | <a href="mailto:Ellume@fticonsulting.com">Ellume@fticonsulting.com</a>                                                                                                           |
| Employment related queries | Neil Dempster - Senior Director<br>Brooke Petersen - Consultant | <a href="mailto:Neil.Dempster@fticonsulting.com">Neil.Dempster@fticonsulting.com</a><br><a href="mailto:Brooke.Petersen@fticonsulting.com">Brooke.Petersen@fticonsulting.com</a> |
| Phone number               | All FTI Staff                                                   | (07) 3225 4900                                                                                                                                                                   |