



Equiticorp Australia Limited
(In Liquidation) (Administrators Appointed)
ACN 002 742 672

Equiticorp Tasman Limited
(In Liquidation) (Administrators Appointed)
ACN 000 079 050

Equiticorp Investments (Australia) Limited
(In Liquidation) (Administrators Appointed)
ACN 008 604 313

Sowani (No. 2) Pty Limited
(In Liquidation) (Administrators Appointed)
ACN 003 250 075

(together, “the Equiticorp Group”)

Update to Creditors

I refer to my previous update to creditors in my capacity as Liquidator of the Equiticorp Group on 17 December 2019 relating to the proposed finalisation plan and creditors meetings held on 29 March 2019 where creditors resolved to support the Liquidators’ application to the Supreme Court of NSW (**Court**) to allow the Equiticorp Group to be placed into Voluntary Administration to effect that finalisation plan.

The Liquidators subsequently made that application, and on 27 February 2020 Gleeson J, granted the proposed relief to allow the Equiticorp Group to be placed into Voluntary Administration and staying the liquidations of the Equiticorp Group.

Copies of the Sealed Orders are enclosed.

Accordingly, Shaun Fraser and I have been appointed joint and several Voluntary Administrators (**Administrators**) of the Equiticorp Group pursuant to Section 436B(2)(g) and 448C(1) of the Corporations Act 2001 (Cth) (**the Act**).

Declaration of Independence, Relevant Relationships and Indemnities

Pursuant to Section 436DA of the Act, I enclose my Declaration of Independence, Relevant Relationships and Indemnities. The nature of our appointment is outlined in our DIRRI.

First Meeting of Creditors

As a result of the relief granted on 27 February 2020, the Administrators are not required to comply with certain statutory obligations under Part 5.3A of the Act and are not required to hold a first statutory meeting of creditors.

Administrators Report and Meeting of Creditors

I am currently preparing a report to creditors as required under Section 75-225 of the Insolvency Practice Rules in advance of a meeting of creditors.

At that meeting, creditors will consider the Administrators’ report and decide the future of the Equiticorp Group.

You will receive a copy of the Administrators report in the coming weeks.



Should you have any queries in relation to this matter, please do not hesitate to contact Richard Woolf +61 2 9248 9924 or rwoolf@mcgrathnicol.com.

Dated: 13 March 2020

Yours faithfully

Equiticorp Australia Limited (In Liquidation) (Administrators Appointed)

Equiticorp Tasman Limited (In Liquidation) (Administrators Appointed)

Equiticorp Investments (Australia) Limited (In Liquidation) (Administrators Appointed)

Sowani (No.2) Pty Ltd (In Liquidation) (Administrators Appointed)

Barry Kogan

Joint and Several Administrator

Enclosure(s):

- Sealed Orders
- Declaration of Independence, Relevant Relationships and Indemnities.



Issued: 28 February 2020 9:08 AM

JUDGMENT/ORDER

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2019/00382014

TITLE OF PROCEEDINGS

First Plaintiff	Barry Frederic Kogan
Second Plaintiff	Shaun Robert Fraser

First

DATE OF JUDGMENT/ORDER

Date made or given	27 February 2020
Date entered	27 February 2020

TERMS OF JUDGMENT/ORDER

Judgment delivered:

Leave granted under Corporations Act 2001 (Cth), s 436B(2) and s 448C and orders made under s 447A and directions given under the Insolvency Practice Schedule (Corporations) s 90-15

ORDERS

60 The Court makes the following orders and directions:

(1) Pursuant to s 436B(2)(g) and s 448C(1) of the Corporations Act 2001 (Cth) (the Act), leave be granted for the plaintiffs to be appointed as:

(a) administrators jointly and severally of each of Equiticorp Australia Limited (in liquidation) (EAL), Equiticorp Tasman Limited (in liquidation) (ETL), Equiticorp Investments (Australia) Limited (in liquidation) (EIAL) and Sowani (No. 2) Pty Limited (in liquidation) (Sowani) (together the Companies); and

(b) deed administrators of any deed of company arrangement entered into by any of the Companies in the course of their administration by the plaintiffs as administrators.

(2) Pursuant to s 447A of the Act, Pt 5.3A of the Act is to operate in relation to the administration of each of the Companies (and any administration of a deed of company arrangement made in relation to any of the Companies), on the following terms (with these orders to prevail to the extent of any inconsistency with the provisions of Pt 5.3A of the Act):

(a) there is no requirement that a first meeting of creditors in the administrations of each of the Companies be convened or held;

(b) s 438B(2) of the Act does not apply to the plaintiffs' administrations of the Companies;

(c) the plaintiffs (as Administrators) may convene and hold the meetings required under s 439A of the Act at any time during the convening period (as defined in the Act), provided always that notice of such meetings must be provided in accordance with r 75-225 of the Insolvency Practice Rules (Corporations) 2016 (Cth);

(d) in and for the purposes of the plaintiffs' administrations (pursuant to Pt 5.3A of the Act) of the Companies, the plaintiffs accept as proofs of debt in the administrations of the Companies any proofs of debt submitted by creditors in the course of the liquidations of the Companies conducted by the plaintiffs (and their predecessors) as liquidators, without adjustment for interest in respect of the claims the subject of such proofs of debt; and

(e) s 439C(c) of the Act does not apply to the plaintiffs' administrations of the Companies.

(3) Pursuant to s 90-15 of the Insolvency Practice Schedule (Corporations) (being Sch 2 to the Act), a direction that the plaintiffs as administrators of the Companies are justified in:

(a) not requiring or receiving a "Report as to Affairs" or "Report on Company Activities and Property" from any of the directors (or past directors) of the Companies; and

(b) not conducting investigations into, and reporting to creditors about, possible recovery actions that may be available in the event that any of the Companies were to proceed into liquidation under the Act pursuant to Div 12 of Pt 5.3A of the Act.

(4) Pursuant to s 383 of the Companies (New South Wales) Code, the winding up of each of EAL, ETL and Sowani be stayed in each case from the time that the plaintiffs appoint themselves administrators of such company, until further order of the Court.

(5) Pursuant to s 383 of the Companies Act 1981 (Cth), the winding up of EIAL be stayed from the time that the plaintiffs appoint themselves administrators of such company, until further order of the Court.

(6) The plaintiffs' costs of and incidental to this application be costs in the liquidation of the Companies, and are to be paid out of the assets of the Companies.

SEAL AND SIGNATURE



Signature Chris D'Aeth
Capacity Principal Registrar
Date 28 February 2020

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

FURTHER DETAILS ABOUT Plaintiff(s)

First Plaintiff
Name Barry Frederic Kogan
Address Level 12

20 Martin Place
SYDNEY NSW 2000

Telephone
Fax
E-mail
Client reference

Second Plaintiff

Name Shaun Robert Fraser
Address Level 12
20 Martin Place
SYDNEY NSW 2000

Telephone
Fax
E-mail
Client reference

Legal representative for plaintiffs

Name David James Walter
Practicing certificate number 43084
Address Baker McKenzie, Tower One-International Towers Syd Level
100 Barangaroo Avenue
BARANGAROO NSW 2000
DX address DX 218 Sydney NSW
Telephone 02 9225 0200
Fax 02 9225 1595
Email david.walter@bakermckenzie.com

FURTHER DETAILS ABOUT (s)



Declaration of Independence, Relevant Relationships and Indemnities (DIRRI)

**Equiticorp Australia Limited
(In Liquidation) (Administrators Appointed) (EAL) ACN 002 742 672**
**Equiticorp Tasman Limited
(In Liquidation) (Administrators Appointed) (ETL) ACN 000 079 050**
**Equiticorp Investment (Australia) Limited
(In Liquidation) (Administrators Appointed) (EIAL) ACN 008 604 313**
**Sowani (No. 2) Pty Limited
(In Liquidation) (Administrators Appointed) (Sowani) ACN 003 250 075**
(together, “the Companies”)

The purpose of this document is to assist creditors with understanding any relationships that Voluntary Administrators have and any indemnities or upfront payments that have been provided to the Voluntary Administrators.

This information is provided to you to enable you to make an informed assessment on any independence concerns, so you have trust and confidence in our independence and, if not, can act to remove and replace us if you wish.

This declaration is made in respect of ourselves, our partners, the firm McGrathNicol, which for the purpose of this declaration includes the McGrathNicol Partnership, the McGrathNicol Advisory Partnership and McGrathNicol Services Pty Ltd.

A. Independence

We, Barry Kogan and Shaun Fraser of the firm McGrathNicol have undertaken an assessment of the risks to our independence prior to accepting the appointment as administrators of the Companies in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to our independence. We are not aware of any reasons that would prevent us from accepting this appointment.

B. Declaration of Relationships

B1. *Circumstances of appointment*

The winding up of the Companies commenced in 1989, and has been ongoing since that time. We, our former partners, and partners of our former firms have acted as Liquidators of the Companies for over 30 years. A liquidator of a company is precluded by the Act from acting as Administrator of that company without relief from the Court or creditor approval.

At a meeting of creditors on 11 March 2019, creditors unanimously resolved that the Liquidators be authorised to make an application to a Court of competent jurisdiction seeking orders that, amongst other things, relief be granted for the Liquidators to be appointed as administrators of the Companies, as part of a plan to finalise the liquidations of the Companies.

On 20 February 2020 the final hearing in respect of the Companies' proposed Voluntary Administration was heard by Gleeson J of the Supreme Court of New South Wales.

On 27 February 2020, Gleeson J granted the proposed relief initiating the Voluntary Administrations and staying the liquidations of the Companies. Subsequently, the liquidators appointed themselves Voluntary Administrators of the Companies.

Gleeson J's reasons for providing relief for the liquidators to be appointed as administrators is provided below, verbatim:

“Given that Mr Kogan and Mr Fraser have carried out significant work in progressing the liquidations of the Companies, including formulating the proposed restructure, I accept that their appointment as



administrators is in the interests of creditors. In addition to the evidence that their appointment as administrators is supported by the creditors of each of the Companies, I take into account the following matters.

- a. First, the appointment of other qualified persons as voluntary administrators, would lead to the duplication of work and additional costs. Second, the present liquidators have a deep understanding of the proposed restructuring transactions. Third, the present liquidators have no real or potential conflict of duty or interest if appointed as administrators.
- b. There is also evidence, which I accept, that neither Mr Kogan or Mr Fraser had any previous association with any of the Companies or their officers, prior to their appointment as liquidators.
- c. Nor is there any suggestion that the administrators of the Companies would be contrary to the public interest."

A copy of the Gleeson J's judgement is attached.

We have not provided any other information or advice to the Companies, the former directors or their advisors prior to my appointment beyond that outlined in this DIRRI.

B2. Prior professional services to the Insolvent

Neither we, nor our firm, have provided any professional services to, or in relation to, the Companies, in the previous 24 months beyond acting as liquidators.

B3. Relevant Relationships (excluding professional services to the Insolvent)

Neither we, nor our firm, have, or have had, within the preceding 24 months, any relationships with the Companies, an associate of the Companies, a former insolvency practitioner appointed to the Companies or any person or entity that is entitled to enforce a security interest in the whole or substantially the whole of the Companies' property beyond what is disclosed in this document.

B4. Group appointments

At the same time as this appointment, we are also appointed to the following companies:

Name	Nature of relationship	Reasons
Equiticorp Australia Limited (In liquidation)	On 10 August 2015, Mr Kogan was appointed joint and several liquidator of these entities. On 23 October 2017	We believe this relationship does not result in a conflict of interest or duty because neither Mr Fraser or I had any previous association with any of the Companies or their officers, prior to the appointment as liquidators. Gleeson J was aware of and commented on this relationship in his Judgement of 27 February 2020 (attached), forming a conclusion that it remained appropriate for us to be appointed Voluntary Administrators.
Equiticorp Tasman Limited (In liquidation)	Mr Fraser was appointed joint and several liquidator of these entities following the resignation of the former liquidator, Mr Joseph Hayes.	
Equiticorp Investments (Australia) Limited (In liquidation)	On 27 February 2020, Mr Kogan and Mr Fraser were appointed Voluntary Administrators of these entities	
Sowani (No.2) Pty Limited (In liquidation)	by the Supreme Court of New South Wales.	



<p>Capitalcorp Securities Pty Limited (In Liquidation)</p> <p>Capitalcorp Alpha Investments Limited (In Liquidation)</p> <p>Capitalcorp International Investments Limited (In Liquidation)</p>	<p>On 10 August 2015, Mr Kogan was appointed joint and several liquidator to these entities. On 23 October 2017, Mr Fraser was appointed joint and several liquidator of these entities following the resignation of the former liquidator, Mr Joseph Hayes.</p>	<p>We believe this relationship does not result in a conflict of interest or duty because neither Mr Fraser or I had any previous association with any of the Companies or their officers, prior to the appointment as liquidators.</p>
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B5. No other relevant relationships to disclose

The Companies were part of a multinational group where various external administrators were appointed in a range of jurisdictions around the world. William Black and Andrew Grenfell of the firm McGrathNicol New Zealand, an affiliated firm, have been appointed liquidators of various associated entities registered in New Zealand. These entities pay or receive distributions to entities domiciled in Australia and have other linkages to group entities.

The Australian Administrators are of the view that the McGrathNicol New Zealand appointment to the entities registered in New Zealand does not affect our independence for the following reasons:

- While McGrathNicol and McGrathNicol New Zealand are affiliated, they are independent firms;
- The liquidations of the entities registered in New Zealand are being run separately;
- Our recent discussions with the appointees to New Zealand in relation to the Companies have been limited to strictly formulating an appropriate approach to finalising the liquidations for the benefit of all creditors. The purpose of these discussions was to:
 - Obtain cash balances and the value and number of inter-company claims;
 - Formulate an approach on restructuring the intercompany relationships to finalise the liquidations of the Companies, which in turn allow finalisation of the liquidations of other entities around the world; and
- The nature of the work performed by McGrathNicol New Zealand would not be subject to review and challenge during the course of the Australian Voluntary Administration.

Other than the relationship above, there are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with the Companies, an associate of the Companies, a former insolvency practitioner appointed to the Companies or any person or entity that is entitled to enforce a security interest in the whole or substantially the whole of the Companies' property that should be disclosed.

C. Indemnities and up-front payments

We have not been indemnified in relation to these Administrations, other than any indemnities that we may be entitled to under statute, and we have not received any up-front payments in respect of our remuneration or disbursements.



Dated: 13 March 2020

Barry Kogan

Shaun Fraser

Note:

If the circumstances change or new information is identified, we are required under the Corporations Act 2001 and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication, as well as table a copy of any replacement Declaration at the next meeting of the insolvent's creditors. For Creditors' Voluntary Liquidations and Voluntary Administrations, this document and any updated versions of this document are required to be lodged with ASIC.

Please note that the presentation of the above information is in accordance with the standard format suggested by ARITA.