



**Treck Masters (Trading) Pty Ltd (In Liquidation)
A.C.N. 645 593 586 (“the Company”)**

Statutory Report to Creditors

7 October 2022

1. Executive Summary

1.1. Liquidator appointment

I was appointed as Liquidator of the Company by special resolution of the members of the Company passed at a duly convened meeting on 11 July 2022.

This report should be read in conjunction with my initial report to creditors dated 14 July 2022.

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

Should you have any queries in relation to this matter, please contact Tom Farquhar on (02) 8020 5861 or via email at tfarquhar@hogansproawles.com.au.

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

1.3. Summary of investigations

At this stage, there are insufficient assets or recoveries available in the liquidation to enable a dividend to any class of creditors.

I have identified the following possible offences and recovery actions available for me to pursue.

Investigation / Recovery	Corporations Act	Total claim \$
R&D Refund	-	TBA
Insolvent Trading	Section 588G	46,923
Duty of Good Faith	Section 181	TBA

Should creditors wish to fund my investigations, please contact Tom Farquhar of my office on 02 8020 5861 or via email at tfarquhar@hogansproawles.com.au by 28 October 2022.

2. Update on Liquidation

2.1 Company Background

The Company was registered on 2 November 2020 and traded a business that designed and developed anti-theft luggage security systems.

Next Level Japan K.K (“Next Level JKK”) obtained judgement for \$25,476.16 plus interest and legal fees for outstanding invoices. Next Level JKK provided marketing and sales resources to the Company to enter the Japanese market. The Company did not fulfil its requirement in relation to the agreement entered between the two parties on 29 June 2021.

The Company ceased to trade immediately prior to my appointment on 11 July 2022.

2.2 ASIC Search

An ASIC Search conducted for the Company discloses the following:

Company Details		
Registration Date	2 November 2020	
Registered Office	61A Donohue Street, Kings Park NSW 2148	
Principal Place of Business	61A Donohue Street, Kings Park NSW 2148	
Director	Appointed	Ceased
Leslie David Ralph	2 November 2020	-
Secretary	Appointed	Ceased
Leslie David Ralph	2 November 2020	-
Share Structure	Amount Paid	Amount Unpaid
10 Ordinary Shares	\$100.00	\$0.00
Current Shareholders	Shares Held/Type	Fully Paid
Leslie David Ralph	100 Ordinary Shares	Yes

2.3 Personal Property Securities Register (“PPSR”)

A search of the PPSR indicates that there are no registered security interests.

2.4 Directorship search

A personal historical search has been conducted of ASIC’s record for the Director, Leslie David Ralph (“Mr Ralph”). Below is a summary of the directorships of the Director held over the last five (5) years:

Company	Position	Commenced
Leslie David Ralph		
Treck Masters (Trading) Pty Ltd	Director	02-11-2020
Treck Masters (Trading) Pty Ltd	Secretary	02-11-2020

Treck Masters (Holdings) Pty Ltd	Director	02-11-2020
Treck Masters (Holdings) Pty Ltd	Secretary	02-11-2020
Sequo Industries Pty Ltd	Director	24-04-2019 to 13-09-2021
Sequo Industries Pty Ltd	Secretary	24-04-2019 to 13-09-2021
Sequo Manufacturing Pty Ltd	Director	24-04-2019 to 13-09-2021
Sequo Manufacturing Pty Ltd	Secretary	24-04-2019 to 13-09-2021

3. Estimated Position Statement

Below is an estimated position of the Company:

	Notes	Form 509 (\$)	Liquidator's estimate (\$)
Assets			
Cash at Bank	3.1	1	1
Sundry Debtors	3.2	10,547	-
Income Tax Return	3.3	95,000	-
Circulating assets / recoveries			
Insolvent Trading	3.4	-	298,638
Less: Liquidation costs			
Liquidators remuneration and disbursements	3.5	10,000	10,000
Total surplus/deficiency for unsecured creditors		TBC	TBC
Unsecured creditors			
	3.6		
Leslie Ralph - Related Party		240,000	TBD
Trade Creditors		58,638	46,923
		298,638	46,923
Total surplus/deficiency		TBC	TBC

Notes

Note 1 Cash at Bank

The pre-appointment Australia and New Zealand Banking Group Limited ("ANZ") bank account was closed on 28 January 2022. The pre-appointment Commonwealth Bank of Australia ("CBA") bank account had a \$1 CR on the date of my appointment. I have transferred the balance of the CBA bank account to the liquidation account.

Note 2 Sundry Debtors

According to the Director, the Company had \$10,147 in sundry debtors at the date of my appointment.

However, to this date, I have been unable to validate this amount and accordingly, it is unlikely to be recoverable.

Note 3 Income Tax Return

The Director advised the Company is expecting a Research and Development (“R&D”) refund of about \$95K at the date of my appointment. However, no documentation has been provided by the Director to substantiate this claim.

Note 5 Insolvent Trading

Please refer to section 6.4 of this report for further information.

Note 6 Liquidators remuneration and disbursements

On 12 August 2022, I received remuneration and disbursements approval from the creditors via proposal without a meeting of \$10,000 and \$1,000 excluding GST respectively.

To this date, I have incurred fees of circa \$13,000.

Note 7 Unsecured creditors

My investigations to date reveal the following unsecured creditors:

Creditor	Amount (\$)
Leslie Ralph - Director	TBD
Proactive Edge	1,094
Peter J Moon & Co Pty Ltd	500
Level Vision ILP Pty Ltd	3,568
Next Level Japan KK	27,762
Deakin University	14,000
TOTAL	46,923

4. Report on Company Activities and Property (“ROCAP”)

The Act requires the director and secretary to comply and provide to the liquidator a ROCAP, detailing the financial position of the company at the date of my appointment, being 11 July 2022.

I have sent numerous requests for the completion of the ROCAP and delivery of the Company books and records.

On 12 September 2022, I had written to the Australian Securities and Investments Commission (“ASIC”) requesting assistance for the director’s non-compliance to my requests. On the same day, ASIC notified the Director of the obligations he owed to the Liquidator of the Company, which includes returning a completed ROCAP.

To this date, the Director has not returned to me a completed ROCAP and provided me with limited books and records.

5. Financial Analysis

At the date of this report, I have obtained the following information which I have based my preliminary investigations on:

- Bank statements for the period 20 November 2020 to 11 July 2022 provided by ANZ and list of transactions for the period 18 February 2022 to 11 July 2022 provided by CBA;
- Access to the Company's accounting system, Xero provided by the Company's bookkeeper, Roslyn Athee ("Ms Athee");
- PST data for the director's email account;
- Freedom of Information documents ("FOI documents") from the ATO;

I have been unable to undertake my investigations and provide any comments on the Company's historical financial position because the Company's books and records are inadequate. Further, the financials entered on Xero don't reflect the transactions that appear on the Company's bank statements.

6. Investigations

6.1 Books and records

Based on my review of Xero, and the books and records I have received to date, I am of the view that the Company's books and records were not kept in a manner that complies with Section 286 of the Act.

Failure to maintain books and records may also 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.

My staff were advised by Ms Athee that the Company's accountant was Peter Moon ("Mr Moon") of Peter J Moon & Co Pty Ltd. On 6 September 2022, my staff contacted Mr Moon, requesting books and records held in his possession. Mr Moon has since advised my staff that he held no books and records for the entity and did not undertake any accounting or tax works for the Company.

Despite numerous assurances from the Director, I have been unable to obtain any books and records for the Company from the Director. On 12 September 2022, ASIC contacted the Director reminding him of his obligations as a director. However, no books and records have been forthcoming.

6.2 Reasons for Failure

My preliminary investigations reveal the Company's failure was also attributed to the following factors:

- Insufficient working capital and trading losses; and
- Inadequate books and records

6.3 Recoveries, offences and voidable transactions

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

Pursuant to Part 5.7B of the Act, the 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 conducted the following preliminary investigations in relation to recoveries, offences and voidable transactions:

- Review books and records for the period approximately six months prior to the appointment of the liquidator to determine whether any creditors have been preferred over the general body of creditors as a result of any transaction; and
- Investigations into the Director's misconducts and breaches of director's duties.

The relation back date period is 11 January 2022 to 11 July 2022.

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 transactions 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 (6) months prior to the relation back day and ending on the date of liquidation.

Based on my review of the Company's bank statements, I have not identified any unfair preference transactions. Further investigations are required to verify this claim.

b) Uncommercial Transactions (Section 588FB)

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

For an uncommercial transaction to be voidable, the transaction would have taken place during the two (2) years ending on the relation-back day or if a related entity was the other party to the transaction, during the four (4) years ending on the relation-back day.

Based on the Company books and records available to me, I have not identified any transactions that would be subject to this Section of the Act.

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.

Based on the Company books and records available to me, I have not identified any transactions that would be subject to this Section of the Act.

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.

Based on the Company books and records available to me, I have not identified any transactions that would be subject to this Section of the Act.

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.

Based on the Company books and records available to me, I have not identified any transactions that would be subject to this Section of the Act.

6.4 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"

Based on the above definition of insolvency and the information available to me, I am of the view that the Company was insolvent from 2 November 2020.

a) Presumption of Insolvency

Pursuant to Section 286 of the Act, the Company is required to maintain financial records that would:

- Correctly record and explain its transactions and financial position and performance; and
- Would enable true and fair financial statements to be prepared and audited for the period of 7 years.

Failure to maintain sufficient books and records gives rise to presumption of insolvency throughout the period.

As mentioned in section 6.1 above, it is my opinion that the books and records have not been kept in a manner that complies with Section 286 of the Act.

The Company's bank statements are significantly different to the transactions that are reconciled in the Company's management account on Xero and there was no evidence of supporting documentation for any transactions.

Further, there are no prepared financial statements for FY21 or FY22 periods and my investigations have been limited due to the lack of Company books and records.

Therefore, I am of the view that the Company was insolvent trading from the date the Company was registered on 2 November 2020.

6.4.1 Insolvent Trading Quantum/Claim

The quantum of the insolvent trading claim is estimated to be \$46,923, which is equivalent to the value of creditors on the date of my appointment.

Please refer to Section 3.7 for a detailed list of creditors of the Company.

The likelihood of dividend from the above depends on the commerciality of the recovery, which lead me with the following factors to consider:

- The quantum of the claim;
- The litigation funding involved;
- The Director's ability to pay;
- The defences available for the Director; and
- The available Liquidator's fund for insolvent trading.

6.4.2 Insolvent Trading Defences

The defences available to directors pursuant to section 588FGB of the Act 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.

Director's personal financial position

According to the NSW Land Title search the Director has no real property, however he may have an equitable interest in a property in NSW.

Further investigations are required to affirm the Director's personal financial position and to assess whether the claim against the Director is commercial to pursue.

6.5 Breach of Directors' Duties

Section 180 to 183 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 – Criminal Offences

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

The Director may have also failed to exercise his duties as a director in good faith in the best interest of the corporation and for a proper purpose.

Based on my investigations and the limited information provided by the Director to date, the records indicate the Company was engaging third parties to promote a proto-type travel luggage. I am not aware of any product having been developed by the Company. From the limited information provided it appears the Company may not have operated in any capacity, however, was lodging Business Activity Statements and claiming GST refunds. In my opinion the director may not have exercised his powers and discharged his duties in good faith.

Further investigations are required to affirm the Director's breach of director's duties.

7. What happens next?

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

- Reporting to the corporate insolvency regulator, the Australian Securities and Investments Commission (“ASIC”);
- Continue my investigations into the affairs of the Company;
- Any other matters relevant to the liquidation.

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. If you have not already submitted your claim, please complete the Proof of Debt form attached as **Annexure A**.

I expect to have completed this liquidation within six months to twelve months.

8. Costs of the Liquidation

On 12 August 2022, creditors approved by circular resolution my fees in the amount of \$10,000 plus GST. To this date, I have incurred fees of circa \$13,000.

I am not seeking further remuneration approval at this stage.

9. Receipts and payments

There have been no receipts or payments at this stage.

10. Where can you get more information?

The Australian Restructuring Insolvency and Turnaround Association (“ARITA”) provides information to assist creditors with understanding liquidations and insolvency.

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

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

If you have any queries or have any information to support the liquidation you can contact my office and speak with Tom Farquhar on 02 8020 5861 or via email on tfarquhar@hogansprowles.com.au.

Dated: 7 October 2022

Treck Masters (Trading) Pty Ltd (In Liquidation)



Christian Sprowles
Liquidator

Attachments

- Annexure A Proof of Debt form
- Annexure B Information Sheet - Creditor Rights in Liquidation

INFORMAL PROOF OF DEBT FORM

Regulation 5.6.47

Treck Masters (Tading) Pty Ltd (In Liquidation)
A.C.N. 645 593 586 ("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:

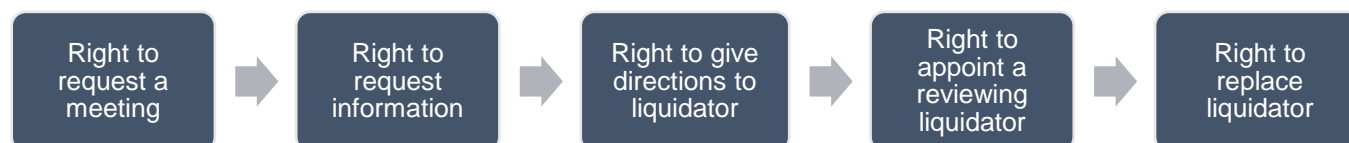
- a. his or her claim has been admitted, wholly or in part, by the Liquidator; or
b. he or she has lodged with the Liquidator particulars of the debt or claim, or if required, a formal proof of debt.

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.

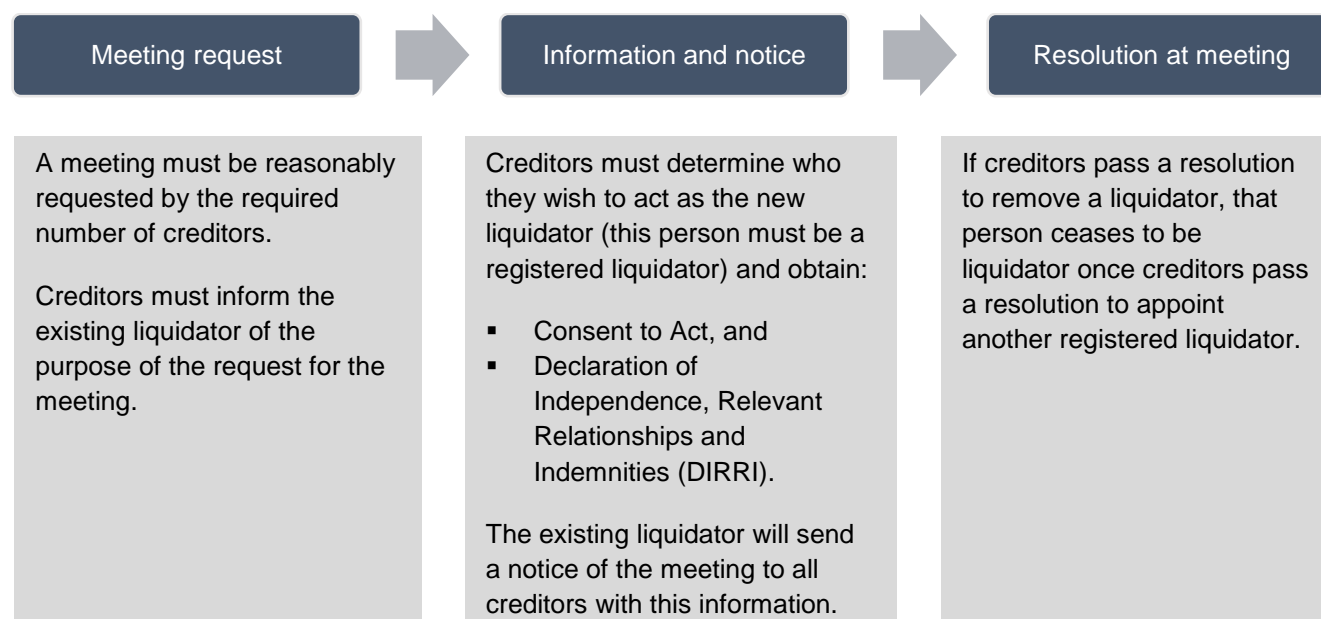
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

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