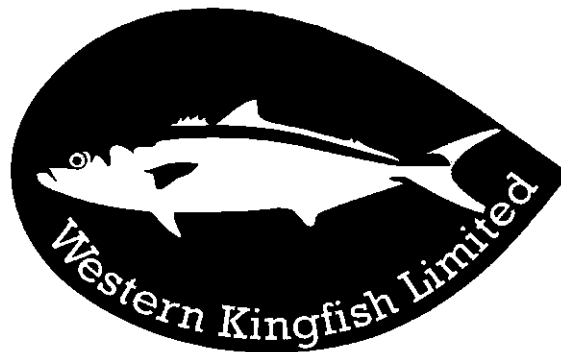


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# **Administrators' Report**

**Pursuant to Section 439A of the Corporations Act 2001**



**WESTERN KINGFISH LIMITED**  
**ACN 122 711 880 (Administrators Appointed)**

**Andrew Saker**

**Garry Trevor**

**Martin Jones**

**6 January 2009**

 **FERRIER HODGSON**



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## GLOSSARY OF TERMS

Abbreviation	Description
Act	The Corporations Act 2001
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
DOCA	Deed of Company Arrangement
ERV	Estimated Realisable Value
GEERS	General Employee Entitlements Redundancy Scheme
Statement	Directors' Statement about the Company's Business, Property, Affairs and Financial Circumstances

## LISTING OF ANNEXURES

<b>Annexure 1</b>	Administrators' Remuneration
	Liquidators' Remuneration
	The Firm's Schedule of Hourly Rates & General Guide to Staff Experience



## 1. EXECUTIVE SUMMARY

Andrew Saker, Martin Jones and Garry Trevor were appointed as Joint and Several Administrators of Western Kingfish Limited ("WKL") on 2 December 2008, pursuant to Section 436A of the Corporations Act ("the Act").

Creditors ratified our appointment as Joint and Several Administrators of WKL at the first meeting of creditors held on 11 December 2008. At this meeting, consistent with the Administrators' opinion creditors resolved that no Committee of Creditors be formed for WKL at this point in time.

WKL was listed on the Australian Stock Exchange on 30 July 2007. WKL currently operates aquacultural farming operations in Jurien Bay, Western Australia, approximately 3 hours north of Perth and specialises in the production of Yellowtail Kingfish ("YTK"), in near shore sea cage aquacultural operations, for local and export markets. WKL currently has fish in the sea cages on their leases. WKL also has aquaculture licenses to conduct commercial scale production of Western Rock Lobster and Moreton Bay Bugs in a land based facility. Immediately following our appointment, we took control of all of WKL's assets and continued to carry on WKL's business with the assistance of the directors and key management personnel.

Following our appointment we also commenced a sale / restructure program and, to date, we have received expressions of interest from 50 parties for either the purchase of all or part of WKL's assets and / or the recapitalisation of WKL. We requested interested parties submit indicative offers to us by 2 January 2009. In this regard, we have received 5 indicative offers to date, 3 of which propose a possible recapitalisation of WKL, subject to various conditions. Given the short period of time with which the Administrators have had to market WKL's assets and hold discussions with interested parties, a number of requests have been made by interested parties for further time to submit indicative offers and the parties which have submitted indicative offers also require further time to conduct due diligence with a view to submitting final offers.

Based on the above, it is our opinion that the second meeting of creditors be adjourned for a period not exceeding 45 business days for the following reasons:

- a) To allow the Administrators further time for interested parties to conduct their due diligence for the restructure and recapitalisation of WKL ultimately leading to a Deed of Company Arrangement ("DOCA") proposal being put forward to creditors; and
- b) Following resolution of the above matters, the Administrators will be in a better position to assess the company's financial position and advise of the potential return to creditors under the various options that are proposed regarding the future of the company.



The Administrators have conducted their preliminary investigations into the affairs of the company prior to their appointment and have not identified any transactions which may be recoverable by a Liquidator. These investigations are discussed at section 8 of this report.

The second meeting of creditors of WKL has been convened for Thursday, 15 January 2009 and will be held at the offices of Ferrier Hodgson, Level 26, BankWest Tower, 108 St Georges Terrace, Perth, Western Australia at 11:00 am WST.

## **2. INTRODUCTION**

### **2.1 Appointment of Administrators and First Meeting of Creditors**

Creditors attended a first meeting of creditors of WKL which was held at the Jurien Bay Community Centre, Bashford Street, Jurien Bay, Western Australia on Thursday, 11 December 2008. At that meeting, creditors ratified our appointment as Joint and Several Administrators of WKL.

At the meeting, creditors elected not to form a committee of creditors for WKL at that point in time.

At the meeting, creditors also received an update on the administration to date and received a statement by the Director (Andrew Mitton) as to the lead up of events prior to the appointment of the Administrators.

### **2.2 Second Meeting of Creditors**

Pursuant to Section 439A of the Act, the second meeting of creditors of WKL has been convened for Thursday, 15 January 2009 and will be held at the offices of Ferrier Hodgson, Level 26 of the BankWest Tower, 108 St Georges Terrace, Perth, Western Australia at 11:00 am WST.

At the second meeting, the following options are available to creditors regarding WKL's future:

- That the administration should end and control of the company revert to its Directors;
- That the meeting be adjourned for a period no longer than 45 business days;  
OR
- That the company should be wound up.

At this stage, as the Administrators have only called for indicative offers for the purchase of WKL's assets and / or recapitalisation and had limited discussions with interested parties no final DOCA proposals are available for consideration by creditors at this second meeting.



## 2.2.1 Intention to Adjourn the Second Meeting

As discussed earlier, following our appointment we commenced a sale / restructure program and, to date, have received expressions of interest from 50 parties for either the purchase of all or part of WKL's assets and / or recapitalisation of WKL. We requested interested parties submit indicative offers of interest to us by 2 January 2009. In this regard, we received 5 indicative offers to date, 3 of which propose a possible recapitalisation of WKL, subject to various conditions.

Given the short period of time with which the Administrators have had to market WKL's assets and hold discussions with interested parties, a number of requests have been made by interested parties for further time to submit indicative offers and the parties which have submitted indicative offers also require further time to conduct due diligence with a view to submitting final offers.

Accordingly, at the date of this report, we are unable to report on whether it would be in creditors' best interests to wind up the company.

Notwithstanding the costs involved, we recommend adjourning the second meeting of creditors for a period of up to 45 business days to enable a potential sale of the business to be effected, and/or tabling of a proposal(s) for a DOCA. The second meeting of creditors will be reconvened within this period. We estimate that our costs for this period will be approximately \$30,000 plus GST.

## 2.3 Purpose of Report

Section 439A(4) of the Act explains the purpose of an Administrators' report in providing that the notice (of second meeting) must be accompanied by a copy of:

- (a) *A report by the Administrator about the company's business, property, affairs and financial circumstances; and*
- (b) *A statement setting out the Administrator's opinion about each of the following matters:*
  - *Whether it would be in the creditors' interests for the company to execute a DOCA; and*
  - *Whether it would be in the creditors' interest for the administration to end;*
  - *Whether it would be in the creditors' interest for the company to be wound up;*
  - *His or her reasons for those opinions; and*
- (c) *If a DOCA is proposed – a statement setting out details of the proposed deed.*



## 2.4 Non-Disclosure of Certain Information

There are sections of this report wherein we considered it inappropriate to disclose certain information to creditors. Such information includes:

- Valuations of specific assets; and
- Valuation of the business.

We fully recognise the need to provide creditors with complete disclosure of all necessary information relating to the company. However, we believe this information is commercially sensitive and it is not in creditors' interests for us to disclose the information publicly at this stage.

## 2.5 Statement of Independence

The Administrators considered the question of their independence prior to accepting their appointment as Administrators. To the best of the Administrators' knowledge, the following relationships existed prior to the Administrators' appointment:

1. Garry Trevor and Andrew Saker first provided verbal solvency advice to the directors of WKL on 13 November 2008; and
2. Andrew Saker discussed the financial position of WKL with the directors on 1 December 2008.

We also confirm that we have not been provided with any indemnity, guarantee or contribution from the Directors or their associated businesses, a creditor or any other party for any of our fees and expenses.

Martin Jones, Andrew Saker and Garry Trevor are partners of Ferrier Hodgson. Ferrier Hodgson is Australia's and the Asia-Pacific's largest independent corporate restructuring practice with 40 partners and over 300 staff throughout Australia and Asia. Ferrier Hodgson does not provide accounting, audit, legal or taxation services.

Andrew Saker is a Chartered Accountant, Registered Liquidator and member of the Insolvency Practitioners Association of Australia with over 20 years experience in corporate insolvency.

Martin Jones is a Chartered Accountant, Registered Liquidator and member of the Insolvency Practitioners Association of Australia with over 25 years experience in corporate insolvency.

Garry Trevor is a Chartered Accountant, Registered Liquidator and member of the Insolvency Practitioners Association of Australia with over 30 years experience in corporate insolvency.

Further information regarding Ferrier Hodgson and the Administrators can be obtained from the firm's website at [www.ferrierhodgson.com](http://www.ferrierhodgson.com).



### 3. COMPANY INFORMATION

#### 3.1 Statutory Information

A search of the ASIC database revealed the following information.

##### 3.1.1 Incorporation Date and Registered Office

The ASIC search discloses WKL's incorporation date as 16 November 2006. The company's registered office is listed as care of Anthony Ho & Associates, 79 Broadway Way, Nedlands, Western Australia.

##### 3.1.2 Company Officers

At the date of our appointment, an ASIC search discloses that the current and past company's officers were:

Name	Role	Appointment Date	Cessation Date
Mervyn Edward Collinson	Director	16/11/2006	Continuing
Alan Savage	Director	06/12/2006	Continuing
Andrew Mitton	Director	16/10/2007	Continuing
John Michael Gillon	Director	09/11/2007	Continuing
Kim Arnold Hogg	Secretary	07/11/2007	Continuing
Robert Charles Gould	Director	16/11/2006	09/11/2007
Simon John Lawrence Stone	Director	24/01/2007	09/11/2007
Garth Stewart Graham	Director	16/11/2006	15/10/2007
Mark Drewett Kendrew	Secretary	29/01/2007	09/11/2007
Garth Stewart Graham	Secretary	16/11/2006	29/01/2007

A search of the National Personal Insolvency Index maintained by the Insolvency Trustee Service, Australia, discloses that none of WKL's Directors were a bankrupt or subject to a Personal Insolvency Agreement under Part X of the Bankruptcy Act 1966 as at the date of our appointment.

##### 3.1.3 Shareholders

WKL is a publicly listed company in Australia. At the date of our appointment 63,810,000 ordinary shares were on issued.



The company's 10 major shareholders according to the share register as at the date of our appointment were:

Shareholder Name	No. of Shares Held	% of Total Share Capital
Collinson Super Pty Ltd	7,500,000	11.75
Mr G S Graham & Ms F E Graham	3,910,000	6.13
Bulleen Pty Ltd	3,750,000	5.88
Bell Potter Nominees Limited	3,000,000	4.70
J P Morgan Nominees Australia Limited	3,000,000	4.70
Australis Aquaculture Limited	2,500,000	3.92
Bond Street Custodians Limited	2,190,000	3.43
Yambina Pty Ltd	1,800,000	2.82
Equity Trustees Limited	1,455,000	2.28
State One Stockbroking Ltd	1,149,158	1.80

These top 10 shareholders hold 47.41% of the issued share capital of WKL.

#### 3.1.4 Registered Chargeholders

The ASIC search discloses that there were no registered charges against WKL as at the date of our appointment.

#### 3.1.5 Outstanding Winding up Applications

There were no winding up applications outstanding as at the date of our appointment.

### 3.2 Company History

Incorporated on 16 November 2006 in Western Australia, the company commenced operations from premises located at Jurien Harbour Aquaculture Centre, Lot 30 Jurien Harbour Breakwater Drive, Jurien Bay, Western Australia.

WKL is the parent entity of Craywest Pty Ltd owning all of the issued capital in the company. Our preliminary investigations do not disclose that Craywest Pty Ltd holds any material assets.

WKL was listed on the Australian Stock Exchange on 30 July 2007 and raised an initial \$8 million to set up operations at Jurien Bay. As per WKL's 30 June 2008 Annual Financial Report WKL had a market capital of \$9.1 million at this time. The company's shares traded between 6 and 25 cents in the previous 12 months. The company's share registry service has advised that 63,810,000 ordinary shares were on issue at the date of our appointment.

WKL has a number of key aquaculture projects which are summarised below:



## **Yellow Tail Kingfish (“YTK”) Project**

WKL first commenced its farming of YTK when they captured their broodstock in July 2007 from the Abrolhos Islands of Western Australia. They have since acclimatised these broodstock to captivity, exhibiting normal courtship behaviours and spawning in the tanks since November 2007. The spawning enabled the hatchery to collect fertilised eggs, hatch them and grow them out since this time.

WKL presently has 2 separate broodstock populations at the Jurien Bay hatchery facility which have both spawned successfully. In addition to this they have also arranged access to a third broodstock population at the Fremantle Challenger Tafe facility, giving WKL an off-site back up for the valuable and critical broodstock.

In late November 2007 WKL ordered a six cage System Farm which was subsequently installed, with brass nets, and ready to use in their offshore operations in early 2008. In May 2008 WKL stocked the System Farm with a batch of over 50,000 YTK fingerlings.

According to WKL, the growth and survival data from this first cohort were well above expectations, based on available data for YTK and for survival rates of young fish in other sea cage culture systems. These exceptional growth and survival rates mentioned above were greatly interrupted during early November 2008, to which WKL recorded their first significant mortality rates. These mortality rates continued to rise during November 2008 and it has since been discovered that the cause of these high mortalities was a bacterial infection which was caused when treating the YTK for flukes. Since the identification of the infection mortality rates have continued but are now back to an expected level of mortality rates in this cage culture system.

Of this first 50,000 cohort there are approximately 12,000 YTK left, which at the time of writing this report were around 1 kilogram each.

WKL employed 10 personnel, including both employees and contractors on site upon our appointment. WKL previously employed 17 employees but 7 of these employees were made redundant shortly before our appointment due to cash flow issues and also that the current peak period of the farming cycle had come to an end.

## **Western Rock Lobster (“WRL”) and Moreton Bay Bug (“MBB”) Projects**

WKL was granted the first licence for aquaculture production of marine lobster in Western Australia, and was also issued a ministerial exemption to collect juvenile lobsters (pueruli) of the WRL. These licences will enable WKL to conduct commercial scale operations to collect and grow out pueruli of the WRL and aquaculture of several other species of Australian lobsters.

WKL is well positioned to establish its future presence in this new aquaculture industry, and started collecting pueruli for grow out in August 2008. WKL has also been actively establishing links with other Australian research institutes developing lobster aquaculture technologies, and aims to progress technology for the closed life



cycle aquaculture of the prized MBB. WKL has obtained broodstock for the MBB and commenced conducting reviews on these projects in August 2008.

These two projects have been put on a temporary halt since the YTK mortality issue mentioned above. As this is the primary operation of WKL, management decided to first establish the YTK operations and then have the ability to grow into these other two projects, being the MBB and WRL projects at a future point in time.

### **3.3 Decision to Appoint Administrators**

On 24 September 2008, WKL announced a Share Purchase Plan ("SPP") to address its immediate funding requirements. The funds raised under the SPP were to be used to further progress the company's farming activities at Jurien Bay, including preparation for harvesting of the first cohort of YTK, which was expected in the first quarter of 2009. The SPP was to close on 21 October 2008.

Due to difficult economic conditions the SPP was extended on two occasions to 31 October 2008 and then 14 November 2008.

On 17 November 2008 WKL announced via the Australian Stock Exchange that a stock mortality event had occurred at the Jurien Bay Fish Farm and that approximately 15,000 fish deaths, representing approximately 30% of the initial cohort had occurred due to proliferation of identified opportunistic bacterial pathogens in the intestines of the fish. Subsequent to this initial announcement further stock mortalities were experienced shortly thereafter such that only approximately 12,000 of the initial cohort survived meaning that approximately 75% of the initial cohort had died.

On 26 November 2008, WKL announced to the market that in light of recent global economic circumstances and the fish mortalities experienced above that the SPP had been cancelled and application monies would be refunded to applicants.

WKL explored other funding options with major shareholders and had been in discussions with a number of parties potentially interested in placing an investment in WKL shortly before our appointment. However, given the recent difficult macroeconomic conditions and stock mortalities at WKL which impacted on forecast future cash flows and attractiveness of the business, funding was not able to be sourced in the short-term to address ongoing trading costs and the acquisition of critical capital items (purchase of customised boat and polar circle).

In view of WKL's current financial position, the Directors' formed the view that WKL was likely to become insolvent shortly and the Directors resolved to appoint Administrators to WKL. On 2 December 2008, Andrew Saker, Martin Jones and Garry Trevor were appointed as Joint and Several Administrators of WKL.



## 4. HISTORICAL FINANCIAL INFORMATION

### 4.1 Preparation of Financial Statements

The company's financial statements were prepared and audited to 30 June 2008. Management accounts were maintained by the company and the figures depicted below as at 2 December 2008 are reflective of WKL's management accounts.

At section 8.2 of this report, we comment on the adequacy of the company's books and records.

### 4.2 Profit and Loss Statement and Preliminary Analysis

Set out below is a summary of WKL's consolidated profit and loss statement for the financial years ending 30 June 2007 and 30 June 2008 and as at 2 December 2008 together with our preliminary analysis:

#### WKL's Profit and Loss Summary

	2 December 2008 (\$)	30 June 2008 (\$)	30 June 2007 (\$)
<b>Revenue</b>	<b>66,845</b>	<b>329,895</b>	<b>5,253</b>
Inventories, materials and consumables	(152,455)	(118,019)	(70,484)
Loss on disposal of assets	-	(51,259)	-
Employee expenses	(749,908)	(1,098,813)	(272,753)
Share based payments	(43,105)	(58,579)	(251,417)
Property costs	(119,560)	(264,242)	-
Professional fees	(273,200)	(215,449)	-
Depreciation expense	(150,986)	(117,521)	(12,912)
Finance costs – interest	(3,756)	(3,902)	(2,921)
Other expenses	(132,487)	(658,433)	(482,639)
<b>Loss before income tax</b>	<b>(1,558,612)</b>	<b>(2,256,322)</b>	<b>(1,087,873)</b>
<b>Net Loss</b>	<b>\$(1,558,612)</b>	<b>\$(2,256,322)</b>	<b>\$(1,087,873)</b>

As you will note above WKL has not derived a profit since its inception and has had no material revenue stream. The company was reliant on the equity it raised to fund ongoing operations. This is due to the fact that WKL had not reached a stage of its development whereby YTK were able to be harvested (the first YTK harvest was expected in the first quarter of 2009).



### 4.3 Balance Sheet and Preliminary Analysis

Set out below is a summary of WKL's balance sheet for the financial years ending 30 June 2007 and 30 June 2008 and as at 2 December 2008 together with our preliminary analysis:

#### WKL's Balance Sheet Summary

	2 December 2008 (\$)	30 June 2008 (\$)	30 June 2007 (\$)
<b>Current Assets</b>			
Cash and Cash Equivalents	548,773	2,217,154	30,457
Trade and Other Receivables	39,087	46,880	83,034
Inventories	43,652	44,730	-
Prepayments	46,263	30,139	105,246
<b>Total Current Assets</b>	<b>677,775</b>	<b>2,338,903</b>	<b>218,737</b>
<b>Non-Current Assets</b>			
Property, Plant & Equipment	3,612,437	3,368,443	26,223
Biological Assets	19,820	21,107	388,037
Other Financial Assets	35,216	29,563	9,864
<b>Total Non-Current Assets</b>	<b>3,667,473</b>	<b>3,419,113</b>	<b>424,124</b>
<b>Total Assets</b>	<b>4,345,248</b>	<b>5,758,016</b>	<b>642,861</b>
<b>Current Liabilities</b>			
Trade and other payables	397,879	245,254	341,915
Loans and Borrowings	5,262	11,674	29,419
Provisions	64,293	64,293	33,067
<b>Total Current Liabilities</b>	<b>467,434</b>	<b>321,221</b>	<b>404,401</b>
<b>Non-Current Liabilities</b>			
Loans and Borrowings	4,711	5,180	16,854
<b>Total Non-Current Liabilities</b>	<b>4,711</b>	<b>5,180</b>	<b>16,854</b>
<b>Total Liabilities</b>	<b>472,145</b>	<b>326,401</b>	<b>421,255</b>
<b>Net Assets</b>	<b>3,873,103</b>	<b>5,431,615</b>	<b>221,606</b>
<b>Equity</b>			
Issued Capital	8,465,814	8,465,814	1,058,062
Option Reserves	309,996	309,996	251,417
Accumulated Losses	(4,902,707)	(3,344,195)	(1,087,873)
<b>Total Equity</b>	<b>\$3,873,103</b>	<b>\$5,431,615</b>	<b>\$221,606</b>

As you will note above, WKL's net asset position improved from 30 June 2007 to 30 June 2008. This was as a result of its capital raising in July 2007 and use of these funds to acquire various capital items.



## 5. STATEMENT BY DIRECTORS

### 5.1 Summary

Section 438B of the Act requires the Directors to give an Administrator a statement about the company's business, property, affairs and financial circumstances. We received the Directors' Statement on 5 January 2009.

The following table summarises the assets and liabilities described in the Directors' Statement and Administrators' estimated realisable value ("ERV").

Statement as at 2 December 2008	Report Reference	RATA Cost or Net Book Value	Administrators' ERV
		(\$)	(\$)
<b>Floating Charge Assets</b>			
Cash on Hand	5.1.1	200	200
Cash at Bank	5.1.2	577,027	543,015
Stock on Hand - Feed	5.1.3	43,651	43,651
Prepayments	5.1.4	38,822	38,822
Debtors	5.1.5	39,087	-
<b>Sub Total</b>		<b>698,787</b>	<b>625,688</b>
<b>Less: Priority Creditors</b>			
Employee Entitlements	5.1.6	(90,936)	(144,893)
<b>Total Floating Charge Assets Available for Unsecured Creditors</b>		<b>607,851</b>	<b>480,795</b>
<b>Fixed Charge Assets</b>			
Plant and Equipment	5.1.7	3,667,473	Undisclosed
Provision for Retention of Title Claims	5.1.8	-	(40,000)
<b>Total Assets Available For Unsecured Creditors</b>		<b>4,275,324</b>	<b>Undisclosed</b>
<b>Unsecured Creditors</b>			
Trade Creditors	5.1.9	(336,052)	(336,052)
Directors' Non-Priority Entitlements	5.1.6	-	(460,865)
Contingent Claims - Leases	5.1.10	-	(840,000)
<b>Total Unsecured Creditor Claims</b>		<b>(336,052)</b>	<b>(1,636,917)</b>
<b>Estimated Surplus / (Deficiency)</b>		<b>\$3,939,272</b>	<b>Undisclosed</b>

The estimated realisable values set out above are based on the RATA and the company's books and records and are not necessarily endorsed by the Administrators. The Directors have not attempted to provide estimated realisable value for the company's assets. The Administrators have not audited the company's records or the RATA. The Administrators have provided estimated realisable values with respect to the company's liability position only. The Administrators have not disclosed their estimated realisable value for assets for reasons detailed below.



**As such, the above schedule should not be used to determine the likely return to creditors as a number of realisable values are based on the company's records and remain subject to the review of the Administrators and, in particular:**

- **The Administrators are not in a position to confirm (or otherwise) the asset values attributed by the Directors and the company due to the confidential and commercially sensitive nature of such information to the sale / restructure process.**
- **The value of creditor claims remains subject to change as further claims may be received and require adjudication.**
- **The abovementioned estimated position does not provide for possible trading losses, capital costs or the professional costs associated with the Administration process.**

We comment on the Statement as follows:

#### 5.1.1 Cash on Hand

This amount represents petty cash on hand at the Jurien Bay office at the date of our appointment.

#### 5.1.2 Cash at Bank

The company had three bank accounts with the Bank of Western Australia prior to our appointment. We closed these accounts and deposited closing proceeds of \$543,015 to a separate administration account under the Administrators' control.

#### 5.1.3 Stock on Hand - Feed

This amount represents the estimated value of feed stock on hand at the date of appointment. This stock has continued to be utilised to feed the cohort of YTK at sea since our appointment. It is estimated that this feed stock will feed the cohort of YTK for the next 4 – 6 weeks.

#### 5.1.4 Prepayments

Prepayments relate to payments for rent, insurance and rates paid in advance prior to our appointment. The majority of these prepayments were for December 2008 costs which have now actually been incurred.

#### 5.1.5 Debtors

This amount represents a GST credit due to WKL for the month of November 2008, however this amount is likely to be offset by the Australian Taxation Office as a PAYG liability of \$53,733.24 exists with respect to wages paid for November 2008. Thus, we do not believe this amount will be collectable for the benefit of creditors.



### 5.1.6 Employee Entitlements

We examined the company's employee records and contracts. We estimate the priority debts owed to employees of WKL as follows:

Employee Entitlements	RATA/ Book Value	Administrators' ERV		
	Total Employee Entitlements \$	Non Priority Excluded Amount \$	Net Priority Entitlements \$	Total Employee Entitlements \$
Wages and Expenses	3,231	-	3,231	3,231
Superannuation	25,859	-	19,837	19,837
Child Support	2,138	-	2,138	2,138
Annual Leave	59,708	28,506	31,202	59,708
Redundancy	-	380,969	16,154	397,123
Pay in Lieu of Notice	-	51,390	72,331	123,721
<b>Total</b>	<b>\$90,936</b>	<b>\$460,865</b>	<b>\$144,893</b>	<b>\$605,758</b>

Employee claims are afforded priority of repayment pursuant to Section 556 of the Act.

The Act provides that "Excluded Employees", which includes company Directors and their spouses, are each restricted to a total maximum priority claim of \$2,000 for unpaid wages and \$1,500 for annual leave entitlements.

Amounts owed to Excluded Employees that exceed the statutory cap for wages and superannuation and annual leave / long service leave, and all payments owing in respect of retrenchment, being redundancy and payment in lieu of notice, rank for dividend with all other unsecured creditors.

### 5.1.7 Plant and Equipment

This amount represents the book value of plant and equipment at the date of our appointment. As discussed above, at this stage we have not disclosed our valuation of the plant and equipment given the status of our sale / restructure program.

### 5.1.8 Provision for Retention of Title Claims

This amount represents a provision for potential retention of title claimants. To date, we have been notified of one claim to a potential value of \$40,000 with respect to netting which was in the company's possession at the date of our appointment (which remains unpaid) and are currently assessing the validity of this claim.

### 5.1.9 Trade Creditors

This amount represents the book value of unsecured trade creditor claims at the date of our appointment. These figures are subject to the receipt and adjudication of final proofs of debt from creditors.



#### 5.1.10 Contingent Claims – Leases

This amount represents contingent claims with respect to WKL's leasing contracts in the event that these contracts were to be immediately terminated. The majority of this contingent exposure relates to WKL's lease of the hatchery premise at Jurien Bay as the lease expires in March 2012.

#### 5.1.11 Omissions from Statement

Save for our previous comments regarding specific disclosures in the Statement, there does not appear to be any material omissions from the Directors' Statement.

### 5.2 Causes of Failure

Whilst further investigation is desirable, the main causes of failure of WKL identified by the Directors are:

- Inability to successfully raise further capital; and
- Fish mortality event.

Each of the above factors is discussed in further detail below.

#### 5.2.1 Inability to successfully raise further capital

In July 2007, WKL raised \$1.2 million in seed capital and \$8 million at public float via a placement of 42 million ordinary shares at an issue price of 20 cents per share. The funds raised were stated as being used for:

- (i) Obtaining relevant licences for fish farming;
- (ii) Setting up a climate controlled hatchery;
- (iii) Establishing fully equipped offshore operations; and
- (iv) Ongoing trading capital (fish feed, wages, water, electricity etc);

During the 2008 financial year WKL's management and Directors identified that additional working capital would be required to fund the current and ongoing operational requirements to get WKL to its first harvest following which WKL would then be able to generate a revenue stream on its own and place less reliance on further capital raisings to fund operations.

On 24 September 2008, WKL announced a SPP to address its immediate funding requirements. The funds raised under the SPP were to be used to further progress the company's farming activities at Jurien Bay, including preparation for harvesting of the first cohort of YTK, which was expected in the first quarter of 2009. The SPP was to close on 21 October 2008.



Due to difficult macroeconomic conditions the SPP was extended on two occasions to 31 October 2008 and then 14 November 2008.

On 17 November 2008 WKL announced via the Australian Stock Exchange that a stock mortality event had occurred at the Jurien Bay Fish Farm resulting in approximately 15,000 fish deaths, representing approximately 30% of the initial cohort. The event occurred due to proliferation of identified opportunistic bacterial pathogens in the intestines of the fish. Subsequent to this initial announcement further stock mortalities were experienced over the next week such that only approximately 12,000 of the initial cohort survived meaning that approximately 75% of the initial cohort had died.

On 26 November 2008, WKL announced to the market that in light of recent global economic circumstances and the fish mortalities experienced above that the SPP had been cancelled and application monies would be refunded to applicants.

WKL explored other funding options with major shareholders and had been in discussions with a number of parties potentially interested in placing an investment in WKL shortly before our appointment. However, given the recent difficult economic conditions and stock mortalities which impacted on forecast future cash flows and attractiveness of the business, funding was not able to be sourced in the short-term to address ongoing trading costs and acquisition of critical capital items.

#### 5.2.2 Fish mortality event

According to WKL, the growth and survival data from the initial cohort of 50,000 YTK was well above expectations, based on available data for YTK and for survival rates of young fish in other sea cage culture systems.

As discussed above on 17 November 2008, WKL announced via the Australian Stock Exchange that a stock mortality event had occurred at the Jurien Bay Fish Farm resulting in approximately 15,000 fish deaths, representing approximately 30% of the initial cohort. The event occurred due to proliferation of identified opportunistic bacterial pathogens in the intestines of the fish. Subsequent to this initial announcement further stock mortalities were experienced such that only approximately 12,000 of the initial cohort survived meaning that approximately 75% of the initial cohort had died.

Management of WKL advise that the fish deaths recorded have been due to a proliferation of identified opportunistic bacterial pathogens in the intestines of the fish. This syndrome can be initiated by a variety of factors that are routinely associated with fish farming practices. These factors compromise the animal's health and can predispose them to the kinds of infections that were experienced. WKL believes it has identified the material factors relevant to the outbreak and has formulated policies to manage and improve overall husbandry and health practices.

Since the identification of the infection, mortality rates have continued but are now back to an expected level of mortality rates in this cage culture system.



In view of WKL's current financial position and the events above, the Directors' formed the view that WKL was likely to become insolvent shortly and the Directors resolved to appoint Administrators to the WKL. On 2 December 2008, Andrew Saker, Martin Jones and Garry Trevor were appointed as Joint and Several Administrators of WKL.

Our preliminary investigations into the causes of failure of WKL are consistent with the Directors' causes identified above. In addition, we note that WKL has a high number of fixed overhead costs (rent and wages) and had spent significant sums with respect to capital items (customised boat, polar circle and system farm) which have contributed to the company's utilisation of capital raised since July 2007.

## 6. TRADING BY ADMINISTRATORS

### 6.1 Overview and Trading Issues

The Administrators assumed control of WKL's assets and operations upon appointment. Appropriate controls and systems were put in place in respect of cash / banking, purchase orders, stock control and reporting.

The company has continued to trade under our control since our appointment and the Directors' and managements' efforts to assist the Administrators with ongoing trading arrangements are noted.

Upon our appointment we, along with the Directors and key management personnel held numerous discussions with critical suppliers to WKL with regard to ongoing supplies and services. We also opened a number of credit accounts with suppliers.

A new Administrators' bank account was opened for WKL and we liaised with WKL's pre-appointment bankers to ensure the pre-appointment bank balances were transferred immediately to ensure payment of the next payroll on time.

### 6.2 Summary of Receipts and Payments

A summary of the receipts and payments of the administration for the period 2 December 2008 to 2 January 2009 is tabled below:

Summary of Receipts and Payments to 2 January 2009	Amount (\$)
<b>Receipts</b>	
Pre-Appointment Cash at Bank	543,015
<b>Total Receipts</b>	<b>\$543,015</b>
<b>Payments</b>	
Bank Charges	4
Consumables	430
Employee Expense Reimbursements	681



Repairs & Maintenance	985
Subcontractors	1,735
Wages & Salaries	42,449
<b>Total Payments</b>	<b>\$46,286</b>
<b>Cash at Bank as at 2 January 2009</b>	<b>\$496,729</b>



## **7. SALE OF BUSINESS**

Given the tight timeframe imposed by the Act and WKL's critical cash position, we immediately commenced a sale / restructure program seeking expressions of interest for the sale and / or recapitalisation of WKL.

We commenced the following program for WKL:

### **7.1 Advertisements**

Advertisements for expressions of interest for the purchase and / or recapitalisation of WKL's business and assets appeared in The West Australian newspaper on Wednesday, 10 December 2008, Saturday, 13 December 2008, Wednesday, 17 December 2008 and Saturday, 20 December 2008.

Advertisements also appeared in the Australian Financial Review newspaper on Wednesday, 10 December 2008 and Wednesday, 17 December 2008. Expressions of interest closed on Wednesday, 24 December 2008.

### **7.2 Information Memorandum**

An Information Memorandum was prepared and finalised on 29 December 2008 in consultation with the Directors and management of WKL. Interested parties who signed a Confidentiality Agreement were sent an Information Memorandum on 29 December 2008.

### **7.3 Site Visits**

Site visits to WKL's Jurien Bay hatchery, storage facility and fish farm have also taken place. To date, 4 parties have conducted site visits.

The Directors and key management have assisted with the site visits by liaising with the interested parties and discussing key assets of the business.

### **7.4 Expressions of Interest**

To date we have received expressions of interest from 50 parties for the sale and / or restructure of WKL. There has been a mixture of interest in both the recapitalisation of WKL and the individual sale of WKL's assets.

In line with the tight timeframe as noted above, we requested interested parties to submit indicative offers of interest to us by 2 January 2009. In this regard, we received 5 indicative offers, 3 of which propose a possible recapitalisation of WKL subject to certain conditions. Given the short period of time with which the Administrators have had to market WKL's assets and hold discussions with interested parties a number of requests have been made by interested parties for further time to submit indicative offers and the parties which have submitted



indicative offers also require further time to conduct due diligence with a view to submitting final offers capable of acceptance by the Administrators and creditors.

We anticipate receiving final offers for the purchase of WKL's assets and proposals for the recapitalisation of WKL by the end of January 2009.

Following receipt of final offers the Administrators will then be in a position to recommend an offer for creditors' approval.

## **8. STATUTORY INVESTIGATIONS**

### **8.1 Nature and Scope of Review**

The Act requires an Administrator to carry out preliminary investigations into a company's business, property, affairs and financial circumstances.

Investigations centre on transactions entered into by the company that a Liquidator might seek to void or otherwise challenge where the company is wound up. Investigations allow an Administrator to advise creditors what funds might become available to a Liquidator so that creditors can properly assess whether to accept a DOCA proposal or resolve to wind up the company.

Funds recovered by a Liquidator would be available to the general body of unsecured creditors including secured creditors but only to the extent of any shortfall incurred after realising their security. In this regard, we note that WKL does not have any secured creditors.

A Liquidator may recover funds from each type of voidable transaction detailed in this report. A Deed Administrator does not have recourse to these voidable transactions. A Liquidator may also recover funds through other avenues, for example, through action seeking compensation for insolvent trading. In some circumstances, a creditor may seek compensation directly, without the Liquidator, for insolvent trading where the company is placed into Liquidation.

An Administrator is not obliged to carry out investigations to the same extent as a Liquidator. A Liquidator may require many months of investigation and conduct public examinations before forming a concluded view on recovery action.

We have investigated matters to the extent possible in the time available.

The Administrators' knowledge of the company's affairs comes principally from the following sources:

- The Directors' Statement and a detailed questionnaire concerning the company's affairs prepared by the Directors.
- Discussions with the Directors and management of the company.



- An independent appraisal of the value of the company's property, plant and equipment obtained upon our instructions.
- A search of the ASIC records relating to the company and any related entities.
- Searches obtained from Department of Transport and Department of Land Administration.
- An examination of the company's books and records including its financial statements and management accounts.

## 8.2 The Company's Solvency

### 8.2.1 Overview

A pre-cursor to the recovery of funds by a Liquidator through the voiding of certain transactions or through other legal action, such as seeking compensation from Directors for insolvent trading, is establishing the company's insolvency at the relevant time.

Establishing insolvency is a complex matter due in part to the complexity of corporate financial transactions and the lack of clear prescriptive legal authority on proof of insolvency.

Notwithstanding, there are two primary tests used in determining a company's solvency, at a particular date, namely:

- Balance sheet test; and
- Cash flow or commercial test.

The Courts have widely used the cash flow or commercial test in determining a company's solvency at a particular date.

Section 95A of the Act also contains a definition of solvency. That definition reflects the commercial test in stating that a person is solvent if *"the person is able to pay all the person's debts as and when they become due and payable"*.

However, the commercial test is not the sole determinant of solvency. Determining solvency derives from a proper consideration of a company's financial position in its entirety and in the context of commercial reality. Relevant issues include, but are not limited to, the following:

- The degree of illiquidity. A temporary lack of liquidity is not conclusive;
- Regard should be had to:
  - cash resources; and
  - monies available through asset realisations, borrowings against the security of assets or equity / capital raising.



- All a company's assets might not be relevant when considering solvency. For example, where a company proposes selling assets which are essential to its business operations, the proceeds of those assets should not be taken into account.
- The voluntary and temporary forbearance by creditors not to enforce payment terms.
- It is not appropriate to base an assessment of whether a company can meet its liabilities as and when they fall due on the prospect that a company might trade profitably in the future.

In summary, it is a company's inability using such resources as are available to it through the use of its assets, or otherwise, to meet its debts as they fall due, which indicates insolvency.

### 8.2.2 Preliminary Determination

Set out below is a summary of our preliminary investigations and our preliminary determination as to the company's solvency.

### 8.2.3 Banking Facilities

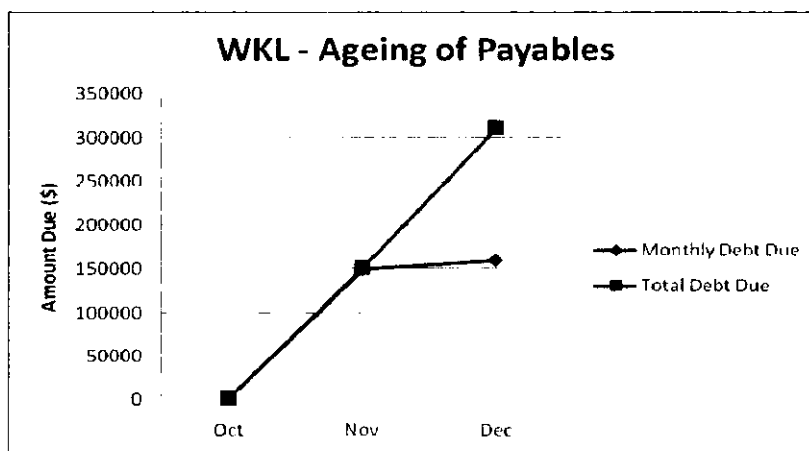
WKL had no bank loan facilities and simply operated with a number of trading accounts whereby funds raised from its capital raising were transferred to these accounts from the share issue account from time to time. Upon our appointment the company held funds of \$543,015.

### 8.2.4 Aged Payables Review

The table below sets out an analysis of the aged trade payables as at 2 December 2008 based upon records of WKL:

	Due 31 Dec 08 (\$)	Due 30 Nov 08 (\$)	Due 31 Oct 08 & Earlier (\$)	Total Due (\$)
Trade Creditors' Amount Due	159,664.78	149,812.91	1,793.58	<b>\$311,271.27</b>
Percentage of Total	51.29%	48.13%	0.58%	100.00%

The ageing of debt and overall debt outstanding is graphed below also:





We comment on the above analysis as follows:

The ageing of trade payables above demonstrates that 51.29% of WKL's outstanding trade debt relates to invoices issued during November 2008 and 48.13% relates to invoices issued during October 2008. Accordingly, the majority of WKL's outstanding debts relate to invoices issued during October 2008 and November 2008 (99.42% of the overall debt outstanding). The majority of creditors' payment terms were within 30 days of invoice and at the date of appointment over 50% of the trade payables were not due for payment.

### 8.2.5 Statutory Payments

The records of WKL disclose that the following statutory payments were outstanding at the date of our appointment:

#### Superannuation

The records of WKL disclose that superannuation contributions for the month of November 2008 in the amount of \$19,836 remain outstanding. These amounts were scheduled to be paid by 31 December 2008 whilst not technically due until 28 January 2009.

#### Child Support Payments

An amount of \$2,138 was outstanding with respect to child support payments deducted from wages paid during November 2008. This amount was due to be paid by 31 December 2008.

#### Payroll Tax

At the date of our appointment, a payroll tax liability in the amount of \$10,135 for the month of November 2008 had not been paid by WKL. This amount was due to be paid on 7 December 2008.

#### PAYG and GST Tax

At the date of appointment an amount of \$53,733 was due to be paid by 31 December 2008 with respect to PAYG deductions for November 2008 wages. Also, an amount of \$39,087 was refundable by the Australian Taxation Office with respect to GST credits for November 2008.

### 8.2.6 Profitability

WKL's profit results for the period 30 June 2007 to 2 December 2008 are tabled below:

	2 December 2008 (\$)	30 June 2008 (\$)	30 June 2007 (\$)
Net Profit / (Loss)	(1,558,612)	(2,256,322)	(1,087,873)



As you will note above, the company did not generate a profit during the period 30 June 2007 to 2 December 2008.

### 8.2.7 Company Cash flow

It is apparent that WKL prepared and revised its cash flow and production forecasts numerous times throughout the current financial year. We have reviewed a number of documents whereby the cash flow forecasts of WKL appear to have been discussed and considered by WKL management and its Directors.

We note that WKL's cash flow was expected to be negative during the first week of January 2009. In this regard, it is apparent that over time the Board of WKL recognised that a significant cash flow shortage would occur around January 2009 as a result of lack of working capital and a number of capital items which were required to be purchased (completion of construction of a customised boat \$120K and a polar circle \$70K). The Board of WKL had planned on raising capital well prior to this January 2009 position (where cash flow was forecast to be negative), as evident by the SPP discussed earlier. However, as a result of poor economic conditions and the fish mortality event, the capital raising was not completed.

### 8.2.8 Working Capital Position

The working capital position of WKL for the period 30 June 2007 to 2 December 2008 is tabled below:

	2 December 2008 (\$)	30 June 2008 (\$)	30 June 2007 (\$)
Current Assets	677,775	2,338,903	218,737
Current Liabilities	(467,434)	(321,221)	(404,401)
<b>Working Capital/(Deficiency)</b>	<b>210,341</b>	<b>2,017,682</b>	<b>(185,664)</b>
<b>Working Capital Ratio</b>	<b>144.99%</b>	<b>728.13%</b>	<b>54.09%</b>

As you will note above, WKL's working capital position significantly increased during the 2008 financial year as a result of a capital raising and decreased significantly during the 2009 financial year to 2 December 2008 as a result of significant ongoing operational costs.

### 8.2.9 Net Assets

The net asset position of WKL for the period 30 June 2007 to 2 December 2008 is tabled below:

	2 December 2008 (\$)	30 June 2008 (\$)	30 June 2007 (\$)
Total Assets	4,345,248	5,758,016	642,861
Total Liabilities	(472,146)	(326,401)	(421,255)
<b>Net Assets</b>	<b>3,873,102</b>	<b>5,431,615</b>	<b>221,606</b>

The company maintained a positive net asset position. Its major assets recorded are its items of plant and equipment.



#### 8.2.10 Sources of Funding

In July 2007, WKL raised \$1.2 million in seed capital and \$8 million at public float via a placement of 42 million ordinary shares at an issue price of 20 cents per share. The funds raised were stated as being used for:

- (i) Obtaining relevant licences for fish farming;
- (ii) Setting up a climate controlled hatchery;
- (iii) Establishing fully equipped offshore operations; and
- (iv) Ongoing trading capital (fish feed, wages, water, electricity etc).

During 2008 WKL's management and Directors identified that extra capital was required to be raised to fund the current and ongoing operational requirements to see WKL through to its first fish harvest following which WKL would then be able to generate its own cash flow through the sale of YTK.

On 24 September 2008, WKL announced a SPP to address its immediate funding requirements. The SPP was to allow shareholders to invest a further maximum of \$5,000.00 per shareholder into WKL. The funds raised under the SPP were to be used to further progress the company's farming activities at Jurien Bay, including preparation for harvesting of the first cohort of YTK, which was expected in the first quarter of 2009. The SPP was to close on 21 October 2008.

Due to difficult economic conditions the SPP was extended on two occasions to 31 October 2008 and then 14 November 2008.

On 17 November 2008 WKL announced via the Australian Stock Exchange that a stock mortality event had occurred at the Jurien Bay Fish Farm resulting in approximately 15,000 fish deaths, representing approximately 30% of the initial cohort. The event occurred due to proliferation of identified opportunistic bacterial pathogens in the intestines of the fish. Subsequent to this initial announcement further stock mortalities were experienced shortly thereafter such that only approximately 12,000 of the initial cohort survived meaning that approximately 75% of the initial cohort had died.

On 26 November 2008, WKL announced to the market that in light of recent global economic circumstances and the fish mortalities experienced above that the SPP had been cancelled and application monies would be refunded to applicants.

WKL explored other funding options with major shareholders and had been in discussions with a number of parties potentially interested in placing an investment in WKL shortly before our appointment. However, given the recent difficult economic conditions and stock mortalities which impacted on forecast future cash flows and attractiveness of the business, funding was not able to be sourced in the short-term to address ongoing trading costs and acquisition of critical capital items.



In view of WKL's current financial position, the Directors' formed the view that WKL was likely to become insolvent shortly and the Directors resolved to appoint Administrators to the WKL. On 2 December 2008, Andrew Saker, Martin Jones and Garry Trevor were appointed as Joint and Several Administrators of WKL.

#### 8.2.11 Likely Date of Insolvency

Indicators	Earliest Estimated Date
Ageing of Trade Payables	30 November 2008
Working Capital	N/A
Profit and Loss Statements	30 June 2007
Statutory Payments	N/A

#### 8.2.12 Ageing of Trade Payables

The majority of WKL's trade payables (51.29%) did not fall due until 31 December 2008 and 48.13% of trade payables were due on 30 November 2008 shortly before the Administrators' appointment. Thus the company's trade payables were mostly up to date upon our appointment.

#### 8.2.13 Working Capital

WKL's working capital position at 30 June 2007 was negative, however became positive as at 30 June 2008 and remained positive as at 2 December 2008.

We note that funds of \$543,015 were held on hand at the date of our appointment.

We also note that the company had approximately \$120,000 to pay with respect to a customised boat being built. The company had spent approximately \$300,000 on the boat at the date of our appointment. We note that the \$120,000 was not technically due for payment as work to complete the boat was still due to be completed. Given the company's tight cash position the company is not currently in a position to complete payment for completion of the boat.

#### 8.2.14 Profit and Loss Statements

WKL did not generate a profit during the period 30 June 2007 to 2 December 2008.

#### 8.2.15 Statutory Payments

WKL records and advice from the company's management indicate that statutory payments were being made on time by the company. The outstanding statutory payments identified above were not outstanding at the date of our appointment.

**Based on the above analysis, it is our preliminary view that WKL was not insolvent at the time of our appointment, however given the unavailability of additional capital, the ongoing trading costs, no current revenue stream and costs already incurred due for payment on or before 31 December 2008 it is**



**likely that the company would have become insolvent shortly thereafter in January 2009.**

A Liquidator would need to conduct further investigations, and possibly conduct public examinations of relevant parties, to ultimately determine this position.

#### 8.2.16 Presumption of Insolvency – Inadequate Books and Records

Failure to keep or retain adequate books and records in accordance with Section 286 of the Act provides a rebuttable presumption of insolvency under Section 588E of the Act. A Liquidator can rely on the presumption of insolvency in litigation including:

- Compensation claims arising from insolvent trading; and,
- Recovery of voidable transactions from related entities.

The presumption cannot be relied upon in the recovery of unfair preference from an unrelated entity.

Our preliminary view is that WKL maintained adequate books and records in accordance with Section 286 of the Act. Accordingly, the presumption of insolvency under Section 588E of the Act would not be available. In this regard, we note that the following key records were maintained:

- Financial statements (of which were also audited);
- Management accounts;
- Electronic accounting system to record transactions;
- Banking records;
- Payroll and employee records; and
- Various agreements with various contractors and suppliers.

### **8.3 Voidable Transactions**

#### 8.3.1 Unfair Preferences

A payment to a creditor is preferential if it is made at a time when the company is insolvent and it results in the recipient receiving a greater return than they would receive if the payment were set aside and the creditor lodged a claim in the liquidation.

Should a Liquidator establish any such unfair preference payments, these amounts may be recouped thereby increasing the funds available to ordinary unsecured creditors. If a creditor disgorges an unfair preference payment to a Liquidator, the creditor is entitled to prove for dividend. Therefore, whilst recovering an unfair



preference increases the pool of funds available to creditors, it also increases total creditor claims.

For the purposes of this report, based upon our preliminary investigations we do not estimate any potential recoveries from unfair preferences. A Liquidator would be required to conduct further investigations into this matter.

### 8.3.2 Uncommercial Transactions

A transaction is an uncommercial transaction if it is made at a time when the company is insolvent and 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 or detriment to the company of entering into the transaction; and
- The prospective benefits to other parties to the transaction upon entering into it.

Should a Liquidator establish any such uncommercial transactions, those transactions may be set aside thereby increasing the funds available to ordinary unsecured creditors.

Our preliminary investigations do not disclose any transactions of an uncommercial nature which may lead to recoveries by a Liquidator in the event that the company is wound up.

### 8.3.3 Unfair Loans

Section 588FD of the Act provides that a loan to a company is unfair if the interest and charges are extortionate. In considering whether interest and charges are extortionate, regard must be had to:

- Risk the lender is exposed to;
- Value of security;
- Term;
- Repayment schedule;
- Amount of loan.

Based on our investigations to date, the company was not a party to any unfair loans.



#### 8.3.4 Unreasonable Director-related Transactions

Pursuant to Section 588FDA of the Act, a transaction is an unreasonable Director-related transaction of the company if:

- The transaction is a payment, transfer of property, issue of securities or incurring of an obligation by the company; and,
- Made by the Director or close associate of the Director;
- That a reasonable person in the company's circumstances would not have entered into having regard to the benefit or detriment to the company or other parties.

Should a Liquidator establish any such transactions, they may be set aside thereby increasing the funds available to unsecured creditors.

Our preliminary investigations do not reveal any unreasonable Director related transactions.

#### 8.3.5 Obstruction of Creditors' Rights

Section 588FE of the Act provides for the voiding of transactions designed to defeat, delay or interfere with creditors rights.

Our investigations do not disclose any such transactions

### 8.4 Insolvent Trading

#### Directors' Liability

Section 588G of the Act imposes a positive duty upon company Directors to prevent insolvent trading. If a Director is found guilty of an offence in contravening Section 588G of the Act, the Court may order him or her to pay compensation to the company equal to the amount of loss or damage suffered by the creditors of the company.

The Court may also impose upon the Directors' one of two types of civil penalty orders. The first can include a fine not exceeding \$200,000 or an order prohibiting Directors from participating in the management of a company. The second, where there is criminal intent and a conviction, a Director could also be imprisoned for up to five years or fined as well.

ASIC usually applies for civil penalty orders while applications for compensation payable to the company are usually made by a Liquidator, or in specified circumstances a creditor.

The substantive elements of Section 588G of the Act are:



- A person must be a Director of a company at a time when the company incurs a debt;
- The company must be insolvent at that time or becomes insolvent by incurring the debt; and
- The Director must have reasonable grounds for suspecting that the company is insolvent or would so become insolvent by incurring the debt;

Summarised below are the defences contained in Section 588H of the Act:

- The Directors had reasonable grounds at the time the debt was incurred to expect the company to be solvent and would remain solvent even after the debt was incurred;
- The Directors relied on another person to provide information about whether or not the company was solvent;
- The Directors were ill or for some other good reason did not take part in the management of the company; and
- The Directors took reasonable steps to prevent the incurring of the debt.

A Liquidator must form an opinion as to the date the company became insolvent and determine the debts incurred from that date thereby quantifying the loss to the company.

Based on our analysis at Section 8.2 of this report, we indicated it was probable that the company was not insolvent at 2 December 2008 however would become insolvent if it continued to operate.

A Liquidator would likely seek legal advice on this issue and conduct more investigations possibly including a public examination.

The costs of proceeding with an insolvent trading action must be considered as does the personal financial capacity of the Directors to pay a judgement obtained against them. The latter issue is addressed in Section 8.9 and indicates the Directors may have the capacity to meet any successful insolvent trading claim.

Accordingly, it is our preliminary view that no insolvent trading claim would be pursued by a Liquidator.

## **8.5 Director Duties**

As discussed above our preliminary investigations to date have not identified any other issues which would give rise to a claim against the Directors for a breach of duty.



## **8.6 Other Matters Arising from Investigations**

### **8.6.1 Avoidance of Employee Entitlements**

Provisions contained in Part 5.8A of the Act commenced operation on 30 June 2000 and aim to protect the entitlements of a company's employees from agreements that deliberately defeat the recovery of those entitlements upon insolvency.

Under section 596AB(1) of the Act, it is an offence for a person to enter into a transaction or relevant agreement with the intention of, or with intentions that include:

- Preventing recovery of employee entitlements; or
- Significantly reducing the amount of employee entitlements recoverable.

The offence created in Part 5.8A of the Act is not limited to the company's, Directors, officers or employees. The section is applicable to any individual regardless of their relationship to the company or employees.

If a breach is proven, Part 5.8A of the Act provides for the imposition of both criminal and civil penalties. Under Section 596AC(1) of the Act, a civil penalty, in the form of compensation, is available to employees where:

- Section 596AB(1) of the Act is contravened;
- The company is being wound up; and
- Employees suffered loss or damage.

It should be noted the company need not have been insolvent at the time.

A Liquidator may take action to recover compensation as a debt due to the company. Employees would have priority to the compensation under Section 556 of the Act.

While the Liquidator has priority standing to take the action for any contravention, an employee may sue directly for compensation in certain circumstances pursuant to Section 596AF(1) of the Act.

Based on our investigations to date, there has been no contravention of Part 5.8A of the Act by any person.

### **8.6.2 Falsification of Books**

Pursuant to Section 1307 of the Act, it is an offence for a person to engage in conduct that results in the concealment, destruction, mutilation or falsification of any securities of or belonging to the company or any books effecting or relating to affairs of the company.



If a breach is proven, Part 9.4 of the Act provides for criminal penalties only. Therefore, any breaches of Section 1307 of the Act will not result in recovery of funds by a Liquidator.

Our preliminary investigations do not reveal any evidence of falsification of books.

### 8.6.3 False or Misleading Statements

Pursuant to Section 1308 of the Act, a company must not advertise or publish a misleading statement regarding the amount of its capital. It is an offence for a person to make or authorise a statement that, to the person's knowledge, is false or misleading in a material particular.

If a breach is proven, Part 9.4 of the Act provides for criminal penalties only. Therefore, any breaches of Section 1308 will not result in recovery of funds by a Liquidator.

Our preliminary investigations do not reveal any evidence of any false or misleading statements.

### 8.6.4 False Information

Pursuant to Section 1309 of the Act, it is an offence for an officer or employee to make available or give information to a Director, auditor, member, debenture holder, or trustee for debenture holders of the company that is to the knowledge of the officer or employee:

- (a) False or misleading in a particular manner; or
- (b) Has omitted from it a matter the omission of which renders the information misleading in a material respect.

If a breach is proven, Part 9.4 of the Act provides for criminal penalties only. Therefore, any breaches of Section 1309 of the Act will not result in any recovery by a Liquidator.

Our preliminary investigations do not reveal any evidence of any false information.

## 8.7 Summary of Potential Liquidator's Claims

Based upon our preliminary investigations above, there do not appear to be any recoveries available to a Liquidator in the event that WKL is wound up.

## 8.8 Directors' Ability to Pay a Liquidator's Claims

Land title and motor vehicle searches were conducted with respect to each of the Directors of the company which disclose that the Directors' own real property and motor vehicles.



It is noted that the Directors do have a Directors' and officers' insurance policy which may respond to any claims brought by a Liquidator.

## **9. PROPOSAL FOR DEED OF COMPANY ARRANGEMENT (DOCA)**

As discussed above, the Administrators have called for indicative offers for the possible restructure of WKL and no final DOCA proposals have been put forward by any party to date.

Further due diligence is expected to be completed by parties who have submitted indicative offers and be shortlisted by the Administrators over the next 2 to 3 weeks with a view to submitting final offers for consideration by the Administrators and creditors of WKL.

It is the Administrators' opinion that further time should be given to potential parties to formulate any potential DOCA proposals. As discussed above, a number of parties have expressed an interest in putting forward recapitalisation and restructure proposals for WKL.

## **10. CREDITORS' OPTIONS, DIVIDEND ESTIMATES AND COST ESTIMATES**

Pursuant to Section 439A(4)(b) of the Act, we are required to provide creditors with a statement setting out our opinion on whether it is in the creditors' interests for the:

- Administration to end;
- Company to be wound up; or
- Company to execute a DOCA.

In forming our opinion, it is necessary to consider an estimate of the dividend creditors might expect, and the likely costs, under each option.

### **10.1 Administration to End**

Creditors may resolve that the administration should end if it appears the company is solvent or, for some other reason, control of the company should revert to its Directors.

Based on our preliminary investigations and analysis of the company's financial position there appears no valid commercial reason why control of the company should revert to its Directors.



If the administration were to end, there is no mechanism controlling an orderly realisation of assets and distribution to creditors. We are unable to say what the company might ultimately pay creditors or what costs it might incur.

Therefore, our opinion is that it is not in the creditors' interest for the administration to end.

## **10.2 Winding up of Company**

Given that we are currently seeking proposals for the purchase of WKL's assets and / or restructure we are currently unable to determine the likely return and timing of any dividend to creditors under a liquidation scenario. The costs of winding up the company's affairs are estimated at \$75,000 exclusive of GST.

Therefore, at this stage, we do not recommend that creditors resolve to wind up the company.

## **10.3 DOCA**

As no DOCA has been proposed at this point in time, the Administrators cannot recommend that the company executes a DOCA.

## **11. ADMINISTRATORS' OPINION**

As stated in section 10.1 above, the option of the administration ending is clearly not viable. The only remaining options available to creditors are to wind up the company or execute a DOCA. At this stage, as no final DOCA proposal has been put forward this option falls away.

**Based on the above, it is our opinion that the second meeting of creditors be adjourned for a period not exceeding 45 business days for the following reasons:**

- a) To allow the Administrators further time for interested parties to conduct their due diligence for the restructure and recapitalisation of WKL ultimately leading to a DOCA proposal being put forward to creditors; and
- b) Following resolution of the above matters, the Administrators will be in a better position to assess the company's financial position and advise of the potential return to creditors under the various options that are proposed regarding the future of the company.

The estimated cost of the Administrators during this extension period is \$30,000 excluding GST.



## **12. REMUNERATION AND DISBURSEMENTS**

At the second meeting of creditors, we intend seeking approval of the following remuneration.

### **Administrators' Remuneration**

Administrators' remuneration for the period 2 December 2008 to 31 December 2008 in the amount of \$60,250.67 excluding GST in accordance with the summary as set out in Annexure 1.

That a provision for the Administrators' remuneration for the period from 1 January 2009 to 15 January 2009 in the amount of \$15,000.00 exclusive of GST in accordance with the summary as set out in Annexure 1.

If creditors approve the proposed adjournment, that a provision for the Administrators' remuneration for the period 16 January 2009 to the date of the adjourned second meeting of creditors in the amount of \$30,000.00 excluding GST be approved. The amount is an estimate only as it is not possible, at this stage, to state a precise amount. An actual fee summary will be presented to creditors for approval. A summary of the anticipated tasks is set out in Annexure 1.

### **Prospective Liquidators' Remuneration**

In the event creditors vote to wind up the company, that a provision for the Liquidators' remuneration in the amount of \$75,000.00 excluding GST be approved. The amount is an estimate only as it is not possible, at this stage, to state a precise amount. An actual fee summary will be presented to creditors for approval. A summary of the anticipated tasks is set out in Annexure 1.

The Administrators, (or, where appointed, Liquidators) seek approval of their remuneration on a time basis in accordance with Ferrier Hodgson's schedule of hourly rates set out in Annexure 1.

To date, the Administrators have not drawn any fees or disbursements. Details of the basis on which disbursements are charged are contained in Annexure 1.



### **13. FURTHER QUERIES**

We will advise creditors in writing, if practicable, of any additional matter that comes to our attention after the dispatch of this report that, in our view, is material to creditors' deliberations.

In the meantime, should creditors have any queries, please do not hesitate to contact either Andrew Smith or Jamie Gunnis at this office.

DATED this 6<sup>th</sup> day of January 2009.

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

**ANDREW SAKER**  
Joint and Several Administrator of  
Western Kingfish Limited

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# **Annexure 1**

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**Administrators' Remuneration**

**Liquidators' Remuneration**

**The Firm's Schedule of Hourly Rates**