

20 August 2019

Report to the Creditors

of

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

I refer to my previous reports and provide an update on the Liquidation of the Company.

To assist creditors, this report has been prepared using the following headings:

1. EIF Proceedings (2013)
2. EPF Proceedings (2013)
3. EPF Proceedings (2018)
4. EIF Receiver Claim
5. Receipts & Payments

1. EIF Proceedings (2013)

Creditors will be aware from my report dated 11 May 2018 of the proceedings commenced by the Liquidators in regards to the EIF.

These proceedings were against the following defendants:

- 1st Defendant - the Company in its own right
- 2nd Defendant - Mark McIvor
- 3rd Defendant - Wayne McIvor
- 4th Defendant - Thomas Haney
- 5th Defendant - KPMG
- 6th Defendant - Paul Steer

As previously advised a Deed of Settlement entered into by the 4th Defendant, Mr Thomas Haney, and by Richard Albarran and Blair Pleash in their capacity as Liquidators of the Company was approved by the Supreme Court of New South Wales on 12 October 2016 and also the Receiver of the EIF on 19 October 2016. With respect to the proceedings against the other defendants, the matter was listed for a case management conference on 26 April 2018.

Since the case management conference before Justice Foster on 26 April 2018 and orders made on that date, the Applicants in the EIF and EPF Proceedings engaged in filing and serving their Replies to all Defences, complying with their discovery obligations and finalising their lay and expert evidence. The Applicants provided verified discovery to the Defendants by 20 July 2018 and filed their lay and expert evidence by 16 August 2018.

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Shortly after, on 13 September 2018, the parties to the EIF Proceeding and the EPF Proceeding took part in a Court ordered mediation. The mediation was successful and the parties entered into a confidential deed of settlement on 17 December 2018 in resolution of the EIF and the EPF Proceedings (Settlement Deed).

On 28 June 2019, the Liquidators of Equititrust obtained judicial advice from the Federal Court of Australia approving Equititrust's entry into the Settlement Deed.

The settlement will not provide a recovery for unitholders or creditors (secured or unsecured) in the EIF or the EPF. This is because the funds to be paid by the respondents pursuant to the settlement agreement will be distributed to the litigation funder by way of a funding commission and reimbursement of legal fees and payment of liquidator's remuneration paid by the litigation funder over the course of the past six years.

The funder's entitlement to those funds, in priority to unit holders and creditors, is provided for in a funding agreement approved by the Supreme Court of NSW on 21 October 2013, in circumstances where the Liquidators had no other means of funding the litigation other than through a litigation funding agreement.

Because the litigation was complex, involved two sets of proceedings against multiple well-resourced defendants, was hard fought, and a settlement was only achieved three months before the trial was due to commence, the legal fees incurred, and required to be repaid to the funder, were substantial.

The settlement represented, in the Liquidators' opinion, the maximum amount that could be recovered from the respondents without proceeding to trial with its associated risks and costs.

Copies of the non-confidential court documents in respect of this application are available on <http://jobs.hallchadwick.com.au/> (Hall Chadwick Portal). Please email equititrust@hallchadwick.com.au to obtain access details to the Hall Chadwick Portal.

2. EPF Proceedings (2013)

Creditors will be aware from my report dated 11 May 2018 of the proceedings commenced by the Liquidators in regards to the EPF.

These proceedings are against the following defendants:

- 1st Defendant - the Company in its own right
- 2nd Defendant - Mark Mclvor
- 3rd Defendant - Wayne Mclvor
- 4th Defendant - Thomas Haney
- 5th Defendant - KPMG
- 6th Defendant - Paul Steer

As previously advised, as the Liquidators would be unfunded in this claim and given the uncertainty of recoveries, the proceedings against, Mark Mclvor, Wayne Mclvor and Thomas Haney were discontinued. Leave was not obtained to proceed against the Company in its own right, therefore this proceeding was only being pursued against the 5th and 6th defendants.

As discussed in above Section 1 of this Report, on 28 June 2019, the Liquidators of Equititrust obtained judicial advice from the Federal Court of Australia approving of Equititrust's entry into the Settlement Deed with respect to the EPF Proceedings.

3. EPF Proceedings (2018)

I refer to my previous reports and provide an update on the proceedings commenced by the Company in the Supreme Court of Queensland (proceeding number 7399/18) against former directors of the Company and against Tucker & Cowen Solicitors in relation to the acquisition by MS Asia of the EPF Loan Book.

Since the Liquidators' report dated 20 December 2018, the following steps have been taken in the proceeding:

1. On 25 January 2019, following receipt of evidence of the internal arrangements of the partnership, Tucker & Cowen, the Company entered into a commercial settlement of the proceedings against Messrs Davey, Marschke and Schwarz of the fifth defendants. Those persons asserted that they were not partners of the firm, Tucker & Cowen Solicitors, during the relevant period. No liability for costs was incurred.
2. On 14 February 2019, Justice Bowskill heard the following applications (which Justice Bradley listed for hearing pursuant to orders and directions made on 12 December 2018 set out in my previous report):-
 - a. Mr David Tucker's (in his capacity as the first defendant and as one of the fifth defendants) and Tuckerloan Pty Ltd's ("**Tucker Defendants**") applications:
 - i. for security for costs until the filing of defences, in the sum of \$373,885;
 - ii. to strike-out the claim and statement of claim in its entirety; and
 - iii. alternatively, to strike-out 79 paragraphs of the statement of claim;
 - b. Mr Richard Cowen's (in his capacity as one of the fifth defendants) and TCS Solicitors Pty Ltd's ("**Cowen Defendants**") applications:
 - i. for security for costs;
 - ii. to strike-out the claim and statement of claim in their entirety; and
 - iii. alternatively, to strike-out 85 paragraphs of the statement of claim;
3. Her Honour Justice Bowskill delivered judgment on 12 March 2019. The judgment is *Equititrust Ltd v Tucker* [2019] QSC 51 and is available on the Supreme Court Library's website at:
<https://archive.sclqld.org.au/qjudgment/2019/QSC19-051.pdf>
4. Justice Bowskill made orders in relation to those applications on 18 March 2019. As to the security for costs applications, her Honour ordered that:
 - a. the Company provide security for the Tucker Defendants' costs in the sum of \$250,000;
 - b. the Company provide security for the Cowen Defendants' costs in the sum of \$150,000;
 - c. the Company pay the Defendants' costs of the security for costs applications.

5. As to the strike out applications, her Honour refused to strike out the claim and statement of claim in their entirety. Her Honour ordered that:
 - a. 26 paragraphs of the statement of claim be struck out, with leave to replead;
 - b. the Company file and serve an amended statement of claim;
 - c. the Defendants notify the Company of any objections to the amended pleading within 14 days of service;
 - d. the Company pay 80% of the Defendants' costs of the strike out applications.
6. The Company provided security for costs as required by Justice Bowksill's Order.
7. On 29 April 2019, the Company filed and served an amended statement of claim, settled by senior counsel.
8. On 9 May 2019, the Tucker Defendants notified the Company's solicitors of their objections to the amended statement of claim, and filed an application for directions.
9. On 13 May 2019, the solicitors for the Cowen Defendants notified the Company's solicitors of their clients' objections to the amended statement of claim, and filed an application for directions.
10. Both sets of Defendants sought leave to bring further strike out applications in relation to the amended statement of claim ("**Defendants' Leave Applications**").
11. On 16 May 2019:
 - a. the Company filed an application for leave to amend its claim, to include a claim against the fifth defendants for damages for breach of contract;
 - b. Justice Wilson heard the Defendants' applications for directions.
12. Her Honour Justice Wilson made orders that, relevantly:
 - a. the Defendants file any further strike out applications by 24 May 2019, which applications will be subject to the Defendants' Leave Applications (that is, her Honour did not grant leave to bring such applications);
 - b. the Defendants' Leave Applications and the Company's application for leave to amend its claim be adjourned to the Civil List for a two-day hearing on a date to be agreed not before 20 July 2019 (or such earlier date as the parties may agree); and
 - c. costs be reserved.
13. In light of the delay and costly proceedings associated with the Defendants various interlocutory applications, the Company reviewed the matter with the objective of simplifying the case and reducing the number of parties. Following this review, the Company:
 - a. retained new senior counsel, Mr Simon Couper QC;
 - b. discontinued the proceedings against the Hong Kong resident defendants, MS Asia Debt Acquisition Limited and Mr David Kennedy (who had not been served);

- c. filed and served a further amended statement of claim, settled by Mr Couper QC, in answer to the Defendants' criticisms in their letters of 9 and 13 May 2019 and to make amendments consequent upon the discontinuance against MS Asia and Mr Kennedy; and
 - d. filed on 19 June 2019 a new application for leave to amend the Claim which included amendments consequent upon the discontinuance against MS Asia and Mr Kennedy.
14. Following receipt of that material, the Cowen Defendants' filed an application for directions, which was heard by Justice Dalton on 19 June 2019. Her Honour made orders that:-
- a. the Company's first application for leave to amend be dismissed with costs;
 - b. the Defendants have leave to file and serve strike out and security for costs applications, and must do so by 15 July 2019;
 - c. those applications and the Company's application for leave to amend its Claim (filed on 19 June 2019) be listed for a two-day hearing in the Civil List on 10 and 11 September 2019;
 - d. the Company pay the Defendants' costs thrown away by reason of the further amended statement of claim filed on 18 June 2019, the discontinuance against the Hong Kong defendants, and the application for directions heard on 19 June 2019.

The Liquidators will provide a further update following judgment on the hearing on 10 and 11 September 2019. Upon the delivery of the judgment, the Liquidators intend to seek directions for the filing of defences by the Tucker Defendants and the Cowen Defendants, directions as to disclosure and documents management, and to have the matter entered on the Commercial List or the Supervised Case List; and to trial as soon as can be arranged.

4. EIF Receiver Claim

As creditors will recall, there are a number of claims between the Receiver of the EIF and the Liquidators which are currently subject to negotiations.

On 3 August 2018 an application was filed by the Receiver of the EIF seeking various orders against the Liquidator. The matter was in the Supreme Court of Queensland on Friday, 12 October 2018 for which Orders were made by Justice Boddice on Tuesday 2 April 2019.

A copy of the orders as ultimately made by Boddice J is attached with a summary of the main points as follows:

- i. The Liquidators to call for and adjudicate on non-unitholder creditor claims;
- ii. Following adjudication, the Liquidators to notify the Receiver of the non-unitholder creditor claims that may be subject to an indemnity from the EIF;
- iii. The Receiver to make a determination on whether to accept or reject these non-unitholder creditor claims as subject to an indemnity from the EIF;
- iv. If the non-unitholder creditor claim is rejected by the Receiver the Liquidators have the ability to make an application to Court for appropriate directions.
- v. The Liquidators are entitled to claim reasonable remuneration in respect of the time spent by them and employees of Hall Chadwick who perform work in carrying out

the work they are required to do under this Order, subject to the approval of this remuneration by the Court. Such remuneration is indemnified from the EIF;

- vi. the Liquidators are to be indemnified from the EIF for all proper costs and expenses (including legal costs on a full indemnity basis) incurred by them in complying with this Order; and
- vii. the Liquidators must notify the Receiver of the amount and nature of any funds recovered by the Liquidators and how they intend on distributing them. The Receiver then has 14 days to make an application for an order that all or part of the funds referred to in the notice be paid to the EIF, for the purpose of reimbursing the EIF for the Liquidators' remuneration and expenses incurred in complying with this Order.

We are in the process of calling for non-unitholder creditor formal proofs of debt so we may adjudicate on these as per the abovementioned orders.

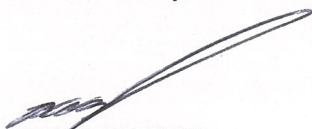
There remain a number of outstanding matters including with respect to our indemnity claims and the claims of unitholder creditors. At our request, on 7 August 2019 our solicitors have written to the Receiver's solicitors to seek some explanation as to how the Receiver proposes that those matters be progressed in circumstances where the liquidation is currently unfunded for those outstanding matters.

5. Receipts & Payments

Please find attached a summary of the receipts and payments in the matter up to 19 April 2019 in line with the lodgements with ASIC.

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

Yours faithfully,



BLAIR PLEASH
LIQUIDATOR

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: BS 10478 OF 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

Applicant: EQUITITRUST LIMITED ACN 061 383 944

AND

Respondents: THE MEMBERS OF THE EQUITITRUST INCOME FUND ARSN 089
079 854 AND THE MEMBERS OF THE EQUITITRUST PRIORITY
CLASS INCOME FUND ARSN 089 079 729

ORDER

Before: Justice Boddice

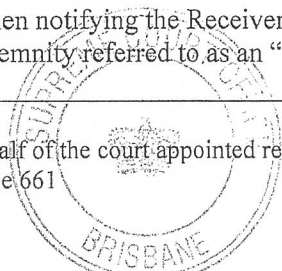
Date: 2 April 2019

Initiating document: Application filed 3 August 2018

THE ORDER OF THE COURT IS THAT:

1. Blair Pleash and Richard Albarran (the **Liquidators**), the liquidators of Equititrust Limited ACN 061 383 944 (In Liquidation) (**EL**), be directed to:
 - (a) ascertain the debts payable by, and claims against, EL in accordance with the Act, excluding any claim by any unitholders of the Equititrust Income Fund ARSN 089 079 854 (**EIF**) and any claim against EL by the Liquidators or former administrators of EL (such that any such claims will not form part of the process provided for in this Order);
 - (b) adjudicate upon those debts and claims in accordance with the provisions of the Act;
 - (c) identify whether EL has a claim for indemnity from the property of the EIF in respect of any, or any part of any, debt payable by or claim against EL which is admitted by the Liquidators in the winding up of EL following the process described in 1(a) and 1(b) above (each such claim for indemnity referred to as a "**Creditor Indemnity Claim**").
2. For the avoidance of doubt, any claims by unitholders of the EIF and any claims relating in any way to the liquidators' own remuneration (including costs and expenses incurred by the liquidators) be excluded from the process described in paragraph 1 above and the process to be followed as set out in orders 3 to 6 below.
3. Within 14 days after any debt or claim is admitted by the Liquidators in the winding up of EL and, in respect of such debt or claim, a Creditor Indemnity Claim is identified by the Liquidators, the Liquidators must notify the Receiver in writing of any such claim.
4. When notifying the Receiver of a claim in accordance with paragraph 3 (each such claim for indemnity referred to as an "**Eligible Claim**"), the Liquidators must:

ORDER
Filed on behalf of the court appointed receiver
Form 58 Rule 661



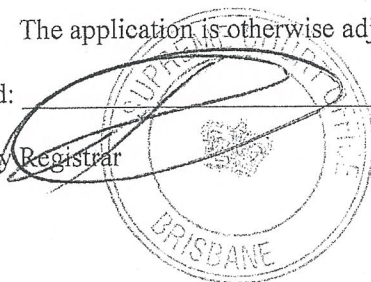
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SZC:JSO:201110996

- (a) provide the Receiver with:
 - (i) a copy of the relevant proof of debt and supporting documentation relating to the Eligible Claim; and
 - (ii) such other information the Liquidators consider relevant to EL's claim for indemnity from the property of the EIF;
 - (b) within 14 days of receipt of a request from the Receiver pursuant to paragraph 5(a) below for further information in respect of an Eligible Claim, provide such reasonably requested further information to the Receiver.
5. The Receiver is directed to:
- (a) within 30 days of receipt of an Eligible Claim, request any further material or information he reasonably considers necessary to assess the Eligible Claim;
 - (b) within 45 days of receipt of an Eligible Claim or of the information requested in accordance with (a) above (whichever is the later):
 - (i) accept the Eligible Claim as one for which EL has a right to be indemnified from the scheme property of the EIF; or
 - (ii) reject the Eligible Claim; or
 - (iii) accept part of it and reject part of it;and give to the Liquidators written notice of his determination; and
 - (c) if the Receiver rejects an Eligible Claim, whether in whole or in part, provide the Liquidators with written reasons for his decision when, or within 7 days after, giving notice of his determination.
6. Within 28 days of receiving notification from the Receiver of the reasons for rejecting, in whole or in part, any Eligible Claim ("**Rejected Claim**"), the Liquidators:
- (a) may make an application to this Honourable Court for directions as to whether or not the Eligible Claim is or is not one for which EL has a right of indemnity out of the scheme property of the EIF; or
 - (b) must notify the relevant creditor for any Rejected Claim of:
 - (i) the Receiver's decision;
 - (ii) any reasons provided by the Receiver for that decision;
 - (iii) any material provided pursuant to paragraph 4 hereof;
 - (iv) whether they intend to make an application for directions in respect of the Rejected Claim pursuant to paragraph 6(a) hereof.
7. The Receiver and the Liquidators have liberty to apply to the Court for directions in respect of any question arising in connection with the consideration or payment of an Eligible Claim or these orders.
8. The Liquidators are entitled to claim reasonable remuneration in respect of the time spent by them and employees of Hall Chadwick who perform work in carrying out the work they are required to do under this Order at rates and in the sums from time to time approved by the

- Court, and to be indemnified out of the assets of the EIF in respect of such remuneration for any amounts which the Court approves by way of further order and within 14 days of such order being served on the Receiver.
9. For the avoidance of doubt the liquidators are to serve any Application for approval of their remuneration pursuant to paragraph 8, and any supporting Affidavit material, upon the Receiver no later than 14 days before the date of any hearing of that Application.
 10. Subject to any further order of the Court, the Liquidators are to be indemnified from the EIF for all proper costs and expenses (including legal costs on a full indemnity basis) incurred by them in complying with this Order, with such amounts to be paid by the Receiver to the Liquidators from the assets of the EIF within 14 days upon the Receiver being presented by the Liquidators from time to time with invoices in respect of such costs and expenses.
 11. If, following the making of this order and during the liquidation of the applicant, the Liquidators recover funds in that liquidation, then before making a distribution of those funds including to pay the Liquidators' remuneration and expenses, the Liquidators must:
 - (a) give written notice to the Receiver as to the amount and nature of those funds and the Liquidators' proposal as to how those funds shall be distributed; and
 - (b) not make any distribution of those funds, until the later of:
 - (i) 14 days following the service on the Receiver of the written notice referred to in (a) above;
 - (ii) if the Receiver brings an application pursuant to paragraph 12 below within the 14 day period provided for in paragraph 10 below, and serves it on the Liquidators within 2 business days of filing, the date on which that application has been determined or discontinued.
 12. Within 30 days of receiving any notice pursuant to paragraph 11(a) above, the Receiver has liberty to apply to the Court for an order that all or part of the funds referred to in the notice be paid to the EIF, for the purpose of reimbursing the EIF for the Liquidators' remuneration and expenses incurred in complying with this Order.
 13. Subject to any further order of the Court, pursuant to section 601NF(2) of the *Corporations Act 2001* (Cth), the Receiver is directed not to make any distribution to the members of the EIF, without first giving the Liquidators 14 days notice of the amount and nature of those funds.
 14. For the purposes of all time limits referred to in this order:
 - (a) public holidays are excluded from the time period; and
 - (b) time does not run in relation to any time period between (and including) 22 December 2018 and 6 January 2019.
 15. The parties' costs of and incidental to this application to date be paid out of the assets of the EIF on the indemnity basis.
 16. The application is otherwise adjourned to a date to be fixed.

Signed:

Deputy Registrar



Receipts and Payments Summary By Account: EQUILI - Equititrust Limited (In Liquidation)

CVL, Bank, Cash and Cash Investment Accounts: To: 19/04/2019 (Gross Method)

Type	Account	GST	Total
TRADING PAYMENTS			
	Printing & Stationery	(2,129.25)	(23,421.64)
		(2,129.25)	(23,421.64)
	Net Trading Receipts and Payments	(2,129.25)	(23,421.64)
NON-TRADING RECEIPTS			
	Fees: Appointee Fees	4,472.50	49,197.55
	Funding for Litigation: International Litigation Partners No 1 Pty Limited		10,270,438.68
	Funding for Litigation: Vannin Capital Operations Limited		1,829,212.56
	GST Control: GST Paid (Received)		1,118,777.30
	Income Tax Refund		2,240,336.74
	Legal Fees: Squire Patton Boggs	208.00	2,288.00
	Miscellaneous Deposit		834.00
	Other Income		3,087.00
	Record review fee	172.00	1,892.00
	Subpoena compliance monies received		36.00
	Transfer from Equititrust Ltd (In Liquidation)		108,987.45
		4,852.50	15,625,087.28
NON-TRADING PAYMENTS			
	Appointee Disbursements	(26,044.95)	(286,494.50)
	Bank Charges		(35.65)
	Court Fees		(3,440.00)
	Fees: Appointee Fees	(134,496.45)	(1,479,460.98)
	GST Remittance to Litigation Funder		(838,558.23)
	IT Services	(96.40)	(1,060.40)
	Legal Costs	(5,716.24)	(62,878.60)
	Legal Disbursements	(5,116.74)	(56,849.45)
	Legal Fees	(51,505.89)	(566,564.78)
	Legal Fees: Bartier Perry Lawyers	(381.80)	(4,199.80)
	Legal Fees: Piper Alderman	(342,818.53)	(3,789,137.77)
	Legal Fees: Russells	(108,347.31)	(1,653,830.21)
	Legal Fees: Squire Patton Boggs	(583,088.71)	(6,483,618.91)
	Printing and Posting	(2,036.75)	(22,404.25)
	Transfer to EPF Funding Account		(108,987.45)
		(1,259,649.77)	(15,357,520.98)
	Net Non-Trading Receipts and Payments	(1,254,797.27)	267,566.30
	Net Receipts (Payments)	(1,256,926.52)	244,144.66