



Trading Profits Pty Ltd (In Liquidation)
IIOR and ATFT Victoria Hotel Subiaco Unit Trust
ACN 621 389 142
(Trading Profits) (the Company)
Statutory Report to Creditors

I refer to the appointment of Rob Kirman and I as Voluntary Administrators of Trading Profits on 10 May 2019 and our subsequent appointment as Liquidators on 17 June 2019.

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.

A detailed report on Trading Profits' affairs (**Administrators' Report**) was provided to creditors on 10 June 2019 and should be read in conjunction with this report. A copy of the Administrators' Report is available from <https://www.mcgrathnicol.com/creditors/trading-profits-pty-ltd-iior-atft-victoria-hotel-subiaco-unit-trust/>.

1. Update on the progress of the liquidation

1.1 Background

As discussed in the Administrators' Report, Trading Profits was incorporated in August 2017 to act as trustee for the Victoria Hotel Subiaco Unit Trust and commenced trading in October 2017.

We understand Trading Profits was founded by a small consortium of investors led by the former director, Mr Joel Steinberg (**Former Director**), for the purpose of purchasing and operating the Victoria Hotel (the **Vic**) located at 226 Hay Street, Subiaco, WA (**Premises**). The Vic is a well-established, leasehold tavern that provides typical food and beverage offerings.

Bevan Marwick, the Sole Director, ceased trading and surrendered the lease of the Premises on 3 May 2019.

1.2 Outcome of second meeting of creditors

The second meeting of creditors of Trading Profits was held on 17 June 2019. Creditors voted for Trading Profits to be wound up and Rob Kirman and I to be appointed as Liquidators. Resolutions were also passed to (i) approve the Voluntary Administrators' and Liquidators' remuneration and disbursements, (ii) the early destruction of Trading Profits' books and records (when the liquidation has been completed), and (iii) for the Liquidators to compromise any debt to Trading Profits greater than \$100,000 and enter agreements exceeding three months.

2. Estimated assets and liabilities

Set out below is a summary of Trading Profits' asset and liability position. This information is based on the books and records provided to the Liquidators, the Xero accounting software (**Xero**) used by Trading Profits, and the Reports on Company Activities and Property (**ROCAPs**) provided by Mr Steinberg and Mr Marwick. It is also discussed in detail in the Administrators' Report which creditors should read in conjunction with this report.

2.1 Assets

Trading Profits' main asset was the business trading as the Vic, which comprised cash floats, plant and equipment and intellectual property.



A summary of Trading Profits' assets is provided below:

| Summary of Assets | | | | | |
|-----------------------------------|----------------|-------------------------|---------------------------|----------------------|--|
| \$ | Section | Liquidators' ERV | Directors' ROCAP's | | |
| | | | Joel Steinberg | Bevan Marwick | |
| Cash at bank | 2.1.1 | 7,831 | n/a | n/a | |
| Cash on hand | 2.1.2 | 20,979 | - | - | |
| Debtors | 2.1.3 | - | 66,000 | - | |
| Plant & equipment | 2.1.4 | 500 | - | 15,000 | |
| Assets subject to specific charge | 2.1.5 | 118,743 | - | 127,000 | |
| Other assets | 2.1.6 | 3,500 | - | - | |
| Total assets | | 151,553 | 66,000 | 142,000 | |

2.1.1 Cash at bank

Trading Profits held two Commonwealth Bank of Australia transaction accounts with a collective balance of \$7,831. Immediately on the Administrators' appointment, a stop was placed on Trading Profits' pre-appointment bank accounts and the funds were transferred to the Administration bank account (refer section 4).

No further realisations are expected relating to cash at bank.

2.1.2 Cash on hand

During a short period preceding the Administrators' appointment, trading income was directed to Mr Marwick's personal accounts to allow for the payment of wages, as the operating account had been frozen. In total, \$20,979 was realised. These funds have been transferred to the liquidation bank account and Mr Marwick has provided a full reconciliation, which has been reviewed and accepted by the Liquidators.

No further recoveries are expected in this regard.

2.1.3 Debtors

Mr Marwick did not disclose any debtors outstanding to Trading Profits. Mr Steinberg disclosed beer rebates totalling \$23,000 and a loan to Mr Marwick totalling \$43,000, which we understand relates to the trading income collected by Mr Marwick as noted in section 2.1.2 above.

The Liquidators' investigations indicate:

- rebates were paid in advance and accordingly, no amounts are recoverable; and
- Mr Marwick has fully accounted to the Liquidators for the trading income collected on Trading Profits behalf.

No further recoveries are expected.

2.1.4 Plant & equipment

Mr Marwick disclosed chairs and tables valued at \$15,000 in his ROCAP.

The Liquidators have arranged for the collection of limited furniture and IT equipment by Pickles Auctions Pty Ltd (**Pickles**), however, its value is likely to be less than \$1,000.

The Former Director, acting on behalf of Steinberg Investments (WA) Pty Ltd (**Steinberg Investments**) and Janet Steinberg, has asserted security over the plant and equipment (**P&E**) held at Pickles. Mr Steinberg has neither (i) provided consent for the Liquidators to deal with the P&E (i.e. to attempt to realise these assets), nor (ii) enforced the securities to deal with the assets directly.

Without admitting the validity of Mr Steinberg's security, the Liquidators are unable to realise the P&E for the benefit of creditors without Mr Steinberg's consent, and therefore no realisations are expected.



Further information regarding the ongoing correspondence with the secured creditor can be found at section 2.2.2.

2.1.5 *Assets subject to specific charge*

Assets subject to a specific charge consist of the following.

- A Mercedes-Benz X-Class utility (**Vehicle**) with a written down value of \$60,000 as at 10 May 2019, secured to Mercedes-Benz Services Australia Pty Ltd (**Mercedes-Benz**) in respect of a \$66,000 hire purchase agreement.

Having reviewed the security and equity position of the Vehicle, it was determined that (i) the security held by Mercedes-Benz was valid and enforceable, and (ii) the Vehicle was worth less than the debt owing to Mercedes-Benz. Accordingly, a notice not to exercise property rights was issued to Mercedes-Benz during the Administrators' appointment and the Vehicle will be realised by Mercedes-Benz. The Liquidators understand that Mr Marwick, who is the guarantor of the Vehicle purchase, has assumed responsibility for payments under the agreement in his personal capacity.

- The television system at the Premises with a written down value of \$59,000 at 10 May 2019, secured to Mandoe Media Pty Ltd (**Mandoe**) in respect of a \$57,200 leasing agreement.

Having reviewed the security and equity position of the television system, it was determined (i) the security held by Mandoe was valid and enforceable, and (ii) the television system was worth less than the debt owing to Mandoe. Accordingly, a notice not to exercise property rights was issued to Mandoe during the Liquidators' appointment and the television system will be realised by Mandoe.

No further material assets subject to a specific charge have been identified by the Liquidators.

2.1.6 *Other assets*

The Liquidators have received an offer for Trading Profits' intellectual property including business names, social media, and websites (**IP**) from the Landlord. The Liquidators require the secured creditors' consent and recommended that this offer be accepted. The Former Director, acting on behalf of Steinberg Investments and Janet Steinberg, has also asserted security over the IP of Trading Profits, and has not (i) provided the requested consent for the Liquidators to deal with the IP, or (ii) enforced the securities to deal with the assets directly.

Without admitting the validity of Mr Steinberg's security, the Liquidators are unable to realise the IP for the benefit of creditors without Mr Steinberg's consent and therefore no realisation is expected.

No other assets of Trading Profits have been identified. For further details regarding the assets of Trading Profits, please refer to the Administrators' Report.

2.2 *Liabilities*

Set out below is a summary of the liabilities of Trading Profits.

| Summary of Liabilities | | | | | |
|-------------------------------|---------|-----------------------|--------------------|--------------------|--|
| \$ | Section | Liquidators' estimate | Directors' ROCAP's | | |
| | | | Joel Steinberg | Bevan Marwick | |
| Priority creditors | 2.2.1 | (198,492) | Refer Xero | (251,500) | |
| Secured creditors | 2.2.2 | (808,183) | Refer Xero | (602,000) | |
| Landlord | 2.2.3 | (1,187,150) | Refer Xero | (274,200) | |
| ATO liability | 2.2.4 | (170,155) | Refer Xero | - | |
| Unsecured loans | 2.2.5 | (268,926) | Refer Xero | - | |
| Remaining unsecured creditors | 2.2.6 | (875,689) | Refer Xero | (246,000) | |
| Total liabilities | | (3,508,595) | - | (1,373,700) | |

For further details regarding the liabilities of Trading Profits, please refer to the Administrators' Report.



2.2.1 Priority creditors (i.e. employee entitlements)

In accordance with section 556(1)(e) of the Corporations Act 2001 ("Cth") (**Act**), employee entitlements such as wages, leave of absence, retrenchment, payment in lieu of notice and superannuation enjoy a priority ahead of unsecured creditors.

The Liquidators' calculation of priority creditors is set out in the table below.

| Priority creditors | |
|--|----------------|
| Entitlement | \$ |
| Wages | 14,285 |
| Superannuation | 110,648 |
| Annual Leave (incl. leave loading) | 30,757 |
| Pay in lieu of notice (incl. superannuation) | 15,143 |
| Redundancy | 27,659 |
| Total | 198,492 |

The Liquidators have verified employee entitlements on behalf of the Fair Entitlements Guarantee (**FEG**) Scheme, and FEG is currently assessing the eligibility of the claimants.

FEG will be entitled to subrogate into the position of employees to whom they make any distributions, and rank as a priority creditor in the liquidation. In effect, this means any amounts owing to an employee will become due to FEG if and when FEG make a distribution to that employee.

The Liquidators urge all employees who believe they have unpaid employee entitlements to submit their claims to FEG and further information regarding FEG can be found at <https://www.jobs.gov.au/fair-entitlements-guarantee-feg>.

We note that Mr Marwick and Mr Steinberg are owed circa \$28,000 relating to unpaid employee entitlements. Due to the cap on director-related employee claims pursuant to section 556 of the Act (being \$2,000 for wages / superannuation, and \$1,500 for leave), circa \$23,000 of this amount will rank as an unsecured claim. These priority amounts are reflected in the above table.

2.2.2 Secured creditors

The main parties claiming security interests over Trading Profits assets are summarised as follows:

| Secured creditors | | | | | | |
|--|----------------|------|--------|-------|--------|------------|
| Secured party | Claim (\$) | PMSI | ALLPAP | Valid | Equity | Disclaimed |
| Janet Steinberg | 218,000 | x | ✓ | ? | n/a | n/a |
| Steinberg Investments (WA) Pty Ltd | 71,000 | x | ✓ | ? | n/a | n/a |
| Gramercy (BF) Pty Ltd | 395,819 | x | ✓ | ? | n/a | n/a |
| Mercedes-Benz Financial Services Australia Pty Ltd | 66,164 | ✓ | x | ✓ | x | ✓ |
| Mandoe Pty Ltd | 57,200 | ✓ | x | ✓ | x | ✓ |
| Total | 808,183 | | | | | |

Note: Excludes PMSIs over stock

We note the following:

- Ms Steinberg provided loans of \$150,000 in May 2018 and \$60,000 in August 2018 to Trading Profits. Loan documentation and a general security agreement appear to have been executed by the Former Director relating to the security afforded to Ms Steinberg. A proof of debt has been submitted for \$218,000 relating to this claim and the Liquidators understand the \$8,000 discrepancy relates to interest and other charges accrued.



- Steinberg Investments and Trading Profits executed a loan agreement for an “amount not exceeding \$300,000” in August 2018. Loan documentation and a general security agreement have been executed by the Former Director relating to the security afforded to Steinberg Investments. A proof of debt has been submitted for \$71,000.
- Gramercy provided a loan of \$287,000 to Trading Profits in September 2018. The Liquidators have obtained loan documentation executed by the Directors relating to the security afforded to Gramercy. Interest and charges on this facility have culminated in a claim of \$395,819 against Trading Profits.
- A detailed review of the validity of the ALLPAP registrations has not been undertaken as there are currently no material assets subject to these securities.

As outlined above at sections 2.1.4 and 2.1.6, the Former Director, acting on behalf of Steinberg Investments and Janet Steinberg, has claimed first ranking security over all of Trading Profits' assets but has not (i) provided consent for the Liquidators to realise assets subject to that security for the benefit of creditors, or (ii) enforced the securities to deal with the assets directly. Accordingly, the Liquidators have been unable to realise these assets for the benefit of creditors. The Liquidators have not confirmed the validity, enforceability and priority of the purported security interest, and reserve their position in this regard.

2.2.3 Landlord

The Landlord has submitted a claim for \$1.2 million consisting of (i) circa four months' unpaid rent totalling \$156,000, and (ii) capital improvement obligations under the lease agreement of \$1.0 million.

2.2.4 ATO liability

The ATO has submitted a proof of debt for unpaid GST and PAYG totalling \$170,000, relating to the period from incorporation to the Administrators' appointment.

2.2.5 Unsecured loans

Trading Profits management accounts disclose unsecured loans totalling \$220,000 consisting of:

- director loan provided by Mr Marwick - \$138,000;
- shareholder loan provided by Michael Whitfield in June 2018 - \$37,000; and
- an unsecured loan provided by an unrelated third party in June 2018.

2.2.6 Remaining unsecured creditors

The Liquidators' investigations have identified unsecured claims from an additional 66 creditors totalling circa \$876,000.

3. Investigations

The Liquidators discussed the initial investigations completed in the Administrators' Report. Set out below is an overview of the recoveries available in a liquidation and commentary regarding same.

3.1 Insolvent Trading

Before a Court will order that a person pay compensation in respect of insolvent trading, a liquidator must establish that:

- the person was a director of the company at the time the company incurred the debts that are the subject of the claim;
- the company was insolvent at the time the debts were incurred or became insolvent by incurring the debt;
- at that time, there were reasonable grounds for suspecting that the company was insolvent or would become insolvent by incurring the debt; and



- the debt subject of the claim was wholly or partly unsecured and the creditors to whom the debts are owed suffered loss and damage.

As detailed in the Administrators' report, Trading Profits was likely insolvent from 31 January 2018 and possibly from shortly after incorporation. The quantum of a potential insolvent trading claim may be up to \$1.6 million, subject to any defences available to the Directors and the risks associated with litigation in general.

3.2 *Voidable transactions*

The types of voidable transactions available to be recovered by the Liquidators are summarised below:

- Unfair preference claims: transactions between Trading and its creditors, resulting in an unsecured creditor receiving a greater amount than it would have received in a winding up. These transactions must have occurred when Trading Profits was insolvent or have caused Trading Profits to become insolvent;
- Uncommercial transactions: being transactions which a reasonable person in the place of Trading Profits would not have entered into, taking into account the benefits and the detriment to Trading Profits the respective benefits to the other parties involved and any other related matters. These transactions must have occurred when Trading Profits was insolvent or have caused Trading Profits to become insolvent;
- Unfair loans: being a loan agreement where the interest or charges are considered to be extortionate. Unfair loans made to Trading Profits at any time prior to the Liquidators' appointment may potentially be overturned by the Liquidators, whether or not Trading Profits was insolvent when the loan was entered into (or any time thereafter); and
- Unreasonable director-related transactions: being transactions made to or on behalf or for the benefit of the Director, or a close associate, which a reasonable person in the place of Trading Profits would not have entered into, taking into account the benefits and the detriment to Trading Profits, the respective benefits to the other parties involved and any other related matters and whether or not Trading Profits was insolvent when the transaction was entered into (or subsequently became insolvent).

The Liquidators have not identified any unfair preferences, uncommercial transactions or unfair loans that require further investigation or are likely to lead to recoveries. However, there are a number of director-related transactions that require further investigation.

The Liquidators will finalise these investigations in due course and pursue any recoveries if commercial to do so.

For further commentary regarding the investigations completed to date, please refer to the Administrators' Report.



4. Receipts and payment to date

The below table details receipts and payments in the liquidation to 17 September 2019:

| Receipts and Payments as at 17 September 2019 | |
|---|---------------------------|
| | \$ (including GST) |
| Receipts | |
| Cash at Bank | 7,831 |
| Cash on hand | 20,979 |
| Contribution to cost of Administration by Bevan Marwick | 1,021 |
| Total contribution | 22,000 |
| Total receipts | 29,831 |
| Payments | |
| Legal fees | (2,615) |
| Bank charges | (22) |
| Other professional disbursements | (23) |
| Total Payments | (2,660) |
| Closing cash balance as at 17 September 2019 | 27,171 |

5. Likelihood of a dividend

For a detailed account of the likelihood of a dividend to each class of creditors, please refer to the Administrators' Report.

As at the date of this report, there has been no change in the estimated return to creditors outlined in the Administrators' Report. The estimated returns to each class of creditor are summarised as follows:

- Priority creditors – 15 to 100 cents in the dollar (excluding FEG contributions), with the key variable being recoveries made from Liquidator recovery actions;
- Secured creditors – nil return; and
- Unsecured creditors – nil to 13 cents in the dollar, with the key variable being recoveries made from Liquidator recovery actions.

If a dividend is going to be paid, you will be contacted before that happens and, if you have not already done so, you will be asked to lodge a proof of debt. This formalises the record of your claim in the liquidation and is used to determine all claims against Trading Profits.

6. Cost of the liquidation

As previously advised in our Administrators' Report, we have estimated that our total remuneration for the liquidation will be \$50,000 excluding GST. This remuneration amount was approved at the second meeting of creditors. Should any further remuneration need to be approved, you will be contacted accordingly.



7. What happens next?

We will proceed with the liquidation, which will include:

- realising the remaining assets;
- finalising the FEG claims for priority employees;
- recovering any further available property;
- completing our investigations into Trading Profits' affairs;
- if identified, pursuing any viable claims for statutory recovery actions;
- completing our reporting to the corporate insolvency regulator, the Australian Securities and Investments Commission (**ASIC**); and
- a distribution to creditors (if applicable).

We may write to you again with further information on the progress of the liquidation.

We expect to have completed this liquidation within 12 months.

8. 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.
- ASIC at www.asic.gov.au (search for "insolvency information sheets").

If you have any queries, please contact Zac Bradford on (08) 6363 7630. For further information about this engagement, please refer to the website <https://www.mcgrathnicol.com/creditors/trading-profits-pty-ltd-iior-atft-victoria-hotel-subiaco-unit-trust/>.

Dated: 17 September 2019

A handwritten signature in black ink, appearing to read 'Rob Brauer'.

Rob Brauer
Liquidator

Enclosure:

ARITA Information Sheet – Offences, Recoverable Transactions & Insolvent Trading