

20 December 2018

Report to the Creditors

of

**Equititrust Limited
(Receiver Appointed) (In Liquidation)
(Receivers and Managers Appointed)
A.C.N. 061 383 944
("the Company")**

and

Notice to the unitholders of the Equititrust Premium Fund ("EPF")

I refer to my previous reports and provide an update on what was titled the Federal Court Examinations in those previous reports.

I advise that the information contained in this report is confidential and is only provided to the creditors of the Company and unit holders of the EPF. You are not authorised to make any information contained in this report available to third parties, other than your own professional advisers.

As you will be aware, the Liquidators conducted several examinations in the Federal Court of Australia to investigate the circumstances in which the Hong Kong nominee company, MS Asia Debt Acquisition Limited, acquired for \$2 million the debt owed by the EPF to BOS International (Australia) Limited.

At the conclusion of their investigations, the Liquidators obtained legal advice from their solicitors and from senior counsel in relation to claims against Mr David Tucker, Mr David Kennedy, MS Asia Debt Acquisition Limited and other parties in respect of MS Asia's acquisition.

This advice is subject to legal professional privilege which is not waived by the Liquidators and accordingly cannot be disclosed in this report.

The Liquidators were satisfied that it is proper – and in the commercial interests of creditors and members of the EPF - that the Company institute proceedings and they have filed a Claim and Statement of Claim, settled by senior counsel, in the Supreme Court of Queensland (proceeding number 7399/18) against the following defendants:

- 1st defendant - David Robert Walter Tucker
- 2nd defendant - Tuckerloan Pty Ltd ACN 101 109 157 on its own account and as Trustee of the Tuckerloan Trust
- 3rd defendant - David John Kennedy
- 4th defendant - MS Asia Debt Acquisition Limited
- 5th defendant - David Robert Walter Tucker, Richard Terrick Cowen, David Heiner Schwarz, Justin Otto Marschke and Daniel Gregory Arthur Davey Carrying on Practice as Partners under the name Tucker & Cowen
- 6th defendant - TCS Solicitors Pty Ltd

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Copy of Claim and Statement of Claim

A copy of the Claim and Statement of Claim may be found on our portal which you may access by making a request via equititrust@hallchadwick.com.au.

In summary, the company seeks damages and compensation from the defendants for an amount exceeding \$17 million.

Service

The Liquidators served the first, second, fifth and sixth defendants.

We are yet to serve the third and fourth defendants, who are based in Hong Kong, and will endeavour to do so in due course.

Directions

Mr Tucker (in his capacity as the first defendant and as one of the fifth defendants), Tuckerloan Pty Ltd, Mr Richard Cowen (in his capacity as one of the fifth defendants) and TCS Solicitors Pty Ltd recently filed applications for directions, which were heard by Justice Bradley on 12 December 2018. Justice Bradley made the following orders and directions:

1. The first and second defendants, Mr Tucker and Mr Cowen each as one of the fifth defendants, and the sixth defendant, have leave pursuant to rule 135(1) to bring:
 - (a) their respective applications filed on 3 and 10 December 2018; and
 - (b) any further interlocutory applications for security for costs, striking out parts of the statement of claim and/or particulars.

As between the plaintiff and the first and second defendants:

2. The plaintiff shall, by 21 December 2018, respond to the request for particulars by the first and second defendants (dated 10 December 2018), providing all proper particulars (saving just exceptions).
3. The first and second defendants and Mr Tucker as one of the fifth defendants shall file and serve their application for security for costs, particulars of the Amended Statement of Claim or to strike out any parts thereof, together with any supporting affidavits, on or before 29 January 2019.

As between the plaintiff and the second-named fifth defendant (Mr Cowen) and the sixth defendant:

4. Mr Cowen and the sixth defendant shall, by 14 December 2018, deliver any request for particulars of the Statement of Claim.
5. The plaintiff shall, by 11 January 2019, respond to any such request for particulars, providing all proper particulars (saving just exceptions).
6. Mr Cowen as one of the fifth defendants and the sixth defendant shall file and serve any application for security for costs, particulars of the Amended Statement of Claim or to strike out any parts thereof, together with any supporting affidavits, on or before 29 January 2019.
7. The application referred to in paragraphs 3 and any application filed in accordance with paragraph 6 above are listed for hearing for one day in the Civil List on 14 February 2019.

Generally:

8. The plaintiff shall, by 14 December 2018, propose to the defendants a basic plan for the management of documents in compliance with paragraph 5 of Practice Direction 18 of 2018.
9. The costs of today's proceedings are the parties' costs in the cause.

Messrs Schwarz, Marschke and Davey (each sued as partners of the fifth defendant firm) have filed applications seeking to set aside service of the proceeding on them, and the proceeding against them, on the basis that they deny being partners, or being liable as partners, of the firm at the relevant times. Their application is returnable on 30 January 2018.

We will provide further updates on the litigation as the matter progresses.

Receipts and Payments

Following the enactment of ILRA 2016, Section 539(5) has been repealed. However, pursuant to the transitional requirements detailed in Section 1592 of the Act, I am still required to notify creditors of the most recent date up to which my receipts and payments have been made up to. I confirm that my most recent account of receipts and payments was lodged with ASIC on 18 May 2018

Should you have any queries regarding the winding up of the Company please do not hesitate to contact Jovan Singh of this office.

Yours faithfully,


BLAIR PLEASH
LIQUIDATOR