

**Sky Wolf Pty Ltd (In Liquidation)  
Formerly Trading as Universal Warehouse Pty Ltd  
A.C.N. 626 076 800  
("the Company")**

## **Statutory Report to creditors**

17 August 2022

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## Annexures

<b>Annexure A</b>	Proof of Debt form
<b>Annexure B</b>	ARITA Information Sheet - Creditor Rights in Liquidation

## ABBREVIATIONS

Accountant	Q & T Accountants
Act	Corporations Act 2001
ALLPAP	All Present And After- Acquired Property – No Exceptions
ARITA	Australian Restructuring Insolvency and Turnaround Association
ASIC	Australian Securities & Investments Commission
ANZ	Australia and New Zealand Banking Group Limited
ATO	Australian Taxation Office
Company	Sky Wolf Pty Ltd (In Liquidation) formerly trading as Universal Warehouse Pty Ltd
Director	Songbo Yang
DIRRI	Declaration of Independence, Relevant Relationships & Indemnities
ERV	Estimated Realisable Value
FY	Financial Year ended
IPR	Insolvency Practice Rules
K	'000'
Liquidator	Brendan Copeland
Mil	Million
NAB	National Australia Bank Limited
Petitioning Creditor	Universal Asian Supermarket Pty Ltd (In Liquidation)
PPSA	Personal Property Securities Act 2009
PPSR	Personal Property and Securities Register
RoCAP	Report on Company Activities and Property
Petitioning Creditor's Solicitor	Hilton Bradley Lawyers
TBA	To Be Advised
TBC	To be Concluded
UASS	Universal Asian Supermarket Southbnk Pty Ltd (In Liquidation)
YTD	Year To Date

## 1 Executive Summary

### 1.1 Liquidator's appointment

I was appointed Liquidator of the Company on 18 May 2022, pursuant to an order made by the Supreme Court of Victoria. The petitioning creditor is Universal Asian Supermarket Pty Ltd (In Liquidation) ("**Petitioning Creditor**").

This report should be read in conjunction with my initial report to creditors dated 16 June 2022. If a creditor requires a copy of the previous report, please contact Christine Xiao of this office at [cxiao@hogansproyles.com.au](mailto:cxiao@hogansproyles.com.au).

### 1.2 Purpose of this report

The purpose of this report is to:

- provide you with an update on the progress of the liquidation; and
- advise you of the likelihood of a dividend being paid in the liquidation.

If creditor have not already done so, you are requested to complete and submit to this office a Proof of Debt form (attached as **Annexure A**).

Creditors have the right to request a meeting that complies with the guidelines set out in the ARITA information sheet "Creditors Rights in Liquidation" (attached as **Annexure B**). I do not propose to hold a meeting of creditors at this time.

I expect to have completed this liquidation within six (6) to twelve (12) months.

### 1.3 Estimated return to creditors

There are insufficient assets available in the Liquidation. A dividend to unsecured creditors is reliant on the recoveries from voidable transactions and insolvent trading claim. At this stage, it is unlikely that a dividend will be paid in the liquidation to priority and unsecured creditors.

If a dividend is going to be paid, creditors will be contacted before it happens and if they have not already done so, creditors will be asked to lodge a proof of debt. This formalises creditors' claims in the liquidation and is used to determine all claims against the Company.

### 1.4 Summary of investigations

I am currently conducting investigating into the Company's affairs and the possible offences committed by Songbo Yang ("**the Director**") a summary of the offences and recovery action is indicated below:

Offences / recovery action	Corporations Act	Parties	Claim (\$)
Insolvent Trading	S588G	Songbo Yang	1.2mil
Voidable transactions	S.588FD, S.588FDA and S.588FB	Songbo Yang	TBC

My investigations are ongoing, I will need to assess the commercial viability and the cost benefit of pursuing these actions. Further details in section 4 of this report.

Any offences will be reported to the Australian Security and Investments Commission (“ASIC”) in a confidential report issued pursuant to section 533 of the Corporations Act 2001 (“the Act”).

### 1.5 Declaration of Independence, Relevant Relationships and Indemnities

My initial report to creditors included a Declaration of Independence, Relevant Relationships and Indemnities (“DIRRI”) signed by me as Liquidator of the Company. There have been no changes to the position of the DIRRI.

## 2 Update on the Liquidation

### 2.1 Background

I provide a summary again of the information available from ASIC search conducted for the Company:

Company Details		
Registration Date	10 May 2018	
Current Registered Office	193 Young Street, Sunnybank QLD 4109	
Current Principal Place of Business	193 Young Street, Sunnybank QLD 4109	
Director	Appointed	Ceased
Songbo Yang	10 May 2018	-
Share Structure	Amount Paid	Amount Unpaid
100 Ordinary Shares	\$100.00	\$0.00
Current Shareholders	Shares Held/Type	Fully Paid
Zhaoguang Yang	20 Ordinary Shares	Yes
Xiangshuai Kong	33 Ordinary Shares	Yes
The Universal Star International Group Pty Ltd	47 Ordinary Shares	Yes

I previously provided a summary of the Directorships and shareholdings under the Director’s names. Please refer to my previous report in relation to same.

### 2.2 Progress of the Liquidation

Please refer to my initial report to creditors dated 16 June 2022 in relation to tasks previously undertaken since my appointment to 16 June 2022.

I remind creditors that the Director is currently overseas and there has been restricted communication with him. The Director advised that he has been unable to receive/retrieve emails and provided the details of Q & T Accountant (**“the Accountant”**).

Below is a summary of the tasks undertaken since my previous report to creditors:

- Reviewed Company’s books and records received;
- Conducted investigation into the Company’s affairs; and
- Corresponded with the Director regarding the affairs of the business.

Further investigations are currently being conducted in respect of the affairs of the Company. Details of the RoCAP submitted by the Director and books and records received are disclosed in the sections below.

### 2.3 Books & Records

To date, I have received the following books and records from the Accountant:

- A copy of the constitution of the Company;
- Copy of outstanding statement from the Accountant;
- Tax Return for the Financial Year ended (**“FY”**)19 and FY20;
- Various Business Activity Statements;
- The financial statements prepared by the Accountant for FY19 and FY20; and
- Company’s MYOB Management Accounts.

In addition, I have also received including but not limited to the following;

- ATO documentation;
- Company’s bank statements; and
- Documentation received from the petitioning creditor’s lawyers.

In my opinion the following records including but not limited to, should have also been maintained:

- Contracts/Agreements;
- Invoices;
- Correspondence with stakeholders;
- Chattel Mortgage agreements;
- Loan agreements;
- Stock take listing; and
- Lease agreements.

Notwithstanding, considering the size of the business, in my opinion the Company has maintained books and records required as per Section 286 of the Act. This opinion may change pending the receipt of any further information in relation to the Company. Failure to maintain books and records may give rise to a presumption of insolvency pursuant to Section 588E of the Act. This presumption may be relied upon by the Liquidator in an application for compensation for insolvent trading and other actions for recoveries pursuant to Part 5.7B of the Act from the directors and related parties. The result of my investigations will be reported in my confidential report to ASIC.

## 2.4 Report on Company Activities and Property (“RoCAP”)

The Act requires the Director to provide to me with a completed RoCAP, detailing the financial position of the Company at the date of my appointment.

Below is a summary of the information provided in the Director’s RoCAP and the estimated realisable value (“ERV”) as per my investigations:

	Notes	RoCAP (\$)	Liquidator's ERV (\$)
<b>Assets</b>			
Cash at Bank	1	Nil	910
<b>Total Assets</b>		<b>Nil</b>	<b>910</b>
<b>Liabilities</b>			
Less: Secured Creditors	2	Nil	Nil
Priority Creditors - Employees	3	Nil	35,723
Unsecured Creditors	4	1,598,045	1,262,616
<b>Total Liabilities</b>		<b>1,598,045</b>	<b>1,298,339</b>
<b>Estimated Surplus/Deficiency</b>		<b>(1,598,045)</b>	<b>(1,297,429)</b>

### 2.4.1 Assets

#### 1. Cash at bank

The Director has disclosed in his RoCAP that there is no realisable value available from cash at bank.

The Company operated two (2) accounts with the Australia and New Zealand and Limited (“ANZ”), one in respect of the bank guarantee and the other account had a credit balance of \$910.59.

Subsequent to my previous report, ANZ provided bank statements confirming that the guarantee account was closed on 17 December 2021 (being prior to my appointment) and the credit balance in the transaction account was transferred to the Company’s liquidation account on 2 June 2022.

The Director disclosed in the RoCAP that he provided \$23K in respect of the security to the Landlord. The bank statements disclose that this guarantee was drawn down by the Landlord on 15 July 2021.

A search conducted on the QLD Transport and Roads and Maritime Services NSW have confirmed that there are no motor vehicles registered under the Company’s name.

For further comments in relation to the assets from the Company’s Management Account, please refer to section 3 of this report.

Should a creditor have any further information in relation to the assets of the Company, please contact my office.

## 2.4.2 Liabilities

### 2. Security Interest Holders

I remind creditors that following security interest was registered under the name of the Company:

Secured Party	Registration	Collateral class	Registration	Notes
Oriental Merchant Pty Ltd	201909060057431	Other goods	6 September 2019	Nil

Subsequent to my previous report to creditors, Oriental Merchant Pty Ltd responded and advised that there is no amount owing in respect of this security interest.

### 3. Priority Creditors – Employees

The Director has not disclosed outstanding employee entitlements in the RoCAP.

Notwithstanding, the Company's Management Accounts disclose the following entitlements owed to the employees as at the date of my appointment.

A summary of the employee claims is detailed below:

Category	Amount (\$)
Superannuation	24,759
Annual Leave	10,964
<b>Total</b>	<b>35,723</b>

Should you be aware of outstanding employees' entitlements, please contact my office to provide further information.

### 4. Unsecured Creditors

The completed RoCAP and records received to date disclose the following creditors of the Company:

Creditors	RoCAP	Amount (\$)
Trade creditors	NIL	53,817
Related Party Creditors	1,598,045	1,208,799
<b>Total</b>	<b>1,598,045</b>	<b>1,262,616</b>

I advise the above creditors list and amount may increase pending on receipt of proof of debts from creditors and further investigations.

My investigations in respect of the assets and liabilities position are continuing. Creditors will be notified should there be any material updates.

Should you be aware of any other creditors, please contact my office for further information.



### 3 Financial Records

I have received the below financial statements for the Company for the FY19 and FY20 prepared by the Accountant and FY21 and YTD22 from the Company's Management Accounts.

#### Profit and Loss

	Financial Statements		Financial Statements		Management		Management	
Profit and Loss	FY19		FY20		FY21		YTD FY 22	
	(\$)		(\$)		(\$)		(\$)	
<b>Operating Income</b>								
Sales	51,364		1,038,038		727,234		15,194	
Less: Cost of goods sold	33,542		800,996		691,855		-	
<b>Gross Profit</b>	<b>17,822</b>		<b>237,041</b>		<b>35,379</b>		<b>15,194</b>	
<b>Gross Margin</b>	<b>35%</b>		<b>23%</b>		<b>5%</b>		<b>100%</b>	
<b>Operating Expense</b>								
Accounting & bookkeeping	603	1%	1,500	1%	3,039	1%	3,442	16%
Insurance	6,268	5%	4,504	2%	-	-	-	-
Motor vehicle expenses	-	-	2,473	1%	5,445	2%	644	3%
Rent	72,428	63%	78,496	40%	25,864	12%	1,818	9%
Salaries & wages	14,084	12%	83,768	42%	161,231	72%	4,559	22%
Superannuation	1,338	1%	7,910	4%	3,462	2%	8,366	40%
Other payroll expense	-	-	1,204	1%	15,921	7%	293	1%
Others	21,079	18%	18,495	9%	9,032	4%	1,971	9%
	<b>115,799</b>		<b>198,351</b>		<b>223,994</b>		<b>21,093</b>	
<b>EBITDA</b>	<b>(97,977)</b>		<b>38,690</b>		<b>(188,614)</b>		<b>(5,899)</b>	
Add: Interest Income	423		424		422		31	
Less: Interest expenses	(2,992)		(3,827)		(46)		-	
Less: Depreciation expenses	(19,794)		(84,837)		-		-	
Less: Land tax	(6,332)		(7,224)		-		-	
<b>Net Profit</b>	<b>(126,674)</b>		<b>(56,774)</b>		<b>(188,239)</b>		<b>(5,867)</b>	

My comments for the above are as follows:

- The Company ceased trading around April 2021.
- The Company generated net losses from FY19 onwards.
- The Company's majority cost relates to rent and wages and salaries which comprises between 75%-85% of the Company's total expenses. From the Company records, it appears that the wages and salaries were doubled in the year FY21. This is due to increase in the wages of staff member and increase in the number of employees from 4 to 5. The wages expenses up to YTD22 relate to 7 employees not including the Director.
- The depreciation relates to a General Pool of \$29,655 and the additional new assets in the amount of \$55,182 which was purchased and disposed in FY20. The depreciation was applied at 100% for both assets totalling \$84,837 in FY20. There is no further information in respect of General Pool in the Company's financial statements.

- Although the gross profit margin for the FY20 is higher than FY21 and operating expenses are less in FY20 than FY21, the Company generated greater losses in FY20 due to full depreciation allowed on the assets and land tax costs.
- It appears that the Company has paid Land Tax in the FY19 and FY20. The financial statement provided does not disclose the details of same. I have enquired regarding same with the Director and the Accountant and currently awaiting their response.

## Balance Sheet

	Financial Statements	Financial Statements	Management	Management
Balance Sheet	FY19	FY20	FY21	YTD FY 22
	(\$)	(\$)	(\$)	(\$)
<b>Current Assets</b>				
Cash on Hand	100	100	100	100
Cash at Bank	8,694	1,534	8,256	12,092
Bank Guarantee	28,178	28,178	28,178	28,178
Trade Debtors	30,186	-	-	-
Total Clearing Accounts	-	-	(20,852)	(23,764)
Borrowing Cost	327	612	727	727
Stock on Hand	121,663	624,790	-	-
Current Tax Liability	187	376	-	-
Provision for GST	11,339	5,677	-	-
ATO Activity Statement Balance	9,928	20,342	-	-
Loans to UAS Southbank Pty Ltd	-	-	19,485	21,299
	<b>210,601</b>	<b>681,609</b>	<b>35,894</b>	<b>38,632</b>
<b>Non-Current Assets</b>				
General Pool	29,655	-	84,837	84,837
	<b>29,655</b>	<b>-</b>	<b>84,837</b>	<b>84,837</b>
<b>Total Assets</b>	<b>240,256</b>	<b>681,609</b>	<b>120,731</b>	<b>123,469</b>
<b>Current Liabilities</b>				
Superannuation Payable	942	2,317	11,992	12,285
GST	-	-	(21,506)	(22,106)
PAYG Withholding Payable	1,464	2,755	25,042	25,384
	<b>2,406</b>	<b>5,072</b>	<b>15,529</b>	<b>15,563</b>
<b>Non-Current Liabilities</b>				
Director Loan - Alex Yang	148,768	309,169	475,640	475,640
Chattel Mortgage - Forklift	31,935	24,928	13,853	13,853
Chattel Mortgage - Truck	-	56,193	-	-
Chattel Mortgage - Finlease	-	-	40,607	35,878
Business Loan #2	-	-	-	13,300
Loan from Related Parties	183,721	469,594	484,594	484,593
	<b>364,424</b>	<b>859,884</b>	<b>1,014,693</b>	<b>1,023,264</b>
<b>Total Liabilities</b>	<b>366,830</b>	<b>864,956</b>	<b>1,030,222</b>	<b>1,038,827</b>
<b>Net Assets</b>	<b>(126,574)</b>	<b>(183,347)</b>	<b>(909,491)</b>	<b>(915,358)</b>
<b>Equity</b>				
Shareholder Capital	100	100	100	100
Retained Earnings	-	(126,674)	(721,352)	(721,352)
Current Year Earnings	(126,674)	(56,774)	(188,239)	(5,867)
	<b>(126,574)</b>	<b>(183,347)</b>	<b>(909,491)</b>	<b>(727,119)</b>
<b>Total Equity</b>	<b>(126,574)</b>	<b>(183,347)</b>	<b>(909,491)</b>	<b>(727,119)</b>

My comments for the above are as follows:

- The Company generated net deficiency from FY19.

- The Company's major liabilities include loan liabilities from the Director and related parties.
- The ATO advised that there is currently no claim against the Company however the Company has not lodged tax returns for the year ended FY21 and FY22 and the activity statement for quarters March 21, June 21, March 22 and June 22 which may result in the tax liability.
- The Company's largest assets appear to be stock and a Bank Guarantee.  
As the Company ceased trading around April 2021 (prior to my appointment as Liquidator), the director has not advised what happen to the stock on hand at that time or the furniture and fittings owned by the Company.

As previously advised the Director is based currently overseas and unable to access/retrieve emails. Further investigations are being conducted in respect to the furniture and fittings and stock owned by the Company prior to its cessation.

- The Company provided loan to Universal Asian Supermarket Southbnk Pty Ltd ("**UASS**") which totals \$21K as at YTD22. UASS went into liquidation on 18 May 2022, and I was appointed liquidator. At this stage it is unlikely that there will be a distribution to any class of creditors from this company. Any recoveries are reliant upon the recoveries from the voidable transactions.

## 4 Investigations

### 4.1 Company books and records

Liquidators are required to provide an opinion as to whether the Company's books and records are maintained in accordance with Section 286 of the Act for a period of seven years. The Act requires that a company maintain financial records that correctly record and explain its transactions, financial position, and performance, and enable true and fair financial statements to be prepared.

I refer to Section 2.3 of this report, to date, I have not been provided with sufficient Company's books and records. As such, I am of the view that the Company's books and records have not been kept in a manner that complies with Section 286 of the Act.

Failure to maintain books and records may give rise to a presumption of insolvency pursuant to Section 588 E of the Act. This presumption maybe relied upon by the Liquidator in an application for compensation for insolvent trading and other actions for recoveries pursuant to Park 5.7 B of the Act from the directors and related parties.

Please refer to my comments in section 2.3 of this report.

Any offences identified will be reported to the Australian Security and Investments Commission ("**ASIC**") in a confidential report issued pursuant to section 533 of the Corporations Act 2001 ("**the Act**").

### 4.2 Reasons for Failure

The Director's completed RoCAP explained the below factors for the business failure:

- The impact of Covid-19 pandemic on the business.

In my opinion, the Company's failure appears to be due to the following:

- Inadequate cash flow to attend the liabilities of the Company; and
- Mismanagement of business.

The above opinion is subject to change pending the receipt of further information and documentation from the Director.

#### **4.3 Recoveries, offences and voidable transactions**

The Liquidator is required to complete and lodge a report with ASIC pursuant to Section 533 of the Act where it appears that a past or present officer of the Company may have been guilty of an offence in relation to the Company and in other circumstances. I intend to lodge a report pursuant to this section of the Act.

Pursuant to Part 5.8B of the Act, a liquidator is permitted to recover transactions that appear to be voidable transactions in respect of money, property, or other benefits. To the extent that information has been available, I have reviewed the Company books and records for the period approximately six months prior to my appointment and determined whether any creditors have been preferred over the general body of creditors as a result of any transaction.

The relation back date period is 22 October 2021 (six months prior to 22 April 2022, the day the winding up petition was filed).

##### **a) Unfair preferences (Section 588FA)**

Unfair preferences are transactions between the Company and a creditor resulting in the creditor receiving more than the creditor would receive if the transaction were set aside and the creditor was to prove for this amount in the winding-up. Voidable transactions must have taken place in the period beginning six months prior to the relation back day and ending on the date of liquidation.

As the Company ceased trading in April 2021, there are no preference transactions that are recoverable.

##### **b) Uncommercial Transactions (Section 588FB)**

Section 588FB of the Corporations Act provides for transactions that were not beneficial or detrimental to the Company as being void. The transaction must have occurred when the Company was insolvent or would become insolvent.

My investigation into the uncommercial transactions is currently ongoing. Creditors will be advised if there are any material updates.

##### **c) Unfair Loans (Section 588FD)**

Section 588FD of the Act provides for loans to be voided in circumstances where interest or charges are considered extortionate.

My investigation into unfair loans is currently ongoing. Creditors will be advised if there are any material updates.

**d) Unreasonable Director-Related Transactions (Section 588FDA)**

Section 588FDA of the Corporations Act provides for transactions where it may be expected that a reasonable person in the Company's circumstances would not have entered into the transaction having regard to the benefits, detriments, and respective benefits to other parties.

My investigation into unreasonable director-related transactions is currently ongoing. Creditors will be advised if there are any material updates.

**e) Related Party Transactions (Section 588FE(4))**

Section 588FE(4) of the Act provides for payments to related parties may be voided where the Company was insolvent at the time of the transaction. My investigations are currently ongoing in regard to these transactions.

My investigation into related party transactions is currently ongoing. Creditors will be advised if there are any material updates.

**f) Circulating security interest created within six months before relation back date (Section 588FJ)**

Section 588FJ of the Act provides that a circulating security interest created within six months before relation back date maybe rendered void.

There were no circulating security interests that were created within six (6) months before the relation back date. Please refer to section 2.4.2 for further details.

**4.4 Insolvent Trading (Section 588G)**

Section 588G of the Act provides that a company's director(s) has a duty to protect the Company from incurring debt when there are reasonable grounds for suspecting that the Company will be unable to pay its debts as and when they fall due. Section 588M of the Act provides that a liquidator is able to recover 'damages' from the director(s) of an insolvent company, in an amount equal to the loss or damage suffered by the Company as a result of a breach of duty.

Section 95A(1) of the Corporations Act 2001 provides a definition of a solvent entity as follows:

"A person is Solvent if, and only if, the person is able to pay all of its debts, as and when they become due and payable"

An insolvent entity is defined under Section 95A(2) of the Corporations Act 2001 as:

"A person which is not Solvent is Insolvent"

There are defences available to directors pursuant to section 588FGB of the Act which include:

- If it is provided that, at the payment time, the person had reasonable grounds to expect, and did expect, that the company was solvent at that time and would remain solvent if it made the payment;

- Had reasonable grounds to believe and did believe:
  - That a competent and reliable person (the other person) was responsible for providing to the first-mentioned person adequate information about whether the company was solvent; and
  - That the other person was fulfilling that responsibility.
- Expected, on the basis of information provided to the first mentioned person by the other person, that the company was solvent at that time and would remain solvent even if it made the payment.
- Because of illness or for some other good reason, the person did not take part in the management of the company at the payment time.
- The person took all reasonable steps to prevent the company from making the payment; or there were no such steps the person could have taken.

Based on the current information available, I am of the opinion that the Company was trading whilst insolvent from at least FY19 onwards. Further investigations will be conducted to calculate the exact date of insolvency. The quantum of claim from FY19 is currently estimated at \$1,298,339 being the debt outstanding since the date the Company is deemed insolvent. This amount is subject to change, pending the receipt of further claims or information in relation to the Company.

My opinion is based on the following:

**a) Profit and Loss**

- The Company generated net loss of (\$126K) in FY19;
- The Company generated net loss of (\$56K) in FY20;
- The Company generated net loss of (\$188K) in FY21; and
- The Company generated net loss of (\$5K) in YTD22; and

**b) Balance Sheet**

- The Company generated net deficiency of (\$126K) in FY19;
- The Company generated net deficiency of (\$183K) in FY20;
- The Company generated net deficiency of (\$909K) in FY21; and
- The Company generated net deficiency of (\$915K) in YTD22.

**c) Outstanding lodgements**

The Company has not lodged tax returns for the year ended FY21 and FY22 and the activity statement for quarters March 21, June 21, March 22 and June 22 which may result in a tax liability.

**d) Creditor demands**

With the limited books and records received, I am unable to comment if the Company had received letter of demands/notices from creditors. Notwithstanding, I have received

statement from the Accountant disclosing that there are amounts outstanding since June 2020.

**e) Cash, working Capital and current ratio**

Due to limited books and records, I am unable to comment accurately on the positive working capital position of the Company.

In addition, majority of assets comprised of stock and a bank guarantee. Due to absence of stocktake listings and stock schedule, I am unable to justify the accuracy of the amounts recorded in the records.

**f) Alternate source of funding**

The Company received funding from related entity the Petitioning Creditor and UASS which are currently in liquidation (details provided in the previous report) and from shareholders Alex Yang, Allen Kong and Zhaoguang Yang. Considering the Company's net asset position being negative each FY and loan balances increased each year, in my opinion, the Company would have had difficulties obtaining any further funding.

**Director's personal financial position**

The Director has not provided his personal assets and liabilities position.

As advised in my previous report, a search conducted on the NSW Land Registry disclosed that there is there is property jointly owned by the Director in Sunnybank QLD. There is a mortgage on the property with National Australia Bank Limited and three (3) caveats lodged on the property. The property is currently estimated between \$1.5mil and \$1.6mil however I do not possess sufficient information to estimate the equity in the property.

My investigations are ongoing, I will need to assess the commercial viability and the cost benefit of pursuing these actions.

In addition, I am currently unfunded to pursue any recoveries against the Director.

Should a creditor intend to fund for any of the recovery actions, please contact Mahima Sharma of this office on 02 8020 5870 or via email at [msharma@hogansprowles.com.au](mailto:msharma@hogansprowles.com.au).

**4.5 Breach of Directors Duties**

Section 180 to 184 of the Act sets out duties and powers of directors and officers of a company to enable Director's act in the interest of the Company. The duties include:

- Section 180 – Care and Diligence
- Section 181 – Good Faith
- Section 182 – Use of Position
- Section 183 – Use of Information
- Section 184 - Good faith, use of position and use of information

### **Section 180 – Care and Diligence**

Pursuant to Section 180 of the Act a director or other officer of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

- (a) were a director or officer of a corporation in the corporation's circumstances; and
- (b) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.

### **Section 181 – Good Faith**

Pursuant to Section 181 of the Act, a director or other officer of a corporation must exercise their powers and discharge their duties:

- (a) in good faith in the best interest of the corporation; and
- (b) for a proper purpose

### **Section 182 – Use of Position**

Pursuant to Section 182 of the Act, a director or other officer or employee of a corporation must not improperly use their position to:

- (a) Gain advantage for themselves or someone else; or
- (b) Cause detriment to the corporation.

In considering whether a director has met their duties in exercising care and diligence, various circumstances may be considered including the type of company, the size and nature of its business, the composition of its board and the distribution of the work between the board.

My investigations are ongoing into whether the Director have contravened any of the above sections in relation to his duty as director.

Further to the points outlined in this report, my investigations into the nature and history of Company are ongoing to identify any personal advantages and detriments to the Company.

I will be preparing my report to ASIC pursuant to Section 533 of the Act with regards to any breaches.

If creditors have any information which may assist my investigations, please email Christine Xiao of my office at [cxiao@hogansprowles.com.au](mailto:cxiao@hogansprowles.com.au) or by phone on 02 8020 5858.

## **5 Likelihood of a dividend**

Insufficient assets have been realised to enable a distribution to any class of creditor.



A dividend to unsecured creditors is reliant on the recoveries from voidable transactions and insolvent trading claim. At this stage, it is unlikely that a dividend will be paid in the liquidation to priority and unsecured creditors.

If a dividend is going to be paid, creditors will be contacted before it happens and if they have not already done so, creditors will be asked to lodge a proof of debt. This formalises creditors' claims in the liquidation and is used to determine all claims against the Company.

## 6 Receipts and Payments

Following are the receipts and payments in the liquidation to date:

Sky Wolf Pty Ltd (In Liquidation) R&P for the period 18 May 2022 to 17 August 2022	
	<b>\$ (Incl.GST)</b>
Cash at Bank	<u>910.59</u>
<b>Total Receipts</b>	<b>910.59</b>
	<u>-</u>
<b>Total Payments</b>	<b>0.00</b>
<b>Net Receipts/(Payments)</b>	<b>910.59</b>

## 7 Costs of the Liquidation

Following my previous report to creditors of 16 June 2022, remuneration of \$45,000 (excl GST) and internal disbursements of \$2,000 (excl GST) were approved by creditors on 8 July 2022.

At this stage, I will not be seeking further approval of fees from creditors.

## 8 What happens next?

I will proceed with the liquidation, including, but not limited to:

- Finalise my investigations into the affairs of the Company;
- Reporting to the corporate insolvency regulator ASIC;
- Voidable transaction recovery (if any);
- Any other matters relevant to the liquidation; and
- Finalisation.

I expect to have completed this liquidation within six (6) to twelve (12) months subject to pursuit of any recoveries.

If I receive a request for a meeting that complies with the guidelines set out in the ARITA information sheet "Creditors Rights in Liquidation" as attached at **Annexure B**, I will hold a meeting of creditors.

## 9 Where can you get more information?

You can access information which may assist you on the following websites:

- ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors)
- ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for “insolvency information sheets”).

If you have any queries, you can contact my office and speak with Christine Xiao on 02 8020 5858 or by email on [cxiao@hogansprowles.com.au](mailto:cxiao@hogansprowles.com.au).

Yours faithfully,

**Sky Wolf Pty Ltd (In Liquidation)**

  
**Brendan Copeland**  
Liquidator

INFORMAL PROOF OF DEBT FORM

Regulation 5.6.47

Sky Wolf Pty Ltd (In Liquidation)
Formerly trading as Universal Warehouse Pty Ltd
A.C.N. 626 076 800 ("the Company")

Name of creditor: .....

Address of creditor: .....

.....

ABN: .....

Telephone number: .....

Amount of debt claimed: \$..... (including GST \$ .....

Consideration for debt (i.e, the nature of goods or services supplied and the period during which they were supplied):

.....
.....
.....

Is the debt secured? YES/NO

If secured, give details of security including dates, etc:

.....
.....
.....

Other information:

.....
.....

.....
Signature of Creditor
(or person authorised by creditor)

.....
Dated

Notes:

Under the Insolvency Practice Rules (Corporations) (IPR) 75-85, a creditor is not entitled to vote at a meeting unless:

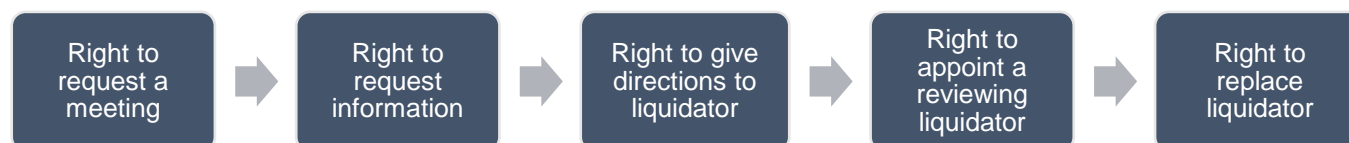
- a. his or her claim has been admitted, wholly or in part, by the Liquidator; or
b. he or she has lodged with the Liquidator particulars of the debt or claim, or if required, a formal proof of debt.

At meetings held under Section 436E and 439A, a secured creditor may vote for the whole of his or her debt without regard to the value of the security (IPR 75-87 ).

Proxies must be made available to the Liquidator.

## Creditor Rights in Liquidations

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



### Right to request a meeting

In liquidations, no meetings of creditors are held automatically. However, creditors with claims of a certain value can request in writing that the liquidator hold a meeting of creditors.

A meeting may be requested in the first 20 business days in a creditors' voluntary liquidation by  $\geq 5\%$  of the value of the debts held by known creditors who are not a related entity of the company.

Otherwise, meetings can be requested at any other time or in a court liquidation by:

- $> 10\%$  but  $< 25\%$  of the known value of creditors on the condition that those creditors provide security for the cost of holding the meeting
- $\geq 25\%$  of the known value of creditors
- creditors by resolution, or
- a Committee of Inspection (this is a smaller group of creditors elected by, and to represent, all the creditors).

If a request complies with these requirements and is 'reasonable', the liquidator must hold a meeting of creditors as soon as reasonably practicable.

### Right to request information

Liquidators will communicate important information with creditors as required in a liquidation. In addition to the initial notice, you should receive, at a minimum, a report within the first three months on the likelihood of a dividend being paid.

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

A liquidator 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 liquidator 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:

Both meetings and information:

- (a) complying with the request would prejudice the interests of one or more creditors or a third party
- (b) there is not sufficient available property to comply with the request
- (c) the request is vexatious

Meeting requests only:

- (d) a meeting of creditors dealing with the same matters has been held, or will be held within 15 business days

Information requests only:

- (e) the information requested would be privileged from production in legal proceedings
- (f) disclosure would found an action for breach of confidence
- (g) the information has already been provided
- (h) the information is required to be provided under law within 20 business days of the request

If a request is not reasonable due to (b), (d), (g) or (h) above, the liquidator must comply with the request if the creditor meets the cost of complying with the request.

Otherwise, a liquidator must inform a creditor if their meeting or information request is not reasonable and the reason why.

Specific queries about the liquidation should be directed to the liquidator's office.

## Right to give directions to liquidator

Creditors, by resolution, may give a liquidator directions in relation to a liquidation. A liquidator must have regard to these directions, but is not required to comply with the directions.

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

An individual creditor cannot provide a direction to a liquidator.

## Right to appoint a reviewing liquidator

Creditors, by resolution, may appoint a reviewing liquidator to review a liquidator's remuneration or a cost or expense incurred in a liquidation. 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.

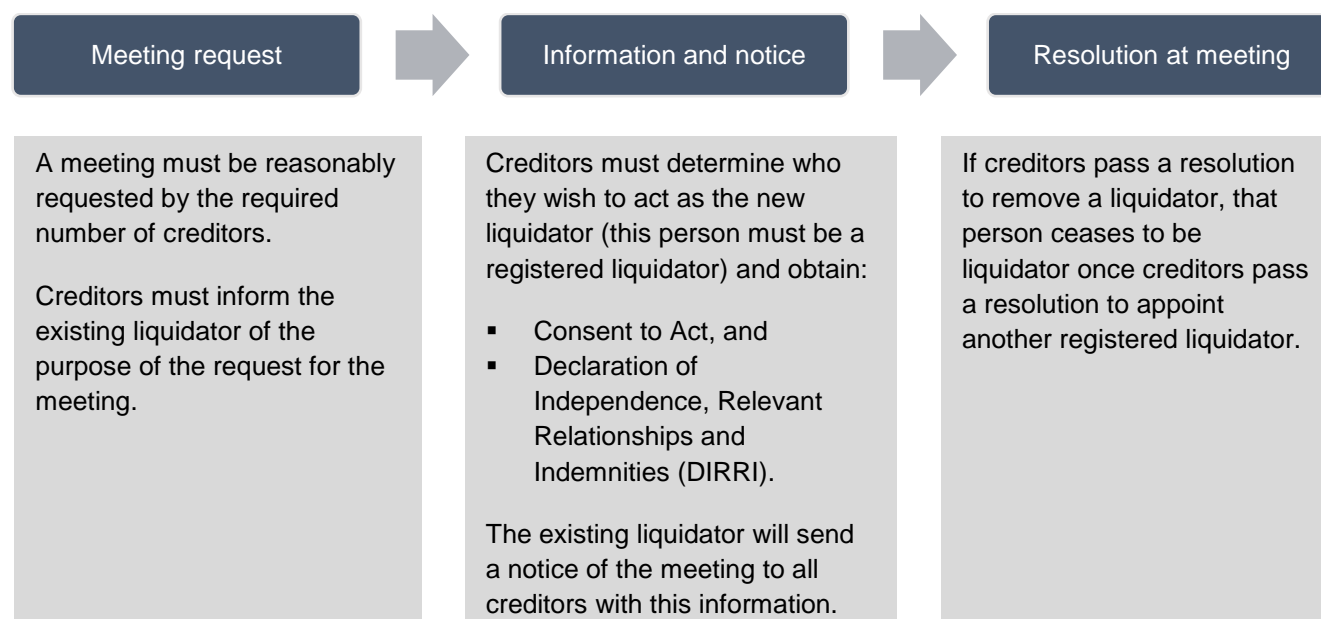
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

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

## Right to replace liquidator

Creditors, by resolution, have the right to remove a liquidator and appoint another registered liquidator.

For this to happen, there are certain requirements that must be complied with:



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